

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
8 been recently assembled, is unused, and contains no
9 reconditioned 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
13 other device used with a computer or any programming for a
14 computer, 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
18 engaged in the business of manufacturing or assembling
19 computers or 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
25 by any of the following means: by certified or registered
26 mail, 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
31 has fewer than 30 personal computers acting either in concert

1 with a network or as stand-alone machines and who obtains a
2 computer device by lease, retail sale, internet sale, gift,
3 special contract, or other transaction, whether delivered or
4 currently located in this State.

5 Section 10. Notice to purchaser.

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

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

23 Section 15. Coverage and coverage period.

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

31 (b) Within 5 business days after receiving notice from a
32 purchaser of a nonconformity, plus reasonable time for

1 shipping of not more than 3 business days, the manufacturer
2 must repair any computer device and return it to the
3 purchaser subject to the following conditions:

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

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

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

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

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

26 (d) If the second repair is ineffective or if the
27 manufacturer fails to timely respond to the purchaser as
28 required under this Section, the purchaser may elect to do
29 either of the following:

30 (1) Receive from the manufacturer a refund of the
31 full purchase price paid at the time of sale or the full
32 value of the lease, as the case may be, plus finance and
33 collateral charges.

34 (2) Receive from the manufacturer delivery of a

1 brand new computer device of equal or greater value than
2 the original price paid at the time of acquisition,
3 without charge or offset for use.

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

7 (e) A manufacturer may, at its discretion, request
8 return of the unrepaired computer device at cost, if the
9 manufacturer has replaced the unit or refunded the purchase
10 price.

11 (f) No computer device returned in accordance with this
12 Section may be resold in this State. A violation of this
13 subsection is a violation of the Consumer Fraud and Deceptive
14 Business Practices Act, and in addition to remedies provided
15 by that Act, any subsequent purchaser is entitled to damages
16 in the amount of treble the purchase price paid by that
17 purchaser for the device.

18 (g) Notwithstanding subsections (e) and (f), a
19 manufacturer who refuses to honor the terms of any warranty
20 booklet or materials delivered to the purchaser at, prior to,
21 or after the delivery of the computer device is in violation
22 of the Consumer Fraud and Deceptive Business Practices Act,
23 and in addition to remedies provided by that Act, the
24 original purchaser is entitled to damages in the amount of
25 treble the purchase price paid by that purchaser for the
26 device.

27 Section 20. Records. A manufacturer must retain records
28 of all contacts, communications, notice transmissions, or
29 customer service dialogues between itself and a purchaser and
30 must maintain a list, by serial number, of all refunds or
31 replacements made under this Act. Copies must be made
32 available to the purchaser upon demand, regardless of whether
33 the manufacturer uses the services of a third party to manage

1 purchaser claims. Failure to comply with this Section is a
2 violation of the Consumer Fraud and Deceptive Business
3 Practices Act, and in addition to remedies provided by that
4 Act, the original purchaser is entitled to damages in the
5 amount of treble the purchase price paid by that purchaser
6 for the device.

7 Section 25. Civil actions.

8 (a) If the manufacturer of a computer device violates
9 any provision of this Act, the purchaser may initiate a civil
10 action to recover as damages any and all remedies specified
11 in this Act.

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

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

21 Section 30. Attorney's fees; costs; expenses. If a
22 purchaser prevails in a claim under this Act, the
23 manufacturer must pay the purchaser's reasonable attorney's
24 fees, costs, and expert expenses in resolving and, if
25 necessary, litigating an action under Section 25, regardless
26 of the cost of the computer device.

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

30 (1) If the software was preinstalled by the
31 manufacturer.

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

5 (3) Unless the manufacturer has strictly complied
6 with the notice provisions of subsection (b) of Section
7 10.

8 Section 40. Expert witness. A purchaser who seeks relief
9 under this Act must not under any circumstances be required
10 to retain the opinion of an expert to prevail against a
11 manufacturer.

12 Section 45. Application of the Consumer Fraud and
13 Deceptive Business Practices Act. A violation of any
14 provision of this Act is also a violation of the Consumer
15 Fraud and Deceptive Business Practices Act.

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

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

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

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

26 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

27 Sec. 2Z. Violations of other Acts. Any person who

1 knowingly violates the Computer Lemon Act, the Automotive
2 Repair Act, the Home Repair and Remodeling Act, the Dance
3 Studio Act, the Physical Fitness Services Act, the Hearing
4 Instrument Consumer Protection Act, the Illinois Union Label
5 Act, the Job Referral and Job Listing Services Consumer
6 Protection Act, the Travel Promotion Consumer Protection Act,
7 the Credit Services Organizations Act, the Automatic
8 Telephone Dialers Act, the Pay-Per-Call Services Consumer
9 Protection Act, the Telephone Solicitations Act, the Illinois
10 Funeral or Burial Funds Act, the Cemetery Care Act, the Safe
11 and Hygienic Bed Act, the Pre-Need Cemetery Sales Act,
12 subsection (a) or (b) of Section 3-10 of the Cigarette Tax
13 Act, subsection (a) or (b) of Section 3-10 of the Cigarette
14 Use Tax Act, the Electronic Mail Act, or paragraph (6) of
15 subsection (k) of Section 6-305 of the Illinois Vehicle Code
16 commits an unlawful practice within the meaning of this Act.
17 (Source: P.A. 91-164, eff. 7-16-99; 91-230, eff. 1-1-00;
18 91-233, eff. 1-1-00; 91-810, eff. 6-13-00; 92-426, eff.
19 1-1-02.)