



Reprinted
March 31, 1999

ENGROSSED HOUSE BILL No. 1152

DIGEST OF HB 1152 (Updated March 30, 1999 2:51 pm - DI 75)

Citations Affected: IC 24-5.

Synopsis: Warranties on disability assistance devices. Provides that the manufacturer for an assistive device purchased by, or leased or transferred to a consumer in Indiana after June 30, 1999 warrants that for one year after the assistive device is first delivered to the consumer: (1) the assistive device will be free from a nonconformity when used as intended and, (2) that any nonconformity will be repaired (including parts and labor, without charge to the consumer. Provides that the statutory warranty is in addition to any other warranties provided by the manufacturer. Specifies the obligations of the manufacturer when a consumer returns a nonconforming assistive device. Provides that an assistive device returned due to nonconformity in Indiana or another state may not be sold in Indiana without full disclosures to the prospective buyer or lessee.

Effective: July 1, 1999.

Goeglein, Brown C, Crosby, Becker, GiaQuinta, Budak

(SENATE SPONSORS — LAWSON C, SIMPSON, LONG, HOWARD)

January 6, 1999, read first time and referred to Committee on Public Health.
February 2, 1999, reported — Do Pass.
February 8, 1999, read second time, amended, ordered engrossed.
February 9, 1999, engrossed.
February 10, 1999, read third time, recommitted to Committee of One; amended; passed.
Yeas 81, nays 15.
March 5, 1999, engrossed.

SENATE ACTION

February 25, 1999, read first time and referred to Committee on Commerce and Consumer Affairs.
March 23, 1999, amended, reported favorably — Do Pass.
March 30, 1999, read second time, amended, ordered engrossed.

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First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

ENGROSSED HOUSE BILL No. 1152

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; 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, 1999]:
4 **Chapter 20. Assistive Device Warranties**
5 **Sec. 1. This chapter does not apply to assistive devices**
6 **purchased by, leased by, or transferred to a consumer before July**
7 **1, 1999.**
8 **Sec. 2. As used in this chapter, "assistive device" means any new**
9 **device, including a demonstrator, that a consumer purchases or**
10 **accepts transfer of in Indiana that is used for a major life activity.**
11 **The term includes the following devices:**
12 (1) **Manual wheelchairs, motorized wheelchairs, motorized**
13 **scooters, and other aids that enhance the mobility of an**
14 **individual.**
15 (2) **Hearing aids, telephone communication devices for the**
16 **deaf (TTD, TTY), assistive listening devices, visual and**

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1 audible signal systems, and other aids that enhance an
2 individual's ability to hear.

3 (3) Voice synthesized computer modules, optical scanners,
4 talking software, braille printers, and other devices that
5 enhance a sight impaired individual's ability to communicate.

6 (4) Any other device that enables an individual with a
7 disability to communicate, see, hear, or maneuver.

8 The term does not include surgical implants, dental and ocular
9 prostheses, batteries, tires, or nonfunctional accessories.

10 Sec. 3. As used in this chapter, "collateral costs" means expenses
11 incurred by a consumer in connection with the repair of a
12 nonconformity, including the reasonable costs of obtaining an
13 alternative assistive device. The term does not include the cost of
14 an alternative assistive device.

15 Sec. 4. As used in this chapter, "consumer" means any of the
16 following:

17 (1) An individual who is a person with a disability as defined
18 in the federal Americans With Disabilities Act (42 U.S.C.
19 12101(2)) or the individual's legal representative:

20 (A) who has purchased an assistive device from an assistive
21 device dealer or manufacturer for purposes other than
22 resale;

23 (B) to whom the assistive device is transferred for purposes
24 other than resale, if the transfer occurs before the
25 expiration of any warranty established by this chapter; or

26 (C) who leases a new assistive device from an assistive
27 device lessor under a written lease.

28 (2) A person that purchases or leases an assistive device using
29 state or federal funds for the use of an individual with a
30 disability.

31 (3) An insurer or self-insurer that purchases or leases an
32 assistive device for the use of an individual with a disability.

33 Sec. 5. As used in this chapter, "dealer" means a person who is
34 in the business of selling or dispensing assistive devices.

35 Sec. 6. As used in this chapter, "demonstrator" means an
36 assistive device used primarily for the purpose of demonstration to
37 the public or loan to a consumer.

38 Sec. 7. As used in this chapter, "manufacturer" means a person
39 that manufactures or assembles assistive devices. The term
40 includes the agents of that person, an importer, a factory branch,
41 and any warrantors of the person's assistive device. The term does
42 not include a professional who fabricates, without charge, a device



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1 for use in the course of treatment.

2 **Sec. 8. (a) As used in this chapter, "nonconformity" means a**
 3 **condition or defect that significantly impairs the use, value,**
 4 **function, or safety of an assistive device or any of its components.**

5 **(b) The term does not include a condition or defect of the**
 6 **assistive device that:**

7 **(1) is the result of:**

8 **(A) abuse, misuse, or neglect by a consumer;**

9 **(B) modifications or alterations not authorized by the**
 10 **manufacturer;**

11 **(C) normal wear, including accumulation of ear wax,**
 12 **perspiration, or moisture;**

13 **(D) normal use that may be resolved through a fitting**
 14 **adjustment, routine maintenance, preventative**
 15 **maintenance, or proper care; or**

16 **(E) a consumer's failure to follow any manufacturer's**
 17 **written service and maintenance guidelines furnished at**
 18 **the time of purchase; or**

19 **(2) indicates the need for:**

20 **(A) routine adjustment, modification, or upgrade; or**

21 **(B) an adjustment:**

22 **(i) due to an exacerbation in the condition of the**
 23 **individual with a disability; or**

24 **(ii) to improve the fit of the assistive device.**

25 **Sec. 9. For purposes of this chapter, a "reasonable attempt to**
 26 **repair" has occurred if, within one (1) year after the date of first**
 27 **delivery of the assistive device, either of the following applies:**

28 **(1) The same nonconformity has been subject to repair two (2)**
 29 **or more times by the manufacturer, assistive device lessor, or**
 30 **any assistive device dealer authorized by the manufacturer to**
 31 **repair the assistive device, and the nonconformity continues**
 32 **to exist and interfere with the assistive device's operation.**

33 **(2) The assistive device is out of service because of**
 34 **nonconformities, with no fungible loaner available, for a**
 35 **cumulative total of at least thirty (30) business days (not**
 36 **including any necessary time in shipment), due to repair by**
 37 **the manufacturer, assistive device lessor, or any assistive**
 38 **device dealer authorized by the manufacturer to repair the**
 39 **assistive device. For purposes of this subdivision a loaner**
 40 **hearing aid is considered fungible with the consumer's**
 41 **hearing aid if the loaner hearing aid improves the consumer's**
 42 **hearing. This subdivision does not apply if the repairs could**



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1 not be performed because of conditions beyond the control of
 2 the manufacturer, its agents, or authorized dealers, including
 3 war, invasion, strike, fire, flood, or other natural disasters.

4 **Sec. 10.** Notwithstanding any other law, in addition to any
 5 express warranty furnished by the manufacturer of an assistive
 6 device, the manufacturer is also considered to have warranted both
 7 of the following for a period of one (1) year from the date of first
 8 delivery to the consumer purchasing or leasing the assistive device
 9 in Indiana:

10 (1) That the assistive device, when used as intended, will be
 11 free from any nonconformity.

12 (2) That any nonconformity will be repaired (including parts
 13 and labor) by the manufacturer or its agent, without charge
 14 to the consumer.

15 **Sec. 11.** If, after reasonable attempt to repair, a nonconformity
 16 is not repaired, the consumer must return the assistive device to
 17 the dealer and the manufacturer shall do either of the following:

18 (1) Do both of the following:

19 (A) Accept return of the nonconforming assistive device.

20 (B) Not later than fourteen (14) days after return of the
 21 assistive device, refund to the consumer or consumers:

22 (i) the full purchase price of the assistive device,
 23 excluding the cost of services associated with the device's
 24 initial purchase, together with reasonable collateral
 25 costs, less a reasonable allowance for use; or

26 (ii) if the device was leased, all lease payments made
 27 through the date of return together with a proportional
 28 share of any required deposit.

29 A refund of the amounts described in this clause to a
 30 consumer or consumers shall be made to the extent of each
 31 consumer's bearing the initial purchase or lease cost and
 32 bearing of any collateral costs.

33 (2) Accept return of the nonconforming assistive device and
 34 replace the nonconforming assistive device with one (1) of
 35 comparable market value, function, and usefulness as
 36 appropriate to the consumer within thirty (30) business days
 37 of the return, not including, in the case of a hearing aid,
 38 scheduling time for professional fitting and dispensing.

39 **Sec. 12.** An assistive device returned due to a nonconformity
 40 under this chapter by a consumer or an assistive device lessor in
 41 Indiana or any other state may not be sold or leased again in
 42 Indiana unless full disclosure of the reason for the return is made



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1 to any prospective buyer or lessee.
2 **Sec. 13. (a) The remedies afforded by this chapter are:**
3 (1) cumulative;
4 (2) not exclusive; and
5 (3) in addition to any other legal or equitable remedies
6 available to the consumer.
7 (b) In addition to any other remedies available, a consumer who
8 suffers loss as a result of any violation of this chapter may:
9 (1) bring an action to recover damages; or
10 (2) submit the matter to arbitration under IC 34-57-2.
11 **Sec. 14. (a) A manufacturer's exclusion or limitation of the**
12 **warranties or consumer remedies provided by this chapter is void.**
13 (b) A purported waiver of rights to legal action or arbitration
14 by a consumer within an assistive device purchase agreement is
15 void.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1152, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BROWN C, Chair

Committee Vote: yeas 14, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1152 be amended to read as follows:

Page 1, line 12, delete "Hearing aids, telephone" and insert **"Telephone"**.

Page 1, line 14, after "that" insert **"are designed to"**.

Page 2, line 2, after "devices" insert **"that are"**.

Page 2, line 10, after "nonconformity" insert **"and with obtaining an alternative assistive device"**.

Page 2, line 10, delete "and" and insert **". The term does not include"**.

Page 2, line 10, after "of" delete "obtaining".

Page 6, after line 39, begin a new paragraph and insert:

"SECTION 2. IC 24-5-21 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 21. Hearing Aid Protection

Sec. 1. As used in this chapter, "collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity and with obtaining an alternative hearing aid, including taxes. The term does not include the cost of an alternative hearing aid or professional fitting and dispensing fees.

Sec. 2. As used in this chapter, "consumer" means any of the following:

- (1) An individual who purchases a hearing aid if the hearing aid was purchased from a dealer or manufacturer for purposes other than resale.**
- (2) If the transfer occurs before the expiration of an express warranty of the hearing aid, an individual to whom the hearing aid is transferred for purposes other than resale.**
- (3) A person who may enforce a warranty.**
- (4) An individual who leases a hearing aid from a lessor under a written lease.**

Sec. 3. As used in this chapter, "dealer" means a person who is in the business of selling or dispensing hearing aids.

Sec. 4. As used in this chapter, "demonstrator" means a hearing aid used primarily for the purpose of demonstration or loan to a consumer.

Sec. 5. As used in this chapter, "early termination cost" means an expense or obligation that a lessor incurs as a result of:

- (1) the termination of a written lease before the termination date set forth in the lease; and**

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(2) the return of a hearing aid to the manufacturer.

The term includes penalties for prepayment under a finance arrangement.

Sec. 6. As used in this chapter, "early termination savings" means:

(1) an expense or obligation that a lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of a hearing aid to a manufacturer, including any interest the lessor would have paid to finance the hearing aid; or

(2) if a lessor does not finance a hearing aid, the difference between the value of the hearing aid over the total period of a lease term remaining after an early termination and the present value of that amount at the date of the early termination.

Sec. 7. As used in this chapter, "express warranty" means a warranty that may not be terminated less than:

(1) one hundred and eighty (180) days after the first delivery of the hearing aid to the consumer for a hearing aid that has a retail value of at least one hundred dollars (\$100) but less than five hundred dollars (\$500) at the time of purchase; or

(2) one (1) year after the first delivery of the hearing aid to the consumer for the hearing aid that has a retail value of at least five hundred dollars (\$500).

Sec. 8. As used in this chapter, "individual" means an individual who:

(1) has a physical or mental impairment that substantially limits at least one (1) major life activity (as defined in 29 USC(9)(B));

(2) has a record of the impairment; and

(3) is regarded as having the impairment.

Sec. 9. As used in this chapter, "lessor" means a person who:

(1) leases hearing aids to consumers; or

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

Sec. 10. As used in this chapter, "manufacturer" means a person or a person's agent that manufactures or assembles hearing aids, including an importer, a distributor, a factory branch, a distributor branch, and the warrantors of the manufacturer's hearing aid. The term does not include a dealer or lessor.

Sec. 11. As used in this chapter, "nonconforming hearing aid" means, with respect to a new hearing aid, any of the following,

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occurring within the term of an express warranty applicable to a new hearing aid:

- (1) The manufacturer, the lessor, or a manufacturer's authorized dealer makes a reasonable attempt to repair a new hearing aid at least two (2) times for the same nonconformity.
- (2) A hearing aid in the consumer's possession is out of service for an aggregate of at least thirty (30) days because of a nonconformity.

Sec. 12. (a) As used in this chapter, "nonconformity" means a broken or missing part, generic defect, malfunction, or a concurrent combination of defects or malfunctions that:

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

(b) The term does not include a hearing aid that:

- (1) needs only adjustment, modification, or upgrade;
- (2) must be adjusted due to an exacerbation in the condition of an individual with a disability or to improve the fit of the hearing aid;
- (3) must be cleaned;
- (4) needs routine maintenance;
- (5) has a condition or defect that is the result of normal use, including accumulation of ear wax, perspiration, or moisture; or
- (6) has a condition or defect that is the result of abuse, neglect, misuse, or unauthorized modification or alteration of the hearing aid.

Sec. 13. (a) A manufacturer who sells a hearing aid to a consumer, either directly or through a dealer or lessor, shall furnish the consumer with an express warranty for the hearing aid. If a manufacturer fails to furnish an express warranty, the hearing aid 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 a hearing aid does not begin until the consumer first takes possession of the hearing aid.

Sec. 14. (a) The express warranty for a hearing aid must require the following if the new hearing aid becomes a nonconforming hearing aid and is not repaired after reasonable attempts (as described in section 11(1) of this chapter) have been made to repair

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the device:

(1) To receive a refund, the consumer must return the hearing aid to the dealer or manufacturer after which:

(A) if the hearing aid 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 hearing aid 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 hearing aid, less any professional fitting and dispensing charges.

(2) To receive a comparable new hearing aid, the consumer must request that the manufacturer provide the comparable new hearing aid. Not more than thirty (30) days after the return, excluding scheduling time for professional fitting and dispensing of not more than fifteen (15) business days unless modified by mutual agreement, the manufacturer shall provide the consumer with the comparable new hearing aid. When the manufacturer provides the new hearing aid, the consumer shall return the nonconforming hearing aid to the dealer or manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

(3) To have the nonconforming hearing aid repaired, the consumer must report the nonconformity to the manufacturer, the lessor, or a manufacturer's authorized dealer and make the hearing aid available for repair before the express warranty expires. The manufacturer, lessor, or dealer to which the hearing aid is made available for repair must make a reasonable attempt to repair or to obtain repairs of the nonconformity at no charge to the consumer.

(b) For purposes of this section, the current value of the written lease equals the total amount of the consumer's obligations under the lease during the period of the lease remaining after its early termination plus the dealer's early termination costs and the value of the hearing aid at the lease expiration date if the lease sets forth an expiration date value, less the lessor's early termination savings.



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(c) A reasonable allowance for use must be calculated by using the depreciation strategy defined in the federal Office of Management and Budget's Circular A-87 (34 CFR 74-76, 34 CFR 79-82, and 34 CFR 85-86) to determine the current value of the used hearing aid.

(d) A person may not enforce a lease against a consumer after the consumer receives a refund.

Sec. 15. A nonconforming hearing aid returned by a consumer or lessor may not be sold or leased again unless full disclosure of the reason for its return is made to a prospective buyer or lessee.

Sec. 16. (a) This section applies if:

(1) a hearing aid covered by a manufacturer's express warranty is tendered by a consumer to the dealer, manufacturer, or lessor from whom it was:

- (A) purchased;
- (B) leased; or
- (C) exchanged;

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

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

(A) The repair period exceeds ten (10) business days, including the day the hearing aid is tendered to the dealer, manufacturer, or lessor, but excluding overnight shipping time and scheduling time for professional fitting and dispensing.

(B) The nonconformity is the same for which the hearing aid has been tendered to the dealer for repair on at least two (2) previous occasions for the same nonconformity.

(b) The manufacturer shall provide directly to the consumer for the duration of a repair period described in subsection (a) either:

- (1) a usable hearing aid that is not necessarily new or identical, but is in good working order and relates to the consumer's audiogram; or
- (2) a rental reimbursement of not more than twenty dollars (\$20) per day.

If the failure of a dealer or lessor to tender the nonconforming hearing aid to the manufacturer in a timely manner causes the failure of the manufacturer to make the repairs within ten (10) business days after receiving the hearing aid, the dealer or lessor shall reimburse the manufacturer for any penalties that the manufacturer must pay.

(c) The manufacturer's duty under this section applies for a

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period that ends on the expiration date of the manufacturer's express warranty.

Sec. 17. (a) This chapter does not limit the rights or remedies that are available to a consumer under any other law.

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

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

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

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

Sec. 18. This chapter does not apply to hearing aids purchased, leased, or transferred to a consumer before July 1, 1999."

(Reference is to HB 1152 as printed February 3, 1999.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1152 be recommitted to a Committee of One, its author, with specific instructions to amend as follows:

Page 8, line 13, delete "29" and insert "**42 USC 12102(2)**";.

Page 8, delete line 14.

Page 8, run in lines 13 and 14.

(Reference is to HB 1152 as reprinted February 9, 1999.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred House Bill 1152, begs leave to report that said bill has been amended as directed.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1152, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

DELETE the amendment made on motion of Goeglein adopted February 10, 1999.

Page 1, line 4, delete "Protection" and insert "**Warranties**".

Page 1, delete lines 5 through 15, begin a new paragraph and insert:

"Sec. 1. This chapter does not apply to assistive devices purchased, leased, or transferred to a consumer before July 1, 1999.

Sec. 2. As used in this chapter, "assistive device" means any new device, including a demonstrator, that a consumer purchases or accepts transfer of in Indiana that is used for a major life activity. The term includes the following devices:

- (1) Manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility of an individual.**
- (2) Hearing aids, telephone communication devices for the deaf (TTD, TTY), assistive listening devices, visual and audible signal systems, and other aids that enhance an individual's ability to hear.**
- (3) Voice synthesized computer modules, optical scanners, talking software, braille printers, and other devices that enhance a sight impaired individual's ability to communicate.**
- (4) Any other device that enables an individual with a disability to communicate, see, hear, or maneuver.**

The term does not include surgical implants, dental and ocular prostheses, batteries, tires, or nonfunctional accessories.

Sec. 3. As used in this chapter, "collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the reasonable costs of obtaining an alternative assistive device. The term does not include the cost of an alternative assistive device.

Sec. 4. As used in this chapter, "consumer" means any of the following:

- (1) An individual who is a person with a disability as defined in the federal Americans With Disabilities Act (42 U.S.C. 12101(2)) or the individual's legal representative:**
 - (A) who has purchased an assistive device from an assistive**



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device dealer or manufacturer for purposes other than resale;

(B) to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of any warranty established by this chapter; or

(C) who leases a new assistive device from an assistive device lessor under a written lease.

(2) A person that purchases or leases an assistive device using state or federal funds for the use of an individual with a disability.

(3) An insurer or self-insurer that purchases or leases an assistive device for the use of an individual with a disability.

Sec. 5. As used in this chapter, "dealer" means a person who is in the business of selling or dispensing assistive devices.

Sec. 6. As used in this chapter, "demonstrator" means an assistive device used primarily for the purpose of demonstration to the public or loan to a consumer.

Sec. 7. As used in this chapter, "manufacturer" means a person that manufactures or assembles assistive devices. The term includes the agents of that person, an importer, a factory branch, and any warrantors of the person's assistive device. The term does not include a professional who fabricates, without charge, a device for use in the course of treatment.

Sec. 8. (a) As used in this chapter, "nonconformity" means a condition or defect that significantly impairs the use, value, function, or safety of an assistive device or any of its components.

(b) The term does not include a condition or defect of the assistive device that:

(1) is the result of:

(A) abuse, misuse, or neglect by a consumer;

(B) modifications or alterations not authorized by the manufacturer;

(C) normal wear, including accumulation of ear wax, perspiration, or moisture;

(D) normal use that may be resolved through a fitting adjustment, routine maintenance, preventative maintenance, or proper care; or

(E) a consumer's failure to follow any manufacturer's written service and maintenance guidelines furnished at the time of purchase; or

(2) indicates the need for:

(A) routine adjustment, modification, or upgrade; or



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(B) an adjustment:

- (i) due to an exacerbation in the condition of the individual with a disability; or
- (ii) to improve the fit of the assistive device.

Sec. 9. For purposes of this chapter, a "reasonable attempt to repair" has occurred if, within one (1) year after the date of first delivery of the assistive device, either of the following applies:

- (1) The same nonconformity has been subject to repair two (2) or more times by the manufacturer, assistive device lessor, or any assistive device dealer authorized by the manufacturer to repair the assistive device, and the nonconformity continues to exist and interfere with the assistive device's operation.
- (2) The assistive device is out of service because of nonconformities, with no fungible loaner available, for a cumulative total of at least thirty (30) business days (not including any necessary time in shipment), due to repair by the manufacturer, assistive device lessor, or any assistive device dealer authorized by the manufacturer to repair the assistive device. For purposes of this subdivision a loaner hearing aid is considered fungible with the consumer's hearing aid if the loaner hearing aid improves the consumer's hearing. This subdivision does not apply if the repairs could not be performed because of conditions beyond the control of the manufacturer, its agents, or authorized dealers, including war, invasion, strike, fire, flood, or other natural disasters.

Sec. 10. Notwithstanding any other law, in addition to any express warranty furnished by the manufacturer of an assistive device, the manufacturer is also considered to have warranted to any consumer purchasing or leasing the assistive device in Indiana both of the following:

- (1) That for a period of one (1) year from the date of first delivery to the consumer the assistive device, when used as intended, will be free from any nonconformity.
- (2) Any nonconformity will be repaired (including parts and labor) by the manufacturer or its agent, without charge to the consumer.

Sec. 11. If, after reasonable attempt to repair, a nonconformity is not repaired, the consumer must return the assistive device to the dealer and the manufacturer shall do either of the following:

- (1) Do both of the following:
 - (A) Accept return of the nonconforming assistive device.
 - (B) Not later than fourteen (14) days after return of the

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assistive device, refund to the consumer or consumers:

- (i) the full purchase price of the assistive device, excluding the cost of services associated with the device's initial purchase, together with reasonable collateral costs, less a reasonable allowance for use; or
- (ii) if the device was leased, all lease payments made through the date of return together with a proportional share of any required deposit.

A refund of the amounts described in this clause to a consumer or consumers shall be made to the extent of each consumer's bearing the initial purchase or lease cost and bearing of any collateral costs.

- (2) Accept return of the nonconforming assistive device and replace the nonconforming assistive device with one (1) of comparable market value, function, and usefulness as appropriate to the consumer within thirty (30) business days of the return, not including, in the case of a hearing aid, scheduling time for professional fitting and dispensing.

Sec. 12. An assistive device returned due to a nonconformity under this chapter by a consumer or an assistive device lessor in Indiana or any other state may not be sold or leased again in Indiana unless full disclosure of the reason for the return is made to any prospective buyer or lessee.

Sec. 13. (a) The remedies afforded by this chapter are:

- (1) cumulative;
- (2) not exclusive; and
- (3) in addition to any other legal or equitable remedies available to the consumer.

(b) In addition to any other remedies available, a consumer who suffers loss as a result of any violation of this chapter may:

- (1) bring an action to recover damages; or
- (2) submit the matter to arbitration under IC 34-57-2.

Sec. 14. (a) A manufacturer's exclusion or limitation of the warranties or consumer remedies provided by this chapter is void.

(b) A purported waiver of rights to legal action or arbitration by a consumer within an assistive device purchase agreement is void."

Delete pages 2 through 11.



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and when so amended that said bill do pass.

(Reference is to HB 1152 as reprinted February 9, 1999, and as amended on motion of Representative Goeglein, adopted February 10, 1999.)

MILLS, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Mr. President: I move that Senators Long and Howard be added as cosponsors of Engrossed House Bill 1152.

LAWSON C

SENATE MOTION

Mr. President: I move that Engrossed House Bill 1152 be amended to read as follows:

Page 1, line 6, delete "purchased, leased," and insert "**purchased by, leased by,**".

Page 4, delete lines 4 through 14, begin a new paragraph and insert:

"Sec. 10. Notwithstanding any other law, in addition to any express warranty furnished by the manufacturer of an assistive device, the manufacturer is also considered to have warranted both of the following for a period of one (1) year from the date of first delivery to the consumer purchasing or leasing the assistive device in Indiana:

- (1) That the assistive device, when used as intended, will be free from any nonconformity.**
- (2) That any nonconformity will be repaired (including parts and labor) by the manufacturer or its agent, without charge to the consumer."**

(Reference is to EHB 1152 as printed March 24, 1999.)

LAWSON C

C
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