

1 AN ACT to create the Assistive Technology Protection Act.

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" does not include a
16 "hearing instrument" or "hearing aid" as defined in the Hearing
17 Instrument Consumer Protection Act. "Assistive technology
18 device" also does not include any device for which a
19 certificate of title is issued by the Secretary of State,
20 Division of Motor Vehicles, but does mean any item, piece of
21 equipment, or product system otherwise meeting the definition
22 of "assistive technology device" that is incorporated,
23 attached, or included as a modification in or to such
24 certificated device.

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

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

30 "Collateral cost" means expenses incurred by a consumer in
31 connection with the repair of a nonconformity, including the
32 cost of shipping, sales tax, and the cost of obtaining an

1 alternative assistive technology device.

2 "Consumer" means any one of the following:

3 (1) A purchaser of an assistive technology device, if
4 the assistive technology device was purchased from an
5 assistive technology device dealer or manufacturer for
6 purposes other than resale.

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

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

13 (4) A person who leases an assistive technology device
14 from an assistive technology device lessor under a written
15 lease.

16 "Consumer" does not include a person who acquires an
17 assistive technology device at no charge through a donation.

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

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

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

1 of the early termination.

2 "Loaner" means an assistive technology device provided
3 free of charge to a consumer, for use by the consumer, that
4 need not be new or identical to, or have functional
5 capabilities equal to or greater than, those of the original
6 assistive technology device, but that meets all of the
7 following conditions:

8 (1) It is in good working order.

9 (2) It performs, at a minimum, the most essential
10 functions of the original assistive technology device in
11 light of the disabilities of the consumer.

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

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

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

29 "Reasonable attempt to repair" means any of the following
30 occurring within the term of an express warranty applicable to
31 a new assistive technology device or within one year after the
32 first delivery of the assistive technology device to a
33 consumer, whichever is sooner:

34 (1) The manufacturer, the assistive technology device
35 lessor, or any of the manufacturer's authorized assistive
36 technology device dealers accept return of the new

1 assistive technology device for repair at least 2 times.

2 (2) The manufacturer, the assistive technology device
3 lessor, or any of the manufacturer's authorized assistive
4 technology device dealers place the assistive technology
5 device out of service for an aggregate of at least 30
6 cumulative days because of nonconformities covered by a
7 warranty that applies to the device.

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

26 Section 15. Assistive technology device replacement or
27 refund.

28 (a) If a new assistive technology device does not conform
29 to an applicable express warranty and the consumer (i) reports
30 the nonconformity to the manufacturer, the assistive
31 technology device lessor, or any of the manufacturer's
32 authorized assistive technology device dealers and (ii) makes
33 the assistive technology device available for repair before one
34 year after the first delivery of the device to the consumer or

1 within the period of the express warranty if the express
2 warranty is longer than one year, then a reasonable attempt to
3 repair the nonconformity must be made at no charge to the
4 consumer.

5 (b) If, after a reasonable attempt to repair, the
6 nonconformity is not repaired, the person from whom the
7 assistive technology device was purchased or leased must carry
8 out the requirements of either item (1) or item (2) of this
9 subsection at the option of the consumer:

10 (1) The person from whom the assistive technology
11 device was purchased or leased shall provide a refund to
12 the consumer within 30 days after the request by the
13 consumer. If the consumer chooses this option, he or she
14 shall return the device having a nonconformity to the
15 person from whom the assistive technology device was
16 purchased or leased along with any endorsements necessary
17 to transfer legal possession to the person from whom the
18 assistive technology device was purchased or leased.

19 If the assistive technology device was purchased by
20 the consumer, the person from whom the assistive technology
21 device was purchased shall accept return of the assistive
22 technology device and refund to the consumer, and to any
23 holder of a perfected security interest in the assistive
24 technology device as the holder's interest may appear, the
25 full purchase price plus any finance charge paid by the
26 consumer at the point of sale and collateral costs, less a
27 reasonable allowance for use.

28 If the assistive technology device was leased by the
29 consumer, the person from whom the assistive technology
30 device was leased shall accept return of the device, refund
31 to the assistive technology lessor and to any holder of a
32 perfected security interest in the device, as the holder's
33 interest may appear, the current value of the written
34 lease, and refund to the consumer the amount that the
35 consumer paid under the written lease plus any collateral
36 costs, less a reasonable allowance for use.

1 (2) The person from whom the assistive technology
2 device was purchased or leased shall provide a comparable
3 new assistive technology device. The consumer shall offer
4 to transfer possession of the device having a nonconformity
5 to the person from whom the assistive technology device was
6 purchased or leased. No later than 30 days after that
7 offer, the person from whom the assistive technology device
8 was purchased or leased shall provide the consumer with the
9 comparable new assistive device. Upon receipt of the
10 comparable new assistive device, the consumer shall return
11 the device having the nonconformity to the person from whom
12 the assistive technology device was purchased or leased,
13 along with any endorsements necessary to transfer legal
14 possession to the person from whom the assistive technology
15 device was purchased or leased.

16 (c) For purposes of this Section, "current value of the
17 written lease" means the total amount for which that lease
18 obligates the consumer during the period of the lease remaining
19 after its early termination, plus the assistive device lessor's
20 early termination costs and the value of the assistive device
21 at the lease expiration date if the lease sets forth that
22 value, less the assistive device lessor's early termination
23 savings.

24 (d) For purposes of this Section, a "reasonable allowance
25 for use" may not exceed the amount obtained by multiplying the
26 total amount for which the written lease obligates the consumer
27 by a fraction, the denominator of which is 1,825 and the
28 numerator of which is the number of days that the consumer used
29 the assistive device before first reporting the nonconformity
30 to the person from whom the assistive technology device was
31 purchased or leased.

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

1 Section 25. Restriction on resale or lease; full
2 disclosure. An assistive technology device returned by a
3 consumer or assistive technology device lessor in this State,
4 or by a consumer or assistive technology device lessor in
5 another state under a similar law of that state, may not be
6 sold or leased again in this State unless full disclosure of
7 the reasons for the return is made to any prospective buyer or
8 lessee of the device.

9 Section 30. Waiver of rights void. Any waiver by a consumer
10 of his or her rights under this Act is void.

11 Section 35. Civil remedies. In addition to pursuing any
12 other remedy, a consumer may bring an action to recover any
13 damages caused by a violation of this Act. The court shall
14 award a consumer who prevails in such an action no more than
15 twice the amount of any pecuniary loss, costs, disbursements,
16 and reasonable attorney's fees, and any equitable relief that
17 the court deems appropriate.