



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2697

Introduced 1/20/2006, by Sen. Iris Y. Martinez - Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

815 ILCS 301/5
815 ILCS 301/12 new
815 ILCS 301/17 new
815 ILCS 301/18 new
815 ILCS 301/27 new
815 ILCS 301/33 new

Amends the Assistive Technology Warranty Act. Defines "Department". Requires a physical evaluation of a consumer by a health care professional and a technology assessment by a qualified rehabilitation professional before an assistive device is sold or leased to the consumer. Provides that the consumer is entitled to a refund from the manufacturer if the manufacturer fails to repair the assistive device. Establishes procedures for receiving a refund. Requires the Department of Human Services to prepare a written statement of a consumer's rights under the Act and to make copies of the statement available to assistive device manufacturers, dealers, and lessors. Authorizes the Department of Human Services to impose civil penalties for violations of the Act. Effective immediately.

LRB094 18996 LCT 54477 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning business.

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

4 Section 5. The Assistive Technology Warranty Act is amended
5 by changing Section 5 and by adding Sections 12, 17, 18, 27,
6 and 33 as follows:

7 (815 ILCS 301/5)

8 Sec. 5. Definitions. In this Act:

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

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

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

32 "Collateral cost" means expenses incurred by a consumer in

1 connection with the repair of a nonconformity, including the
2 cost of shipping, sales tax, and the cost of obtaining an
3 alternative assistive technology device.

4 "Consumer" means any one of the following:

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

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

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

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

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

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

22 "Department" means the Department of Human Services.

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

29 "Early termination savings" means any expense or
30 obligation that an assistive technology device lessor avoids as
31 a result of both the termination date set forth in the lease
32 and the return of an assistive technology device to a
33 manufacturer, including an interest charge that the assistive
34 technology device lessor would have paid to finance the
35 assistive technology device or, if the assistive technology
36 device lessor does not finance the assistive technology device,

1 the difference between the total payments remaining for the
2 period of the lease term remaining after the early termination
3 and the present value of those remaining payments at the date
4 of the early termination.

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

11 (1) It is in good working order.

12 (2) It performs, at a minimum, the most essential
13 functions of the original assistive technology device in
14 light of the disabilities of the consumer.

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

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

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

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

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

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

11 (Source: P.A. 94-378, eff. 1-1-06.)

12 (815 ILCS 301/12 new)

13 Sec. 12. Physical evaluation and technology assessment.

14 (a) In this Section:

15 "Assistive technology supplier" means a service provider
16 involved in the sale and service of commercially available
17 assistive devices.

18 "Assistive technology practitioner" means a therapist or
19 other allied health professional primarily involved in
20 evaluating a consumer's needs and training a consumer in the
21 use of a prescribed assistive device.

22 "Health care professional" means a physician licensed to
23 practice medicine in all its branches under the Medical
24 Practice Act of 1987, a physical therapist, an occupational
25 therapist, or another allied health care professional who
26 performs physical evaluations within the scope of his or her
27 practice.

28 "Physical evaluation" means the determination and
29 documentation of the physiological, functional, and
30 environmental factors that affect the selection of an
31 appropriate assistive device for a consumer.

32 "Qualified rehabilitation professional" means: (A) an
33 individual who has obtained the designation of assistive
34 technology supplier, assistive technology practitioner, or
35 rehabilitation engineering technologist, if applicable, after

1 meeting all of the requirements for that designation as
2 established by the Rehabilitation Engineering and Assistive
3 Technology Society of North America (RESNA); or (B) an
4 individual who: (i) can provide documentation to prove
5 completion of at least 15 contact hours of continuing education
6 within the 12 months immediately prior to July 1, 2007, and all
7 other subsequent years thereafter by June 30, in the field of
8 assistive devices, which may include, but is not limited to,
9 courses by health care professionals, courses by health care
10 associations, courses by a college or university, courses by
11 manufacturers, in-service training by manufacturers, or
12 attendance at symposiums or conferences; (ii) can provide proof
13 of at least one year of experience, at least 10 hours a week in
14 a 40-hour work week, in the field of rehabilitation technology;
15 and (iii) can provide 3 recommendations from health care
16 professionals who can attest to the individual's skills
17 concerning assistive devices.

18 "Rehabilitation engineering technologist" means a person
19 who applies engineering principles to the design,
20 modification, and customization of assistive devices.

21 "Technology assessment" means the process and
22 documentation of matching the pathology, history, and
23 prognosis of a consumer to the appropriate assistive device.

24 (b) On and after July 1, 2008, an assistive device dealer
25 or lessor must employ at least one qualified rehabilitation
26 professional if that dealer or lessor provides any assistive
27 device to a consumer who:

28 (1) is under age 21;

29 (2) has a primary diagnosis that results from childhood
30 or adult onset injury or trauma;

31 (3) has a primary diagnosis that is progressive or
32 degenerative in nature and necessitates an assistive
33 device;

34 (4) has a primary diagnosis that is neurological or
35 neuromuscular in nature and necessitates an assistive
36 device;

1 (5) requires adaptive seating or positioning
2 equipment;

3 (6) has a diagnosis that indicates a need for other
4 assistive technology such as speech generating devices or
5 environmental controls; or

6 (7) has a diagnosis that requires an assistive device
7 ordered by a health care professional.

8 (c) On and after July 1, 2007, in order for an assistive
9 device dealer or lessor to supply an assistive device to a
10 consumer, the consumer must have undergone a physical
11 evaluation by a health care professional, who must provide a
12 written report of the evaluation to be included in the
13 consumer's medical record and maintained on file by the
14 assistive device dealer or lessor.

15 (d) A health care professional, except a physician licensed
16 to practice medicine in all its branches under the Medical
17 Practice Act of 1987, must complete 5 contact hours of
18 continuing education per year in the area of assistive devices.

19 (e) On and after July 1, 2007, every assistive device
20 dealer or lessor making available technology assessments on
21 prescribed assistive devices must have on staff a qualified
22 rehabilitation professional.

23 (f) On and after July 1, 2007, a qualified rehabilitation
24 professional must perform a complete, face-to-face technology
25 assessment with respect to a consumer, based on the physical
26 evaluation required in subsection (c), and document, in
27 writing, recommendations for an assistive device that is
28 appropriate to meet the consumer's needs.

29 (g) On and after July 1, 2010, a 180-day grace period shall
30 be provided to an assistive device dealer or lessor that
31 provides technology assessments on prescribed assistive
32 devices if the qualified rehabilitation professional on the
33 dealer's or lessor's staff ceases to be employed by the dealer
34 or lessor and the dealer or lessor has no other qualified
35 rehabilitation professional on staff. During the grace period,
36 the standards regarding qualified rehabilitation professionals

1 contained in subsections (e) and (f) apply.

2 (h) On and after July 1, 2010, a qualified rehabilitation
3 professional must be RESNA-certified with the designation of
4 assistive technology supplier, assistive technology
5 practitioner, or rehabilitation engineer technologist, if
6 applicable, or have an assistive technology degree from an
7 accredited college or university or any other designation
8 approved by the Home Medical Equipment and Services Board. This
9 subsection does not apply, however, to an individual who is a
10 licensed physical therapist or occupational therapist and who
11 performs physical evaluations within the scope of his or her
12 practice.

13 (i) Final fitting of an assistive device for a consumer
14 must be completed with a qualified rehabilitation professional
15 or health care professional present.

16 (j) On and after July 1, 2007, every assistive device
17 dealer or lessor making available prescribed assistive devices
18 must have a physical location with a working telephone and must
19 maintain at least \$1,000,000 in liability insurance coverage.

20 (k) On or after July 1, 2010, every assistive device dealer
21 or lessor providing assistive devices must be accredited by a
22 nationally recognized accreditation body.

23 (815 ILCS 301/17 new)

24 Sec. 17. Failure to repair.

25 (a) If a nonconformity is not repaired after a reasonable
26 attempt to do so, then at the direction of the consumer the
27 manufacturer must do one of the following:

28 (1) Accept return of the assistive device, replace the
29 assistive device with a comparable new assistive device,
30 and refund any collateral cost.

31 (2) Accept return of the assistive device and refund to
32 the consumer and to any holder of a perfected security
33 interest in the consumer's assistive device the full
34 purchase price plus any finance charge amount paid by the
35 consumer at the point of sale and collateral costs, less a

1 reasonable allowance for use.

2 (3) With respect to a consumer who leases an assistive
3 device from an assistive device lessor under a written
4 lease, accept return of the assistive device, refund to the
5 assistive device lessor and to any holder of a perfected
6 security interest in the assistive device the current value
7 of the written lease, and refund to the consumer the amount
8 that the consumer paid under the written lease plus any
9 collateral costs, less a reasonable allowance for use.

10 (b) For purposes of this Section, a reasonable attempt to
11 repair an assistive device includes a time period of no more
12 than 30 days. This 30-day time limit applies both during the
13 period of any warranty covering the assistance device and after
14 the expiration of any such warranty period. An assistive device
15 manufacturer's failure to repair an assistive device within 30
16 days is a violation of this Act unless the manufacturer
17 complies with subsection (a) promptly after the expiration of
18 the 30-day period.

19 For purposes of this Section, the current value of the
20 written lease equals the total amount for which that lease
21 obligates the consumer during the period of the lease remaining
22 after its early termination, plus the assistive device dealer's
23 early termination costs, and the value of the assistive device
24 at the lease expiration date if the lease sets forth that
25 value, less the assistive device lessor's reasonable allowance
26 for use.

27 For purposes of this Section, a reasonable allowance for
28 use may not exceed the amount obtained by multiplying the total
29 amount for which the written lease obligates the consumer by a
30 fraction, the denominator of which is 1,825 and the numerator
31 of which is the number of days that the consumer used the
32 assistive device before first reporting the nonconformity to
33 the manufacturer, assistive device lessor, or assistive device
34 dealer.

35 (c) No person may enforce an assistive device lease against
36 a consumer of the device after the consumer receives a refund

1 under this Section.

2 (815 ILCS 301/18 new)

3 Sec. 18. Receipt of new device or refund.

4 (a) To receive a comparable new assistive device or a
5 refund due under Section 17, a consumer must offer to transfer
6 possession of the device having a nonconformity to the
7 manufacturer of the device. No later than 30 days after that
8 offer, the manufacturer must provide the consumer with a
9 comparable assistive device or a refund. When the manufacturer
10 provides a new assistive device or a refund, the consumer must
11 return the assistive device having the nonconformity to the
12 manufacturer along with any endorsements necessary to transfer
13 legal possession of the device to the manufacturer.

14 If a consumer who has purchased an assistive device returns
15 the device as provided in this Section, the assistive device
16 manufacturer may not charge the consumer a fee for restocking
17 the assistive device that exceeds 10% of the device's purchase
18 price.

19 (b) To receive a refund due under item (3) of subsection
20 (a) of Section 17, a person who leases an assistive device from
21 an assistive device lessor authorized under a written lease
22 must offer to return the assistive device having the
23 nonconformity to the manufacturer of the device. No later than
24 30 days after that offer, the manufacturer must provide the
25 refund to the consumer. When the manufacturer provides the
26 refund, the consumer must return the assistive device having
27 the nonconformity to the manufacturer.

28 (c) To receive a refund due under item (3) of subsection
29 (a) of Section 17, an assistive device lessor must offer to
30 transfer possession of the assistive device having the
31 nonconformity to the manufacturer of the device. No later than
32 30 days after that offer, the manufacturer must provide the
33 refund to the assistive device lessor. When the manufacturer
34 provides the refund, the assistive device lessor must provide
35 to the manufacturer any endorsements necessary to transfer

1 legal possession of the device to the manufacturer.

2 (815 ILCS 301/27 new)

3 Sec. 27. Consumer's rights; written statement; waiver
4 prohibited. The Department shall prepare a written statement
5 of a consumer's rights under this Act and shall make copies of
6 the statement available to assistive device manufacturers,
7 manufacturers' authorized dealers, and assistive device
8 lessors upon request. Before a consumer purchases or leases an
9 assistive device:

10 (1) The manufacturer or dealer must give the consumer a
11 copy of the statement if the consumer proposes to purchase
12 the device.

13 (2) The manufacturer or lessor must give the consumer a
14 copy of the statement if the consumer proposes to lease the
15 device.

16 (815 ILCS 301/33 new)

17 Sec. 33. Enforcement; penalties.

18 (a) The Department may impose a civil penalty in an amount
19 not exceeding \$10,000 for a violation of this Act, other than a
20 failure to repair an assistive device within the time permitted
21 under subsection (b) of Section 17, by an assistive device
22 manufacturer, a manufacturer's authorized dealer, or an
23 assistive device lessor. For a manufacturer's failure to repair
24 an assistive device within 30 days as required under subsection
25 (b) of Section 17, the Department may impose a civil penalty in
26 an amount not exceeding \$250 per week for each week or part of
27 a week in excess of those 30 days, except that the Department
28 shall not impose such a penalty if the manufacturer supplies a
29 comparable device for the consumer's use promptly after the
30 expiration of the 30-day period for making repairs.

31 The Department may impose a civil penalty under this
32 Section only after it provides the following to the
33 manufacturer, dealer, or lessor:

34 (1) Written notice of the alleged violation.

1 (2) Written notice of the manufacturer, dealer, or
2 lessor's right to request an administrative hearing on the
3 question of the alleged violation.

4 (3) An opportunity to present evidence, orally or in
5 writing or both, on the question of the alleged violation
6 before an impartial hearing examiner appointed by the
7 Department.

8 (4) A written decision from the Department, based on
9 the evidence introduced at the hearing and the hearing
10 examiner's recommendations, finding that the manufacturer,
11 dealer, or lessor violated this Act and imposing the civil
12 penalty.

13 (b) The Department may bring an action in the circuit court
14 to enforce the collection of a monetary penalty imposed under
15 this Section.

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.