

AN ACT to create the Assistive Technology Protection Act.

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

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

Section 5. Definitions. In this Act:

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

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

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

"Collateral cost" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of shipping, sales tax, and the cost of obtaining an

alternative assistive technology device.

"Consumer" means any one of the following:

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

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

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

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

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

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

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

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

of the early termination.

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

(1) It is in good working order.

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

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

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

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

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

(1) The manufacturer, the assistive technology device lessor, or any of the manufacturer's authorized assistive technology device dealers accept return of the new

assistive technology device for repair at least 2 times.

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

Section 10. Express warranty. A manufacturer or assistive technology device lessor who sells or leases an assistive technology device to a consumer, either directly or through an assistive technology device dealer, must furnish the consumer with an express warranty for the assistive technology device warranting that the device is free of any nonconformity. The duration of the express warranty must be not less than one year after the date of the initial delivery of the assistive technology device to the consumer. If the manufacturer fails to furnish an express warranty as required by this Section, the manufacturer shall be deemed to have warranted to the consumer of an assistive technology device that, for a period of one year after the date of the initial delivery to the consumer, the assistive technology device will be free from any condition or defect that substantially impairs the value of the assistive technology device to the consumer. The express warranty takes effect on the date the consumer initially takes possession of the new assistive technology device.

Section 15. Assistive technology device replacement or refund.

(a) If a new assistive technology device does not conform to an applicable express warranty and the consumer (i) reports the nonconformity to the manufacturer, the assistive technology device lessor, or any of the manufacturer's authorized assistive technology device dealers and (ii) makes the assistive technology device available for repair before one year after the first delivery of the device to the consumer or

within the period of the express warranty if the express warranty is longer than one year, then a reasonable attempt to repair the nonconformity must be made at no charge to the consumer.

(b) If, after a reasonable attempt to repair, the nonconformity is not repaired, the person from whom the assistive technology device was purchased or leased must carry out the requirements of either item (1) or item (2) of this subsection at the option of the consumer:

(1) The person from whom the assistive technology device was purchased or leased shall provide a refund to the consumer within 30 days after the request by the consumer. If the consumer chooses this option, he or she shall return the device having a nonconformity to the person from whom the assistive technology device was purchased or leased along with any endorsements necessary to transfer legal possession to the person from whom the assistive technology device was purchased or leased.

If the assistive technology device was purchased by the consumer, the person from whom the assistive technology device was purchased shall accept return of the assistive technology device and refund to the consumer, and to any holder of a perfected security interest in the assistive technology device as the holder's interest may appear, the full purchase price plus any finance charge paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use.

If the assistive technology device was leased by the consumer, the person from whom the assistive technology device was leased shall accept return of the device, refund to the assistive technology lessor and to any holder of a perfected security interest in the device, as the holder's interest may appear, the current value of the written lease, and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

(2) The person from whom the assistive technology device was purchased or leased shall provide a comparable new assistive technology device. The consumer shall offer to transfer possession of the device having a nonconformity to the person from whom the assistive technology device was purchased or leased. No later than 30 days after that offer, the person from whom the assistive technology device was purchased or leased shall provide the consumer with the comparable new assistive device. Upon receipt of the comparable new assistive device, the consumer shall return the device having the nonconformity to the person from whom the assistive technology device was purchased or leased, along with any endorsements necessary to transfer legal possession to the person from whom the assistive technology device was purchased or leased.

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

(d) For purposes of this Section, a "reasonable allowance for use" may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the person from whom the assistive technology device was purchased or leased.

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

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

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

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