



Sen. Miguel del Valle

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LRB094 04164 DRJ 43996 a

1 AMENDMENT TO SENATE BILL 101

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

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

7 Section 5. Definitions. In this Act:

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

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

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

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

8 "Consumer" means any one of the following:

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

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

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

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

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

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

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

1 assistive technology device to the manufacturer, including a
2 penalty for prepayment under a financing arrangement.

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

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

21 (1) It is in good working order.

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

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

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

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

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

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

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

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

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

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

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

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

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

31 If the assistive technology device was purchased by
32 the consumer, the manufacturer shall accept return of the
33 assistive technology device and refund to the consumer, and

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

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

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

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

1 value, less the assistive device lessor's early termination
2 savings.

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

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

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

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

24 Section 35. Civil remedies. In addition to pursuing any
25 other remedy, a consumer may bring an action to recover any
26 damages caused by a violation of this Act. The court shall
27 award a consumer who prevails in such an action no more than
28 twice the amount of any pecuniary loss, costs, disbursements,
29 and reasonable attorney's fees, and any equitable relief that
30 the court deems appropriate."