



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB0101

Introduced 1/26/2005, by Sen. Miguel del Valle

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Assistive Technology Protection Act. 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 a manufacturer who sells an assistive device shall furnish the consumer with an express warranty that the assistive device will be free from any condition or defect that substantially impairs the value of the assistive device 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. Prohibits the resale or lease of an assistive device returned by a consumer without full disclosure of the reasons for the return. Provides for arbitration of disputes under the Act, under rules adopted by the Attorney General. Requires the Attorney General 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. Provides that a consumer's purported waiver of any of his or her rights under the Act is void. Authorizes the Attorney General to impose civil penalties for violations of the Act, and provides for damages caused by a violation of the Act.

LRB094 04164 DRJ 36053 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT to create the Assistive Technology Protection Act.

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 Assistive Technology Protection Act.

6 Section 5. Definitions. In this Act:

7 "Assistive device" means any device, including a  
8 demonstrator, that a consumer purchases, leases, or accepts  
9 transfer of in this State that is used for a major life  
10 activity, which includes, but is not limited to, manual  
11 wheelchairs, motorized wheelchairs, motorized scooters, and  
12 other aids that enhance the mobility of an individual; hearing  
13 aids, telephone communication devices for the deaf (TTY),  
14 assistive listening devices, and other aids that enhance an  
15 individual's ability to hear; voice synthesized computer  
16 modules, optical scanners, talking software, braille printers,  
17 and any other devices that enhance a sight impaired  
18 individual's ability to communicate; and any other assistive  
19 device that enables a person with a disability to communicate,  
20 see, hear, or maneuver.

21 "Assistive device dealer" means a person who is in the  
22 business of selling assistive devices.

23 "Assistive device lessor" means a person who leases an  
24 assistive device to a consumer or who holds the lessor's rights  
25 under a written lease.

26 "Collateral cost" means expenses incurred by a consumer in  
27 connection with the repair of a nonconformity, including the  
28 cost of obtaining an alternative assistive device.

29 "Consumer" means any of the following:

30 (1) The purchaser of an assistive device, if the device  
31 was purchased from an assistive device dealer or  
32 manufacturer for purposes other than resale.

1 (2) A person to whom an assistive device is transferred  
2 for purposes other than resale, if the transfer occurs  
3 before the expiration of an express warranty applicable to  
4 the assistive device.

5 (3) A person who may enforce an express warranty  
6 applicable to an assistance device.

7 (4) A person who leases an assistive device from an  
8 assistive device lessor under a written lease.

9 "Demonstrator" means an assistive device used primarily  
10 for the purpose of demonstration to the public.

11 "Early termination cost" means any expense or obligation  
12 that an assistive device lessor incurs as a result of both the  
13 termination of a written lease before the termination date set  
14 forth in that lease and the return of an assistive device to a  
15 manufacturer under this Act. "Early termination cost" includes  
16 a penalty for prepayment under a finance arrangement.

17 "Early termination saving" means any expense or obligation  
18 that an assistive device lessor avoids as a result of both the  
19 termination of a written lease before the termination date set  
20 forth in that lease and the return of an assistive device to a  
21 manufacturer under this Act. "Early termination saving"  
22 includes an interest charge that the assistive device lessor  
23 would have paid to finance the assistive device or, if the  
24 assistive device lessor does not finance the assistive device,  
25 the difference between the total amount for which the lease  
26 obligates the consumer during the period of the lease remaining  
27 after the early termination and the present value of that  
28 amount at the date of the early termination.

29 "Manufacturer" means a person who manufactures or  
30 assembles assistive devices and agents of that person,  
31 including any importer, distributor, factory branch,  
32 distributor branch, and warrantors of the manufacturer's  
33 assistive device, but does not include an assistive device  
34 dealer.

35 "Nonconformity" means a condition or defect that  
36 substantially impairs the use, value, or safety of an assistive

1 device and that is covered by an express warranty applicable to  
2 the assistive device or to a component of the assistive device.  
3 "Nonconformity" does not include a condition or defect that is  
4 the result of abuse, neglect, or unauthorized modification or  
5 alternation of the assistive device by a consumer.

6 "Reasonable attempt to repair" means at least 3 attempts by  
7 a manufacturer, an assistive device lessor, or a manufacturer's  
8 authorized assistive device dealer, or any combination of them,  
9 to repair an assistive device.

10 Section 10. Physical evaluation and technology assessment.

11 (a) In this Section:

12 "Assistive technology supplier" means a service provider  
13 involved in the sale and service of commercially available  
14 assistive devices.

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

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

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

29 "Qualified rehabilitation professional" means: (A) an  
30 individual who has obtained the designation of assistive  
31 technology supplier, assistive technology practitioner, or  
32 rehabilitation engineering technologist, if applicable, after  
33 meeting all the requirements for that designation as  
34 established by the Rehabilitation Engineering and Assistive  
35 Technology Society of North America (RESNA) or (B) an

1 individual who (i) can provide documentation to prove  
2 completion of at least 15 contact hours of continuing education  
3 (CEC) within the 12 months immediately prior to July 1, 2006,  
4 and all other subsequent years thereafter by June 30, in the  
5 field of assistive devices, which may include, but is not  
6 limited to, courses by health care professionals, courses by  
7 health care associations, courses by a college or university,  
8 courses by manufacturers, in-service training by  
9 manufacturers, or attendance at symposiums or conferences;  
10 (ii) can provide proof of at least one year of experience, at  
11 least 10 hours a week in a 40-hour work week, in the field of  
12 rehabilitation technology; and (iii) can provide 3  
13 recommendations from health care professionals who can attest  
14 to the individual's skills concerning assistive devices.

15 "Rehabilitation engineering technologist" means a person  
16 who applies engineering principles to the design,  
17 modification, and customization of assistive devices.

18 "Technology assessment" means the process and  
19 documentation of matching the pathology, history, and  
20 prognosis of a consumer to the appropriate assistive device.

21 (b) On and after July 1, 2006, an assistive device dealer  
22 or lessor must employ at least one qualified rehabilitation  
23 professional if that dealer or lessor provides any assistive  
24 device to a consumer who:

25 (1) is under age 21;

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

28 (3) has a primary diagnosis that is progressive or  
29 degenerative in nature and necessitates an assistive  
30 device;

31 (4) has a primary diagnosis that is neurological or  
32 neuromuscular in nature and necessitates an assistive  
33 device;

34 (5) requires adaptive seating or positioning  
35 equipment;

36 (6) has a diagnosis that indicates a need for other

1 assistive technology such as speech generating devices or  
2 environmental controls; or

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

5 (c) On and after July 1, 2006, in order for an assistive  
6 device dealer or lessor to supply an assistive device to a  
7 consumer, the consumer must have undergone a physical  
8 evaluation by a health care professional, who must provide a  
9 written report of the evaluation to be included in the  
10 consumer's medical record and maintained on file by the  
11 assistive device dealer or lessor.

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

17 (e) On and after July 1, 2006, every assistive device  
18 dealer or lessor making available technology assessments on  
19 prescribed assistive devices must have on staff a qualified  
20 rehabilitation professional.

21 (f) On and after July 1, 2006, a qualified rehabilitation  
22 professional must perform a complete, face-to-face technology  
23 assessment with respect to a consumer, based on the physical  
24 evaluation required in subsection (c), and document, in  
25 writing, recommendations for an assistive device that is  
26 appropriate to meet the consumer's needs.

27 (g) On and after July 1, 2009, a 180-day grace period shall  
28 be provided to an assistive device dealer or lessor that  
29 provides technology assessments on prescribed assistive  
30 devices if the qualified rehabilitation professional on the  
31 dealer's or lessor's staff ceases to be employed by the dealer  
32 or lessor and the dealer or lessor has no other qualified  
33 rehabilitation professional on staff. During the grace period,  
34 the standards regarding qualified rehabilitation professionals  
35 contained in subsections (e) and (f) apply.

36 (h) On and after July 1, 2009, a qualified rehabilitation

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

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

14 (j) On and after July 1, 2006, every assistive device  
15 dealer or lessor making available prescribed assistive devices  
16 must have a physical location with a working telephone and must  
17 maintain at least \$1,000,000 in liability insurance coverage.

18 (k) On or after July 1, 2009, every assistive device dealer  
19 or lessor providing assistive devices must be accredited by a  
20 nationally recognized accreditation body.

21 Section 15. Express warranty.

22 (a) A manufacturer who sells an assistive device to a  
23 consumer, either directly or through an assistive device  
24 dealer, must furnish the consumer with an express warranty for  
25 the assistive device. The duration of the express warranty must  
26 be not less than one year after the date that the assistive  
27 device is first delivered to the consumer. In the absence of an  
28 express warranty from the manufacturer, the manufacturer must  
29 warrant to the consumer of an assistive device that, for a  
30 period of one year after the date that the assistive device is  
31 first delivered to the consumer, the assistive device will be  
32 free from any condition or defect that substantially impairs  
33 the value of the assistive device to the consumer.

34 (b) If a new assistive device does not conform to an  
35 applicable express warranty and the consumer reports the

1 nonconformity to the manufacturer, the assistive device  
2 lessor, or any manufacturer's authorized assistive device  
3 dealer and makes the assistive device available for repair  
4 before one year after the date that the assistive device was  
5 first delivered to the consumer, the nonconformity must be  
6 repaired at no charge to the consumer.

7 (c) If the nonconformity is not repaired after a reasonable  
8 attempt to do so, and if the assistive device is out of service  
9 for an aggregate period of at least 30 days because of the  
10 nonconformity, the manufacturer must comply with Section 20.

11 Section 20. Failure to repair.

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

15 (1) Accept return of the assistive device, replace the  
16 assistive device with a comparable new assistive device,  
17 and refund any collateral cost.

18 (2) Accept return of the assistive device and refund to  
19 the consumer and to any holder of a perfected security  
20 interest in the consumer's assistive device the full  
21 purchase price plus any finance charge amount paid by the  
22 consumer at the point of sale and collateral costs, less a  
23 reasonable allowance for use.

24 (3) With respect to a consumer who leases an assistive  
25 device from an assistive device lessor under a written  
26 lease, accept return of the assistive device, refund to the  
27 assistive device lessor and to any holder of a perfected  
28 security interest in the assistive device the current value  
29 of the written lease, and refund to the consumer the amount  
30 that the consumer paid under the written lease plus any  
31 collateral costs, less a reasonable allowance for use.

32 (b) For purposes of this Section, a reasonable attempt to  
33 repair an assistive device includes a time period of no more  
34 than 30 days. This 30-day time limit applies both during the  
35 period of any warranty covering the assistance device and after



1 the expiration of any such warranty period. An assistive device  
2 manufacturer's failure to repair an assistive device within 30  
3 days is a violation of this Act unless the manufacturer  
4 complies with subsection (a) promptly after the expiration of  
5 the 30-day period.

6 For purposes of this Section, the current value of the  
7 written lease equals the total amount for which that lease  
8 obligates the consumer during the period of the lease remaining  
9 after its early termination, plus the assistive device dealer's  
10 early termination costs, and the value of the assistive device  
11 at the lease expiration date if the lease sets forth that  
12 value, less the assistive device lessor's reasonable allowance  
13 for use.

14 For purposes of this Section, a reasonable allowance for  
15 use may not exceed the amount obtained by multiplying the total  
16 amount for which the written lease obligates the consumer by a  
17 fraction, the denominator of which is 1,825 and the numerator  
18 of which is the number of days that the consumer used the  
19 assistive device before first reporting the nonconformity to  
20 the manufacturer, assistive device lessor, or assistive device  
21 dealer.

22 (c) No person may enforce an assistive device lease against  
23 a consumer of the device after the consumer receives a refund  
24 under this Section.

25 Section 25. Receipt of new device or refund.

26 (a) To receive a comparable new assistive device or a  
27 refund due under Section 20, a consumer must offer to transfer  
28 possession of the device having a nonconformity to the  
29 manufacturer of the device. No later than 30 days after that  
30 offer, the manufacturer must provide the consumer with a  
31 comparable assistive device or a refund. When the manufacturer  
32 provides a new assistive device or a refund, the consumer must  
33 return the assistive device having the nonconformity to the  
34 manufacturer along with any endorsements necessary to transfer  
35 legal possession of the device to the manufacturer.

1           If a consumer who has purchased an assistive device returns  
2 the device as provided in this Section, the assistive device  
3 manufacturer may not charge the consumer a fee for restocking  
4 the assistive device that exceeds 10% of the device's purchase  
5 price.

6           (b) To receive a refund due under item (3) of subsection  
7 (a) of Section 20, a person who leases an assistive device from  
8 an assistive device lessor authorized under a written lease  
9 must offer to return the assistive device having the  
10 nonconformity to its manufacturer of the device. No later than  
11 30 days after that offer, the manufacturer must provide the  
12 refund to the consumer. When the manufacturer provides the  
13 refund, the consumer must return the assistive device having  
14 the nonconformity to the manufacturer.

15           (c) To receive a refund due under item (3) of subsection  
16 (a) of Section 20, an assistive device lessor must offer to  
17 transfer possession of the assistive device having the  
18 nonconformity to the manufacturer of the device. No later than  
19 30 days after that offer, the manufacturer must provide the  
20 refund to the assistive device lessor. When the manufacturer  
21 provides the refund, the assistive device lessor must provide  
22 to the manufacturer any endorsements necessary to transfer  
23 legal possession of the device to the manufacturer.

24           Section 30. Resale or lease of returned device prohibited.  
25 An assistive device that has been returned by a consumer or  
26 assistive device lessor in this State under Section 25, or by a  
27 consumer or assistive device lessor in another state under a  
28 similar law of that state, may not be sold or leased again in  
29 this State unless full disclosure of the reasons for the  
30 device's return is made to any prospective buyer or lessee of  
31 the device.

32           Section 35. Arbitration.

33           (a) Upon payment of a prescribed fee, a consumer may submit  
34 any dispute arising under this Act to an alternative

1 arbitration mechanism established under rules adopted by the  
2 Attorney General.

3 (b) The arbitration shall be conducted by a professional  
4 arbitrator or arbitration firm appointed by the Attorney  
5 General and under rules adopted by the Attorney General. The  
6 arbitration mechanism shall ensure the personal objectivity of  
7 its arbitrators and the right of each party to present its  
8 case, to be in attendance during any presentation made by the  
9 other party, and to rebut or refute the other party's  
10 presentation.

11 (c) This Section shall not be construed to limit rights or  
12 remedies available to a consumer under any other law.

13 Section 40. Consumer's rights; written statement; waiver  
14 prohibited.

15 (a) The Attorney General shall prepare a written statement  
16 of a consumer's rights under this Act and shall make copies of  
17 the statement available to assistive device manufacturers,  
18 manufacturers' authorized dealers, and assistive device  
19 lessors upon request. Before a consumer purchases or leases an  
20 assistive device:

21 (1) The manufacturer or dealer must give the consumer a  
22 copy of the statement if the consumer proposes to purchase  
23 the device.

24 (2) The manufacturer or lessor must give the consumer a  
25 copy of the statement if the consumer proposes to lease the  
26 device.

27 (b) A consumer's purported waiver of any of his or her  
28 rights under this Act is void.

29 Section 45. Enforcement; penalties.

30 (a) The Attorney General may impose a civil penalty in an  
31 amount not exceeding \$10,000 for a violation of this Act, other  
32 than a failure to repair an assistive device within the time  
33 permitted under subsection (b) of Section 20, by an assistive  
34 device manufacturer, a manufacturer's authorized dealer, or an

1 assistive device lessor. For a manufacturer's failure to repair  
2 an assistive device within 30 days as required under subsection  
3 (b) of Section 20, the Attorney General may impose a civil  
4 penalty in an amount not exceeding \$250 per week for each week  
5 or part of a week in excess of those 30 days, except that the  
6 Attorney General shall not impose such a penalty if the  
7 manufacturer supplies a comparable device for the consumer's  
8 use promptly after the expiration of the 30-day period for  
9 making repairs.

10 The Attorney General may impose a civil penalty under this  
11 Section only after he or she provides the following to the  
12 manufacturer, dealer, or lessor:

13 (1) Written notice of the alleged violation.

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

17 (3) An opportunity to present evidence, orally or in  
18 writing or both, on the question of the alleged violation  
19 before an impartial hearing examiner appointed by the  
20 Attorney General.

21 (4) A written decision from the Attorney General, based  
22 on the evidence introduced at the hearing and the hearing  
23 examiner's recommendations, finding that the manufacturer,  
24 dealer, or lessor violated this Act and imposing the civil  
25 penalty.

26 (b) The Attorney General may bring an action in the circuit  
27 court to enforce the collection of a monetary penalty imposed  
28 under this Section.

29 Section 50. Damages. In addition to pursuing any other  
30 remedy, a consumer may bring an action to recover any damages  
31 caused by a violation of this Act. The court shall award a  
32 consumer who prevails in such an action twice the amount of any  
33 pecuniary loss, costs, disbursements, and reasonable  
34 attorney's fees, and any equitable relief that the court  
35 determines is appropriate.