



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1526

Introduced 2/10/2005, by Rep. Jim Watson

SYNOPSIS AS INTRODUCED:

New Act
815 ILCS 505/2Z

from Ch. 121 1/2, par. 262Z

Creates the Assistive Technology Warranty Act and amends the Consumer Fraud and Deceptive Business Practices Act. Provides that a manufacturer or assistive technology device lessor who sells or leases an assistive technology device to a consumer, either directly or through an assistive technology device dealer, must furnish the consumer with an express warranty for the assistive technology device warranting that the device is free of any nonconformity. Provides that the duration of the express warranty shall be not less than one year after the date of the initial delivery of the assistive technology device to the consumer. Provides that if a new assistive technology device does not conform to an applicable express warranty, a reasonable attempt to repair the nonconformity shall be made at no charge to the consumer. Provides for a refund to a consumer if the nonconformity is not repaired after a reasonable attempt to do so. Provides for arbitration in accordance with rules adopted by the Attorney General. Provides that any waiver by a consumer of rights under the Assistive Technology Warranty Act is void. Provides for civil remedies. Provides that a violation of the Assistive Technology Warranty Act is an unlawful practice within the meaning of the Consumer Fraud and Deceptive Business Practices Act.

LRB094 09979 DRJ 40237 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning business transactions.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Assistive Technology Warranty Act.

6 Section 5. Definitions. In this Act:

7 "Assistive technology device" means any item, piece of
8 equipment, or product system, whether acquired commercially,
9 modified, or customized, that is purchased or leased, or whose
10 transfer is accepted in this State, and that is used to
11 increase, maintain, or improve functional capabilities of
12 individuals with disabilities. "Assistive technology device"
13 does not mean any medical device, surgical device, or organ
14 implanted or transplanted into or attached directly to an
15 individual. "Assistive technology device" also does not
16 include any device for which a certificate of title is issued
17 by the Secretary of State, Division of Motor Vehicles, but does
18 mean any item, piece of equipment, or product system otherwise
19 meeting the definition of "assistive technology device" that is
20 incorporated, attached, or included as a modification in or to
21 such certificated device.

22 "Assistive technology device dealer" means a person who is
23 in the business of selling assistive technology devices.

24 "Assistive technology device lessor" means a person who
25 leases assistive technology devices to consumers, or who holds
26 the lessor's rights, under a written lease.

27 "Collateral cost" means expenses incurred by a consumer in
28 connection with the repair of a nonconformity, including the
29 cost of shipping, sales tax, and the cost of obtaining an
30 alternative assistive technology device.

31 "Consumer" means any one of the following:

32 (1) A purchaser of an assistive technology device, if

1 the assistive technology device was purchased from an
2 assistive technology device dealer or manufacturer for
3 purposes other than resale.

4 (2) A person to whom an assistive technology device is
5 transferred for purposes other than resale, if the transfer
6 occurs before the expiration of an express warranty
7 applicable to the assistive technology device.

8 (3) A person who may enforce a warranty applicable to
9 an assistive technology device.

10 (4) A person who leases an assistive technology device
11 from an assistive technology device lessor under a written
12 lease.

13 "Demonstrator" means an assistive technology device used
14 primarily for the purpose of demonstration to the public.

15 "Early termination cost" means any expense or obligation
16 that an assistive technology device lessor incurs as a result
17 of both the termination of a written lease before the
18 termination date set forth in the lease and the return of an
19 assistive technology device to the manufacturer, including a
20 penalty for prepayment under a financing arrangement.

21 "Early termination savings" means any expense or
22 obligation that an assistive technology device lessor avoids as
23 a result of both the termination date set forth in the lease
24 and the return of an assistive technology device to a
25 manufacturer, including an interest charge that the assistive
26 technology device lessor would have paid to finance the
27 assistive technology device or, if the assistive technology
28 device lessor does not finance the assistive technology device,
29 the difference between the total payments remaining for the
30 period of the lease term remaining after the early termination
31 and the present value of those remaining payments at the date
32 of the early termination.

33 "Loaner" means an assistive technology device provided
34 free of charge to a consumer, for use by the consumer, that
35 need not be new or identical to, or have functional
36 capabilities equal to or greater than, those of the original

1 assistive technology device, but that meets all of the
2 following conditions:

3 (1) It is in good working order.

4 (2) It performs, at a minimum, the most essential
5 functions of the original assistive technology device in
6 light of the disabilities of the consumer.

7 (3) There is no threat to the health or safety of the
8 consumer due to any differences between the loaner and the
9 original assistive technology device.

10 "Manufacturer" means a person who manufactures or
11 assembles assistive technology devices and (i) any agent of
12 that person, including an importer, distributor, factory
13 branch, or distributor branch, and (ii) any warrantor of an
14 assistive technology device. The term does not include an
15 assistive technology device dealer or assistive technology
16 device lessor.

17 "Nonconformity" means any defect, malfunction, or
18 condition that substantially impairs the use, value, or safety
19 of an assistive technology device or any of its component
20 parts, but does not include a condition, defect, or malfunction
21 that is the result of abuse, neglect, or unauthorized
22 modification or alteration of the assistive technology device
23 by the consumer.

24 "Reasonable attempt to repair" means any of the following
25 occurring within the term of an express warranty applicable to
26 a new assistive technology device or within one year after the
27 first delivery of the assistive technology device to a
28 consumer, whichever is sooner:

29 (1) The manufacturer, the assistive technology device
30 lessor, or any of the manufacturer's authorized assistive
31 technology device dealers accept return of the new
32 assistive technology device for repair at least 2 times.

33 (2) The manufacturer, the assistive technology device
34 lessor, or any of the manufacturer's authorized assistive
35 technology device dealers place the assistive technology
36 device out of service for an aggregate of at least 30

1 cumulative days because of nonconformities covered by a
2 warranty that applies to the device.

3 Section 10. Express warranty. A manufacturer or assistive
4 technology device lessor who sells or leases an assistive
5 technology device to a consumer, either directly or through an
6 assistive technology device dealer, must furnish the consumer
7 with an express warranty for the assistive technology device
8 warranting that the device is free of any nonconformity. The
9 duration of the express warranty must be not less than one year
10 after the date of the initial delivery of the assistive
11 technology device to the consumer. If the manufacturer fails to
12 furnish an express warranty as required by this Section, the
13 manufacturer shall be deemed to have warranted to the consumer
14 of an assistive technology device that, for a period of one
15 year after the date of the initial delivery to the consumer,
16 the assistive technology device will be free from any condition
17 or defect that substantially impairs the value of the assistive
18 technology device to the consumer. The express warranty takes
19 effect on the date the consumer initially takes possession of
20 the new assistive technology device.

21 Section 15. Assistive technology device replacement or
22 refund.

23 (a) If a new assistive technology device does not conform
24 to an applicable express warranty and the consumer (i) reports
25 the nonconformity to the manufacturer, the assistive
26 technology device lessor, or any of the manufacturer's
27 authorized assistive technology device dealers and (ii) makes
28 the assistive technology device available for repair before one
29 year after the first delivery of the device to the consumer or
30 within the period of the express warranty if the express
31 warranty is longer than one year, then a reasonable attempt to
32 repair the nonconformity must be made at no charge to the
33 consumer.

34 (b) If, after a reasonable attempt to repair, the

1 nonconformity is not repaired, the manufacturer must carry out
2 the requirements of either item (1) or item (2) of this
3 subsection at the option of the consumer:

4 (1) The manufacturer shall provide a refund to the
5 consumer within 30 days after the request by the consumer.
6 If the consumer chooses this option, he or she shall return
7 the device having a nonconformity to the manufacturer or
8 lessor along with any endorsements necessary to transfer
9 legal possession to the manufacturer or lessor.

10 If the assistive technology device was purchased by
11 the consumer, the manufacturer shall accept return of the
12 assistive technology device and refund to the consumer, and
13 to any holder of a perfected security interest in the
14 assistive technology device as the holder's interest may
15 appear, the full purchase price plus any finance charge
16 paid by the consumer at the point of sale and collateral
17 costs, less a reasonable allowance for use.

18 If the assistive technology device was leased by the
19 consumer, the manufacturer shall accept return of the
20 device, refund to the assistive technology lessor and to
21 any holder of a perfected security interest in the device,
22 as the holder's interest may appear, the current value of
23 the written lease, and refund to the consumer the amount
24 that the consumer paid under the written lease plus any
25 collateral costs, less a reasonable allowance for use. The
26 manufacturer shall have a cause of action against the
27 dealer or lessor for reimbursement of any amount that the
28 manufacturer pays to a consumer which exceeds the net price
29 received by the manufacturer for the assistive technology
30 device.

31 (2) The manufacturer shall provide a comparable new
32 assistive technology device. The consumer shall offer to
33 transfer possession of the device having a nonconformity to
34 the manufacturer. No later than 30 days after that offer,
35 the manufacturer shall provide the consumer with the
36 comparable new assistive device. Upon receipt of the

1 comparable new assistive device, the consumer shall return
2 the device having the nonconformity to the manufacturer,
3 along with any endorsements necessary to transfer legal
4 possession to the manufacturer.

5 (c) For purposes of this Section, "current value of the
6 written lease" means the total amount for which that lease
7 obligates the consumer during the period of the lease remaining
8 after its early termination, plus the assistive device lessor's
9 early termination costs and the value of the assistive device
10 at the lease expiration date if the lease sets forth that
11 value, less the assistive device lessor's early termination
12 savings.

13 (d) For purposes of this Section, a "reasonable allowance
14 for use" may not exceed the amount obtained by multiplying the
15 total amount for which the written lease obligates the consumer
16 by a fraction, the denominator of which is 1,825 and the
17 numerator of which is the number of days that the consumer used
18 the assistive device before first reporting the nonconformity
19 to the manufacturer, assistive device lessor, or assistive
20 device dealer.

21 Section 20. Prohibition on enforcement of lease. A person
22 may not enforce an assistive technology device lease against a
23 consumer after the consumer receives a refund under Section 15.

24 Section 25. Restriction on resale or lease; full
25 disclosure. An assistive technology device returned by a
26 consumer or assistive technology device lessor in this State,
27 or by a consumer or assistive technology device lessor in
28 another state under a similar law of that state, may not be
29 sold or leased again in this State unless full disclosure of
30 the reasons for the return is made to any prospective buyer or
31 lessee of the device.

32 Section 30. Arbitration.

33 (a) Each consumer shall have the option of submitting any

1 dispute arising under this Act, upon the payment of a
2 prescribed fee, to an alternative arbitration procedure
3 established under rules adopted by the Attorney General. The
4 alternative arbitration procedure shall be conducted by a
5 professional arbitrator or arbitration firm appointed by and
6 under rules adopted by the Attorney General. The procedure must
7 ensure the personal objectivity of the arbitrators and the
8 right of each party to present its case, to be in attendance
9 during any presentation made by the other party, and to rebut
10 or refute the other party's presentation.

11 (b) This Section shall not be construed to limit rights or
12 remedies available to a consumer under any other law.

13 Section 35. Waiver of rights void. Any waiver by a consumer
14 of his or her rights under this Act is void.

15 Section 40. Civil remedies. In addition to pursuing any
16 other remedy, a consumer may bring an action to recover any
17 damages caused by a violation of this Act. The court shall
18 award a consumer who prevails in such an action no more than
19 twice the amount of any pecuniary loss, costs, disbursements,
20 and reasonable attorney's fees, and any equitable relief that
21 the court deems appropriate.

22 Section 45. The Consumer Fraud and Deceptive Business
23 Practices Act is amended by changing Section 2Z as follows:

24 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

25 Sec. 2Z. Violations of other Acts. Any person who knowingly
26 violates the Automotive Repair Act, the Home Repair and
27 Remodeling Act, the Dance Studio Act, the Physical Fitness
28 Services Act, the Hearing Instrument Consumer Protection Act,
29 the Illinois Union Label Act, the Job Referral and Job Listing
30 Services Consumer Protection Act, the Travel Promotion
31 Consumer Protection Act, the Credit Services Organizations
32 Act, the Automatic Telephone Dialers Act, the Pay-Per-Call

1 Services Consumer Protection Act, the Telephone Solicitations
2 Act, the Illinois Funeral or Burial Funds Act, the Cemetery
3 Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery
4 Sales Act, the High Risk Home Loan Act, subsection (a) or (b)
5 of Section 3-10 of the Cigarette Tax Act, subsection (a) or (b)
6 of Section 3-10 of the Cigarette Use Tax Act, the Electronic
7 Mail Act, paragraph (6) of subsection (k) of Section 6-305 of
8 the Illinois Vehicle Code, ~~or~~ the Automatic Contract Renewal
9 Act, or the Assistive Technology Warranty Act commits an
10 unlawful practice within the meaning of this Act.

11 (Source: P.A. 92-426, eff. 1-1-02; 93-561, eff. 1-1-04; 93-950,
12 eff. 1-1-05.)