

January 29, 1998

HOUSE BILL No. 1332

DIGEST OF HB 1332 (Updated January 28, 1998 12:57 pm - DI 76)

Citations Affected: IC 24-5.

Synopsis: Warranties for assistive devices. Requires the manufacturer of an assistive device used by an individual with a disability to provide an express warranty of: (1) 90 days for a device with a value of less than \$100 at the time of purchase; (2) 180 days for a device with a value of at least \$100 but less than \$500 at the time of purchase; and (3) one year for a device with a value of \$500 or more, the effective period of which warranty does not begin until the consumer first takes possession. Requires the express warranty to provide for the manufacturer to provide a refund, a new assistive device, or repairs if the consumer reports a nonconformity in the assistive device and returns the nonconforming assistive device to the manufacturer. Prohibits the sale or lease of an assistive device returned for a nonconformity unless full disclosure of the nonconformity is made to the prospective buyer or lessee. Requires the manufacturer of a
(Continued next page)

Effective: July 1, 1998.

C. Brown, Goeglein

January 13, 1998, read first time and referred to Committee on Judiciary.
January 28, 1998, amended, reported — Do Pass.

HB 1332—LS 6537/DI 93



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nonconforming assistive device to provide the consumer with a rental reimbursement of not more than \$20 per day if the repair of the assistive device takes more than ten days or if the assistive device has been returned for the repair of the same nonconformity on at least two previous occasions. Requires a dealer or lessor to pay a manufacturer for reimbursement expenses if failure of the dealer or lessor to tender the assistive device in a timely manner was the cause of the manufacturer's failure to repair the device within ten days. (The introduced version of this bill was prepared by the interim study commission on health and licensing issues.)

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January 29, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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HOUSE BILL No. 1332

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations and consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5-20 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1998]:

4 **Chapter 20. Assistive Device Protection**

5 **Sec. 1. As used in this chapter, "assistive device" means a**
6 **device, including a demonstrator, that is designed for the use of an**
7 **individual with a disability for a major life activity. The term**
8 **includes the following devices:**

9 (1) **Manual wheelchairs, motorized wheelchairs, motorized**
10 **scooters, and other aids that are designed to enhance the**
11 **mobility of an individual.**

12 (2) **Hearing aids, telephone communication devices for the**
13 **deaf and hard of hearing (TDD, TTY), assistive listening**
14 **devices, and other aids that enhance an individual's ability to**
15 **hear.**

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- 1 **(3) Voice synthesized computer modules, optical scanners,**
- 2 **braille printers, and other devices designed to enhance a sight**
- 3 **impaired individual's ability to communicate.**
- 4 **(4) Any other assistive device that improves the**
- 5 **communication or mobility of an individual.**
- 6 **The term does not include surgical implants, dental and ocular**
- 7 **prostheses, batteries, tires, or nonfunctional accessories.**
- 8 **Sec. 2. As used in this chapter, "collateral costs" means expenses**
- 9 **incurred by a consumer in connection with the repair of a**
- 10 **nonconformity, including taxes and the cost of obtaining an**
- 11 **alternative assistive device.**
- 12 **Sec. 3. As used in this chapter, "consumer" means any of the**
- 13 **following:**
- 14 **(1) The purchaser of an assistive device, if the assistive device**
- 15 **was purchased from a dealer or manufacturer for purposes**
- 16 **other than resale.**
- 17 **(2) If the transfer occurs before the expiration of an express**
- 18 **warranty of the assistive device, a person to whom the**
- 19 **assistive device is transferred for purposes other than resale.**
- 20 **(3) A person who may enforce a warranty.**
- 21 **(4) A person who leases an assistive device from a lessor**
- 22 **under a written lease.**
- 23 **Sec. 4. As used in this chapter, "dealer" means a person who is**
- 24 **in the business of selling assistive devices.**
- 25 **Sec. 5. As used in this chapter, "demonstrator" means an**
- 26 **assistive device used primarily for the purpose of demonstration or**
- 27 **loan to a consumer.**
- 28 **Sec. 6. As used in this chapter, "early termination cost" means**
- 29 **an expense or obligation that a lessor incurs as a result of:**
- 30 **(1) the termination of a written lease before the termination**
- 31 **date set forth in the lease; and**
- 32 **(2) the return of an assistive device to the manufacturer.**
- 33 **The term includes penalties for prepayment under a finance**
- 34 **arrangement.**
- 35 **Sec. 7. As used in this chapter, "early termination savings"**
- 36 **means:**
- 37 **(1) an expense or obligation that a lessor avoids as a result of**
- 38 **both the termination of a written lease before the termination**
- 39 **date set forth in the lease and the return of an assistive device**
- 40 **to a manufacturer, including any interest the lessor would**
- 41 **have paid to finance the assistive device; or**
- 42 **(2) if a lessor does not finance an assistive device, the**

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1 difference between the value of the assistive device over the
 2 total period of a lease term remaining after an early
 3 termination and the present value of that amount at the date
 4 of the early termination.

5 **Sec. 8.** As used in this chapter, "express warranty" means a
 6 warranty that may not be terminated less than:

7 (1) ninety (90) days after the first delivery of the assistive
 8 device to the consumer for an assistive device that has a retail
 9 value of less than one hundred dollars (\$100) at the time of
 10 purchase;

11 (2) one hundred and eighty (180) days after the first delivery
 12 of the assistive device to the consumer for an assistive device
 13 that has a retail value of at least one hundred dollars (\$100)
 14 but less than five hundred dollars (\$500) at the time of
 15 purchase; or

16 (3) one (1) year after the first delivery of the assistive device
 17 to the consumer for an assistive device that has a retail value
 18 of at least five hundred dollars (\$500).

19 **Sec. 9.** As used in this chapter, "individual" means an individual
 20 who:

21 (1) has a physical or mental impairment that substantially
 22 limits at least one (1) major life activity;

23 (2) has a record of the impairment; and

24 (3) is regarded as having the impairment.

25 **Sec. 10.** As used in this chapter, "lessor" means a person who:

26 (1) leases assistive devices to consumers; or

27 (2) holds the rights of a person described in subdivision (1);
 28 under a written lease.

29 **Sec. 11.** As used in this chapter, "manufacturer" means a
 30 person or a person's agent that manufactures or assembles
 31 assistive devices, including an importer, a distributor, a factory
 32 branch, a distributor branch, and the warrantors of the
 33 manufacturer's assistive device. The term does not include a dealer
 34 or lessor.

35 **Sec. 12.** As used in this chapter, "nonconforming assistive
 36 device" means, with respect to a new assistive device, any of the
 37 following occurring within the term of an express warranty
 38 applicable to a new assistive device:

39 (1) The manufacturer, the lessor, or a manufacturer's
 40 authorized dealer makes a reasonable attempt to repair a new
 41 assistive device at least two (2) times.

42 (2) An assistive device is out of service for an aggregate of at

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least thirty (30) days because of a nonconformity.
Sec. 13. As used in this chapter, "nonconformity" means a specific condition, generic defect, malfunction, or a concurrent combination of defects or conditions that:

- (1) substantially impairs the use, value, or safety of an assistive device; or
- (2) renders the assistive device nonconforming to the terms of an express warranty.

The term does not include a device that needs only adjustment or upgrade, that must be adjusted due only to an exacerbation in the condition of an individual with a disability, or that has a condition or defect that is the result of abuse, neglect, misuse, or unauthorized modification or alteration of the assistive device.

Sec. 14. (a) A manufacturer who sells an assistive device to a consumer, either directly or through a dealer or lessor, shall furnish the consumer with an express warranty for the assistive device. If a manufacturer fails to furnish an express warranty, the assistive device is considered to be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.

(b) The effective period of an express warranty for an assistive device does not begin until the consumer first takes possession of the assistive device.

Sec. 15. (a) The express warranty for an assistive device must require the following if the new assistive device becomes a nonconforming assistive device and is not repaired after a reasonable attempt to repair has been made:

- (1) To receive a refund, the consumer must return the assistive device to the manufacturer after which:
 - (A) if the assistive device was purchased, the manufacturer shall refund to the consumer the full purchase price plus any finance charge or tax paid by the consumer at the point of sale plus collateral costs, less a reasonable allowance for use; or
 - (B) if the assistive device was leased, the manufacturer shall refund to the lessor 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.

A dealer or lessor shall reimburse the manufacturer for the amount the manufacturer pays to a consumer that exceeds the net price received by the manufacturer for the assistive

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- 1 device.
- 2 (2) To receive a comparable new assistive device, the
- 3 consumer must request that the manufacturer provide the
- 4 comparable new assistive device. Not more than thirty (30)
- 5 days after the request, the manufacturer shall provide the
- 6 consumer with the comparable new assistive device. When the
- 7 manufacturer provides the new assistive device, the consumer
- 8 shall return the nonconforming assistive device to the
- 9 manufacturer, along with any endorsements necessary to
- 10 transfer legal possession to the manufacturer.
- 11 (3) To have the nonconforming assistive device repaired, the
- 12 consumer must report the nonconformity to the
- 13 manufacturer, the lessor, or a manufacturer's authorized
- 14 dealer and make the assistive device available for repair
- 15 before the express warranty expires. The manufacturer,
- 16 lessor, or dealer to which the assistive device is made available
- 17 for repair must make a reasonable attempt to repair or to
- 18 obtain repairs of the nonconformity at no charge to the
- 19 consumer.
- 20 (b) For purposes of this section, the current value of the written
- 21 lease equals the total amount of the consumer's obligations under
- 22 the lease during the period of the lease remaining after its early
- 23 termination plus the dealer's early termination costs and the value
- 24 of the assistive device at the lease expiration date if the lease sets
- 25 forth an expiration date value, less the lessor's early termination
- 26 savings.
- 27 (c) A reasonable allowance for use may not exceed the amount
- 28 obtained by multiplying the total amount for which the written
- 29 lease obligates the consumer by a fraction:
- 30 (1) the numerator of which is the number of days that the
- 31 consumer used the assistive device before first reporting the
- 32 nonconformity to the manufacturer, lessor, or dealer; and
- 33 (2) the denominator of which is one thousand eight hundred
- 34 twenty-five (1,825).
- 35 (d) A person may not enforce a lease against a consumer after
- 36 the consumer receives a refund.
- 37 Sec. 16. A nonconforming assistive device returned by a
- 38 consumer or lessor may not be sold or leased again unless full
- 39 disclosure of the reason for return is made to a prospective buyer
- 40 or lessee.
- 41 Sec. 17. (a) This section applies when:
- 42 (1) an assistive device covered by a manufacturer's express

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1 warranty is tendered by a consumer to the dealer,
2 manufacturer, or lessor from whom it was:

- 3 (A) purchased;
4 (B) leased; or
5 (C) exchanged;

6 for the repair of a nonconformity covered by the warranty;
7 and

8 (2) at least one (1) of the following conditions exists:

9 (A) The repair period exceeds ten (10) working days,
10 including the day the assistive device is tendered to the
11 dealer, manufacturer, or lessor.

12 (B) The nonconformity is the same for which the assistive
13 device has been tendered to the dealer for repair on at least
14 two (2) previous occasions.

15 (b) The manufacturer shall provide directly to the consumer for
16 the duration of a repair period described in subsection (a) a rental
17 reimbursement of not more than twenty dollars (\$20) per day. If
18 the failure of a dealer or lessor to tender the assistive device to the
19 manufacturer in a timely manner causes the failure of the
20 manufacturer to make the repairs within ten (10) days after
21 receiving the assistive device, the dealer or lessor must reimburse
22 the manufacturer for any penalties that the manufacturer must
23 pay.

24 (c) The manufacturer's duty under this section applies for a
25 period that ends on the expiration date of the manufacturer's
26 express warranty.

27 **Sec. 18. (a) This chapter does not limit the rights or remedies**
28 **that are available to a consumer under any other law.**

29 **(b) The rights of a consumer under this chapter may not be**
30 **waived.**

31 **(c) In addition to pursuing any other remedy, a consumer may**
32 **bring an action to recover damages caused by a violation of this**
33 **chapter. The court shall award a consumer who prevails in an**
34 **action under this section:**

35 **(1) not more than the amount of any pecuniary loss, plus**
36 **costs, disbursements, and reasonable attorney's fees; and**

37 **(2) equitable relief that the court determines is appropriate.**

38 **Sec. 19. This chapter does not apply to assistive devices**
39 **purchased, leased, or transferred to a consumer before July 1,**
40 **1998.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1332, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 7, after "individual" insert "**with a disability**".

Page 1, line 10, after "that" insert "**are designed to**".

Page 1, line 13, after "deaf" insert "**and hard of hearing**".

Page 2, line 5, after "dental" insert "**and ocular**".

Page 2, line 25, delete "to" and insert "**or loan to a consumer.**"

Page 2, delete line 26.

Page 3, line 13, delete "one thousand" and insert "**five hundred**".

Page 3, line 13, delete "\$1,000" and insert "**(\$500)**".

Page 3, line 17, delete "one thousand" and insert "**five hundred**".

Page 3, line 17, delete "\$1,000" and insert "**(\$500)**".

Page 3, line 39, delete "accepts return of" and insert "**makes a reasonable attempt to repair**".

Page 3, line 39, delete "for".

Page 3, line 40, delete "repair".

Page 4, line 9, after "in" delete "an" and insert "**the**".

Page 4, line 10, delete "individual's condition," and insert "**condition of an individual with a disability,**".

Page 4, line 11, after "neglect," insert "**misuse,**".

Page 4, line 25, delete ":" and insert "**and is not repaired after a reasonable attempt to repair has been made:**".

Page 6, line 33, delete "two (2) times".

and when so amended that said bill do pass.

(Reference is to House Bill 1332 as introduced.)

VILLALPANDO, Chair

Committee Vote: yeas 10, nays 0.

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