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LRB094 04164 DRJ 43634 a

1 AMENDMENT TO SENATE BILL 101

2 AMENDMENT NO. _____. Amend Senate Bill 101 by replacing
3 everything after the enacting clause with the following:

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

1 leases assistive technology devices to consumers, or who holds
2 the lessor's rights, under a written lease.

3 "Collateral cost" means expenses incurred by a consumer in
4 connection with the repair of a nonconformity, including the
5 cost of shipping, sales tax, and the cost of obtaining an
6 alternative assistive technology device.

7 "Consumer" means any one of the following:

8 (1) A purchaser of an assistive technology device, if
9 the assistive technology device was purchased from an
10 assistive technology device dealer or manufacturer for
11 purposes other than resale.

12 (2) A person to whom an assistive technology device is
13 transferred for purposes other than resale, if the transfer
14 occurs before the expiration of an express warranty
15 applicable to the assistive technology device.

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

18 (4) A person who leases an assistive technology device
19 from an assistive technology device lessor under a written
20 lease.

21 "Consumer" does not include a person who acquires an
22 assistive technology device at no charge through a donation, or
23 a public school district or special education joint agreement
24 established under the Illinois School Code that purchases or
25 leases an assistive technology device for the use of a student
26 with a disability for the purpose of implementing the
27 Individualized Educational Plan of the student.

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

30 "Early termination cost" means any expense or obligation
31 that an assistive technology device lessor incurs as a result
32 of both the termination of a written lease before the
33 termination date set forth in the lease and the return of an
34 assistive technology device to the manufacturer, including a

1 penalty for prepayment under a financing arrangement.

2 "Early termination savings" means any expense or
3 obligation that an assistive technology device lessor avoids as
4 a result of both the termination date set forth in the lease
5 and the return of an assistive technology device to a
6 manufacturer, including an interest charge that the assistive
7 technology device lessor would have paid to finance the
8 assistive technology device or, if the assistive technology
9 device lessor does not finance the assistive technology device,
10 the difference between the total payments remaining for the
11 period of the lease term remaining after the early termination
12 and the present value of those remaining payments at the date
13 of the early termination.

14 "Loaner" means an assistive technology device provided
15 free of charge to a consumer, for use by the consumer, that
16 need not be new or identical to, or have functional
17 capabilities equal to or greater than, those of the original
18 assistive technology device, but that meets all of the
19 following conditions:

20 (1) It is in good working order.

21 (2) It performs, at a minimum, the most essential
22 functions of the original assistive technology device in
23 light of the disabilities of the consumer.

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

27 "Manufacturer" means a person who manufactures or
28 assembles assistive technology devices and (i) any agent of
29 that person, including an importer, distributor, factory
30 branch, or distributor branch, and (ii) any warrantor of an
31 assistive technology device. The term does not include an
32 assistive technology device dealer or assistive technology
33 device lessor.

34 "Nonconformity" means any defect, malfunction, or

1 condition that substantially impairs the use, value, or safety
2 of an assistive technology device or any of its component
3 parts, but does not include a condition, defect, or malfunction
4 that is the result of abuse, neglect, or unauthorized
5 modification or alteration of the assistive technology device
6 by the consumer.

7 "Reasonable attempt to repair" means any of the following
8 occurring within the term of an express warranty applicable to
9 a new assistive technology device or within one year after the
10 first delivery of the assistive technology device to a
11 consumer, whichever is sooner:

12 (1) The manufacturer, the assistive technology device
13 lessor, or any of the manufacturer's authorized assistive
14 technology device dealers accept return of the new
15 assistive technology device for repair at least 2 times.

16 (2) The manufacturer, the assistive technology device
17 lessor, or any of the manufacturer's authorized assistive
18 technology device dealers place the assistive technology
19 device out of service for an aggregate of at least 30
20 cumulative days because of nonconformities covered by a
21 warranty that applies to the device.

22 Section 10. Express warranty. A manufacturer or assistive
23 technology device lessor who sells or leases an assistive
24 technology device to a consumer, either directly or through an
25 assistive technology device dealer, must furnish the consumer
26 with an express warranty for the assistive technology device
27 warranting that the device is free of any nonconformity. The
28 duration of the express warranty must be not less than one year
29 after the date of the initial delivery of the assistive
30 technology device to the consumer. If the manufacturer fails to
31 furnish an express warranty as required by this Section, the
32 manufacturer shall be deemed to have warranted to the consumer
33 of an assistive technology device that, for a period of one

1 year after the date of the initial delivery to the consumer,
2 the assistive technology device will be free from any condition
3 or defect that substantially impairs the value of the assistive
4 technology device to the consumer. The express warranty takes
5 effect on the date the consumer initially takes possession of
6 the new assistive technology device.

7 Section 15. Assistive technology device replacement or
8 refund.

9 (a) If a new assistive technology device does not conform
10 to an applicable express warranty and the consumer (i) reports
11 the nonconformity to the manufacturer, the assistive
12 technology device lessor, or any of the manufacturer's
13 authorized assistive technology device dealers and (ii) makes
14 the assistive technology device available for repair before one
15 year after the first delivery of the device to the consumer or
16 within the period of the express warranty if the express
17 warranty is longer than one year, then a reasonable attempt to
18 repair the nonconformity must be made at no charge to the
19 consumer.

20 (b) If, after a reasonable attempt to repair, the
21 nonconformity is not repaired, the manufacturer must carry out
22 the requirements of either item (1) or item (2) of this
23 subsection at the option of the consumer:

24 (1) The manufacturer shall provide a refund to the
25 consumer within 30 days after the request by the consumer.
26 If the consumer chooses this option, he or she shall return
27 the device having a nonconformity to the manufacturer or
28 lessor along with any endorsements necessary to transfer
29 legal possession to the manufacturer or lessor.

30 If the assistive technology device was purchased by
31 the consumer, the manufacturer shall accept return of the
32 assistive technology device and refund to the consumer, and
33 to any holder of a perfected security interest in the

1 assistive technology device as the holder's interest may
2 appear, the full purchase price plus any finance charge
3 paid by the consumer at the point of sale and collateral
4 costs, less a reasonable allowance for use.

5 If the assistive technology device was leased by the
6 consumer, the manufacturer shall accept return of the
7 device, refund to the assistive technology lessor and to
8 any holder of a perfected security interest in the device,
9 as the holder's interest may appear, the current value of
10 the written lease, and refund to the consumer the amount
11 that the consumer paid under the written lease plus any
12 collateral costs, less a reasonable allowance for use. The
13 manufacturer shall have a cause of action against the
14 dealer or lessor for reimbursement of any amount that the
15 manufacturer pays to a consumer which exceeds the net price
16 received by the manufacturer for the assistive technology
17 device.

18 (2) The manufacturer shall provide a comparable new
19 assistive technology device. The consumer shall offer to
20 transfer possession of the device having a nonconformity to
21 the manufacturer. No later than 30 days after that offer,
22 the manufacturer shall provide the consumer with the
23 comparable new assistive device. Upon receipt of the
24 comparable new assistive device, the consumer shall return
25 the device having the nonconformity to the manufacturer,
26 along with any endorsements necessary to transfer legal
27 possession to the manufacturer.

28 (c) For purposes of this Section, "current value of the
29 written lease" means the total amount for which that lease
30 obligates the consumer during the period of the lease remaining
31 after its early termination, plus the assistive device lessor's
32 early termination costs and the value of the assistive device
33 at the lease expiration date if the lease sets forth that
34 value, less the assistive device lessor's early termination

1 savings.

2 (d) For purposes of this Section, a "reasonable allowance
3 for use" may not exceed the amount obtained by multiplying the
4 total amount for which the written lease obligates the consumer
5 by a fraction, the denominator of which is 1,825 and the
6 numerator of which is the number of days that the consumer used
7 the assistive device before first reporting the nonconformity
8 to the manufacturer, assistive device lessor, or assistive
9 device dealer.

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

13 Section 25. Restriction on resale or lease; full
14 disclosure. An assistive technology device returned by a
15 consumer or assistive technology device lessor in this State,
16 or by a consumer or assistive technology device lessor in
17 another state under a similar law of that state, may not be
18 sold or leased again in this State unless full disclosure of
19 the reasons for the return is made to any prospective buyer or
20 lessee of the device.

21 Section 30. Arbitration.

22 (a) Each consumer shall have the option of submitting any
23 dispute arising under this Act, upon the payment of a
24 prescribed fee, to an alternative arbitration procedure
25 established under rules adopted by the Attorney General. The
26 alternative arbitration procedure shall be conducted by a
27 professional arbitrator or arbitration firm appointed by and
28 under rules adopted by the Attorney General. The procedure must
29 ensure the personal objectivity of the arbitrators and the
30 right of each party to present its case, to be in attendance
31 during any presentation made by the other party, and to rebut

1 or refute the other party's presentation.

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

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

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

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

15 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

16 Sec. 2Z. Violations of other Acts. Any person who knowingly
17 violates the Automotive Repair Act, the Home Repair and
18 Remodeling Act, the Dance Studio Act, the Physical Fitness
19 Services Act, the Hearing Instrument Consumer Protection Act,
20 the Illinois Union Label Act, the Job Referral and Job Listing
21 Services Consumer Protection Act, the Travel Promotion
22 Consumer Protection Act, the Credit Services Organizations
23 Act, the Automatic Telephone Dialers Act, the Pay-Per-Call
24 Services Consumer Protection Act, the Telephone Solicitations
25 Act, the Illinois Funeral or Burial Funds Act, the Cemetery
26 Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery
27 Sales Act, the High Risk Home Loan Act, subsection (a) or (b)
28 of Section 3-10 of the Cigarette Tax Act, subsection (a) or (b)
29 of Section 3-10 of the Cigarette Use Tax Act, the Electronic
30 Mail Act, paragraph (6) of subsection (k) of Section 6-305 of

1 the Illinois Vehicle Code, ~~or~~ the Automatic Contract Renewal
2 Act, or the Assistive Technology Warranty Act commits an
3 unlawful practice within the meaning of this Act.

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