



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/09/04, by George Scully Jr.

SYNOPSIS AS INTRODUCED:

New Act
815 ILCS 505/2Z

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

Creates the Computer Lemon Act and amends the Consumer Fraud and Deceptive Business Practices Act. Establishes rights for purchasers of defective computer devices, protecting them from warranty abuses and ineffective warranty repairs. Imposes certain record keeping requirements on manufacturers. Establishes a right of action and remedies for purchasers against manufacturers who do not comply with Act requirements. Adds the Computer Lemon Act to the other Acts listed in the Consumer Fraud and Deceptive Business Practices Act for which a knowing violation constitutes an unlawful practice under that Act.

LRB093 16587 RXD 42236 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning computers.

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 Computer Lemon Act.

6 Section 5. Definitions. In this Act:

7 "Brand new computer" means a computer device which has been
8 recently assembled, is unused, and contains no reconditioned
9 parts.

10 "Computer device" means a central processing unit or
11 terminal display screen, including all circuitry and
12 connective devices; a printer; a modem; a scanner; or any other
13 device used with a computer or any programming for a computer,
14 whether preinstalled or purchased separately.

15 "Date of sale or lease" means the date when a computer
16 device is first delivered to a purchaser.

17 "Manufacturer" means a person or for-profit entity engaged
18 in the business of manufacturing or assembling computers or
19 computer software or accessories.

20 "Nonconformity" means a defect, condition, or malfunction
21 that impairs the use of a computer device or causes it to
22 operate in a manner not intended.

23 "Notice" means the means by which a purchaser advises a
24 manufacturer of a nonconformity. Notice may be transmitted by
25 any of the following means: by certified or registered mail,
26 return receipt requested; by facsimile transmission;
27 electronically; by e-mail; any means provided for in the
28 manufacturer's warranty or service materials.

29 "Purchaser" means a person who is a resident or temporary
30 resident of the State of Illinois or a business entity that has
31 fewer than 30 personal computers acting either in concert with
32 a network or as stand-alone machines and who obtains a computer

1 device by lease, retail sale, internet sale, gift, special
2 contract, or other transaction, whether delivered or currently
3 located in this State.

4 Section 10. Notice to purchaser.

5 (a) At the time of sale or lease of a computer device, a
6 purchaser must be provided by the manufacturer an accurate
7 written statement of the purchaser's rights established by this
8 Act. The statement must be printed in 14-point boldface type.
9 The manufacturer must secure from the purchaser a signed
10 acknowledgment that the manufacturer has explained to the
11 purchaser his or her rights and that the purchaser understands
12 those rights. Unless a signed acknowledgment of rights is
13 secured, the time limits specified in Section 15 must be
14 tolled.

15 (b) The manufacturer must conspicuously disclose the name
16 and version number of all software programs or combinations of
17 programs that will or may be likely to cause operating problems
18 with the computer device. In any action brought under this Act,
19 when there is a claim that such a disclosure was not made, the
20 burden is on the manufacturer to prove that such a disclosure
21 was made.

22 Section 15. Coverage and coverage period.

23 (a) A purchaser of a computer device is entitled to
24 effective repairs by the manufacturer for any nonconformity
25 that arises during the first 24 months of use, at no cost to
26 the purchaser. However, if the manufacturer has issued a
27 warranty or service contract, the coverage period must be the
28 greater of (i) the term specified in the warranty or service
29 contract or (ii) 24 months from the date of purchase.

30 (b) Within 5 business days after receiving notice from a
31 purchaser of a nonconformity, plus reasonable time for shipping
32 of not more than 3 business days, the manufacturer must repair
33 any computer device and return it to the purchaser subject to
34 the following conditions:

1 (1) If on-site service is provided for in the warranty,
2 repairs must be made at the purchaser's location without
3 charge.

4 (2) If on-site service is not provided for in the
5 warranty, the manufacturer must arrange and pay for the
6 cost of shipping from the purchaser's location.

7 (3) If on-site service is conducted by the purchaser,
8 who, at the manufacturer's direction, performs diagnostic
9 tests or troubleshooting procedures or attempts repairs,
10 including but not limited to partial disassembly, the
11 service is considered to be conducted by the manufacturer.

12 (4) All repairs must be guaranteed by the manufacturer
13 for a term of 2 years.

14 (c) If the repair is ineffective, the manufacturer must
15 have, upon notice from the purchaser, a second opportunity to
16 make an effective repair at the purchaser's physical location,
17 provided that the repair is completed within 3 business days.
18 The manufacturer may not require the purchaser to ship the unit
19 back to the manufacturer for the final repair opportunity
20 regardless of the manufacturer's willingness to pay for
21 shipping costs.

22 (d) If the second repair is ineffective or if the
23 manufacturer fails to timely respond to the purchaser as
24 required under this Section, the purchaser may elect to do
25 either of the following:

26 (1) Receive from the manufacturer a refund of the full
27 purchase price paid at the time of sale or the full value
28 of the lease, as the case may be, plus finance and
29 collateral charges.

30 (2) Receive from the manufacturer delivery of a brand
31 new computer device of equal or greater value than the
32 original price paid at the time of acquisition, without
33 charge or offset for use.

34 If more than one nonconformity has been subject to repair,
35 no second repair attempt is required before the purchaser may
36 seek the remedies provided in this Act.

1 (e) A manufacturer may, at its discretion, request return
2 of the unrepaired computer device at cost, if the manufacturer
3 has replaced the unit or refunded the purchase price.

4 (f) No computer device returned in accordance with this
5 Section may be resold in this State. A violation of this
6 subsection is a violation of the Consumer Fraud and Deceptive
7 Business Practices Act, and in addition to remedies provided by
8 that Act, any subsequent purchaser is entitled to damages in
9 the amount of treble the purchase price paid by that purchaser
10 for the device.

11 (g) Notwithstanding subsections (e) and (f), a
12 manufacturer who refuses to honor the terms of any warranty
13 booklet or materials delivered to the purchaser at, prior to,
14 or after the delivery of the computer device is in violation of
15 the Consumer Fraud and Deceptive Business Practices Act, and in
16 addition to remedies provided by that Act, the original
17 purchaser is entitled to damages in the amount of treble the
18 purchase price paid by that purchaser for the device.

19 Section 20. Records. A manufacturer must retain records of
20 all contacts, communications, notice transmissions, or
21 customer service dialogues between itself and a purchaser and
22 must maintain a list, by serial number, of all refunds or
23 replacements made under this Act. Copies must be made available
24 to the purchaser upon demand, regardless of whether the
25 manufacturer uses the services of a third party to manage
26 purchaser claims. Failure to comply with this Section is a
27 violation of the Consumer Fraud and Deceptive Business
28 Practices Act, and in addition to remedies provided by that
29 Act, the original purchaser is entitled to damages in the
30 amount of treble the purchase price paid by that purchaser for
31 the device.

32 Section 25. Civil actions.

33 (a) If the manufacturer of a computer device violates any
34 provision of this Act, the purchaser may initiate a civil

1 action to recover as damages any and all remedies specified in
2 this Act.

3 (b) In addition to refund or replacement of the computer
4 device under Section 15, a prevailing purchaser is entitled to
5 an additional award of \$6,000.

6 (c) If a purchaser initiates an action in this State for a
7 violation of this Act, the manufacturer must produce at each
8 and every court proceeding in that action a corporate
9 representative who is fully aware of the facts and
10 circumstances of the case and has available for the court's
11 review a copy of all records required by Section 20.

12 Section 30. Attorney's fees; costs; expenses. If a
13 purchaser prevails in a claim under this Act, the manufacturer
14 must pay the purchaser's reasonable attorney's fees, costs, and
15 expert expenses in resolving and, if necessary, litigating an
16 action under Section 25, regardless of the cost of the computer
17 device.

18 Section 35. Prohibited defenses. It is not a defense under
19 this Act that a nonconformity was caused by a software
20 programming problem under the following conditions:

21 (1) If the software was preinstalled by the
22 manufacturer.

23 (2) Unless the manufacturer produces an expert witness
24 at the proceedings who examined the computer device and can
25 specify the exact cause and correction of the problem.

26 (3) Unless the manufacturer has strictly complied with
27 the notice provisions of subsection (b) of Section 10.

28 Section 40. Expert witness. A purchaser who seeks relief
29 under this Act must not under any circumstances be required to
30 retain the opinion of an expert to prevail against a
31 manufacturer.

32 Section 45. Application of the Consumer Fraud and Deceptive

1 Business Practices Act. A violation of any provision of this
2 Act is also a violation of the Consumer Fraud and Deceptive
3 Business Practices Act.

4 Section 50. Rights preserved. Nothing in this Act limits
5 the purchaser from pursuing any other rights or remedies under
6 any other law, contract, or warranty.

7 Section 55. No waiver. The provisions of this Act may not
8 be waived by a purchaser.

9 Section 60. Applicability. This Act applies to all
10 computer devices purchased, leased, or delivered to a purchaser
11 on or after the effective date of this Act.

12 Section 90. The Consumer Fraud and Deceptive Business
13 Practices Act is amended by changing Section 2Z as follows:

14 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

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

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