



Reprinted
February 9, 1999

HOUSE BILL No. 1152

DIGEST OF HB 1152 (Updated February 8, 1999 6:15 pm - DI 97)

Citations Affected: IC 24-5.

Synopsis: Warranties on disability assistance devices and hearing aids. 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. Requires a manufacturer who sells a hearing aid to a consumer to furnish an express warranty. Provides that the effective period of the express warranty does not begin until the consumer first takes possession. Requires the express warranty to require the manufacturer to provide a refund, a new assistive device or hearing aid, or repairs if
(Continued next page)

Effective: July 1, 1999.

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

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.

HB 1152—LS 6731/DI 77+



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the consumer reports a nonconformity and returns the assistive device or hearing aid. Prohibits the sale or lease of an assistive device or hearing aid returned for a nonconformity unless full disclosure of the nonconformity is made to the prospective buyer or lessee. Requires the manufacturer of a nonconforming assistive device or hearing aid to provide the consumer with a rental reimbursement of not more than \$20 per day if the repair takes more than ten days, or if the assistive device or hearing aid 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 or hearing aid within ten days.

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Reprinted
February 9, 1999

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.

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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 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, wheelchair lifts, and other aids that are designed to**
11 **enhance the mobility of an individual.**

12 (2) **Telephone communication devices for the deaf and hard**
13 **of hearing (TDD, TTY), assistive listening devices, and other**
14 **aids that are designed to 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 that are designed to**
 3 **enhance a sight 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 and with obtaining an alternative assistive device,**
 11 **including taxes. The term does not include the cost of an alternative**
 12 **assistive device.**
 13 **Sec. 3. As used in this chapter, "consumer" means any of the**
 14 **following:**
 15 **(1) The purchaser of an assistive device if the assistive device**
 16 **was purchased from a dealer or manufacturer for purposes**
 17 **other than resale.**
 18 **(2) If the transfer occurs before the expiration of an express**
 19 **warranty of the assistive device, a person to whom the**
 20 **assistive device is transferred for purposes other than resale.**
 21 **(3) A person who may enforce a warranty.**
 22 **(4) A person who leases an assistive device from a lessor**
 23 **under a written lease.**
 24 **Sec. 4. As used in this chapter, "dealer" means a person who is**
 25 **in the business of selling assistive devices.**
 26 **Sec. 5. As used in this chapter, "demonstrator" means an**
 27 **assistive device used primarily for the purpose of demonstration or**
 28 **loan to a consumer.**
 29 **Sec. 6. As used in this chapter, "early termination cost" means**
 30 **an expense or obligation that a lessor incurs as a result of:**
 31 **(1) the termination of a written lease before the termination**
 32 **date set forth in the lease; and**
 33 **(2) the return of an assistive device to the manufacturer.**
 34 **The term includes penalties for prepayment under a finance**
 35 **arrangement.**
 36 **Sec. 7. As used in this chapter, "early termination savings"**
 37 **means:**
 38 **(1) an expense or obligation that a lessor avoids as a result of**
 39 **both the termination of a written lease before the termination**
 40 **date set forth in the lease and the return of an assistive device**
 41 **to a manufacturer, including any interest the lessor would**
 42 **have paid to finance the assistive device; or**

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

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

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

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

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

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

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

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

25 (3) is regarded as having the impairment.

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

27 (1) leases assistive devices to consumers; or

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

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

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

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



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1 (2) An assistive device is out of service for an aggregate of at
2 least thirty (30) days because of a nonconformity.

3 Sec. 13. As used in this chapter, "nonconformity" means a
4 specific condition, generic defect, malfunction, or a concurrent
5 combination of defects or conditions that:

6 (1) substantially impairs the use, value, or safety of an
7 assistive device; or

8 (2) renders the assistive device nonconforming to the terms of
9 an express warranty.

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

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

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

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

29 (1) To receive a refund, the consumer must return the
30 assistive device to the manufacturer after which:

31 (A) if the assistive device was purchased, the manufacturer
32 shall refund to the consumer the full purchase price plus
33 any finance charge or tax paid by the consumer at the
34 point of sale plus collateral costs, less a reasonable
35 allowance for use; or

36 (B) if the assistive device was leased, the manufacturer
37 shall refund to the lessor the current value of the written
38 lease and refund to the consumer the amount that the
39 consumer paid under the written lease plus any collateral
40 costs, less a reasonable allowance for use.

41 A dealer or lessor shall reimburse the manufacturer for the
42 amount the manufacturer pays to a consumer that exceeds the

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



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1 (1) an assistive device covered by a manufacturer's express
 2 warranty is tendered by a consumer to the dealer,
 3 manufacturer, or lessor from whom it was:

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

7 for the repair of a nonconformity covered by the warranty; 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 nonconforming
 19 assistive device to the manufacturer in a timely manner causes the
 20 failure of the manufacturer to make the repairs within ten (10)
 21 days after receiving the assistive device, the dealer or lessor shall
 22 reimburse the manufacturer for any penalties that the
 23 manufacturer must 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 **1999.**

41 **SECTION 2. IC 24-5-21 IS ADDED TO THE INDIANA CODE AS**
 42 **A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY**



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1, 1999]:

2 **Chapter 21. Hearing Aid Protection**

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

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

10 (1) **An individual who purchases a hearing aid if the hearing**
 11 **aid was purchased from a dealer or manufacturer for**
 12 **purposes other than resale.**

13 (2) **If the transfer occurs before the expiration of an express**
 14 **warranty of the hearing aid, an individual to whom the**
 15 **hearing aid is transferred for purposes other than resale.**

16 (3) **A person who may enforce a warranty.**

17 (4) **An individual who leases a hearing aid from a lessor under**
 18 **a written lease.**

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

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

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

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

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

29 **The term includes penalties for prepayment under a finance**
 30 **arrangement.**

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

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

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



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

- 3 (1) one hundred and eighty (180) days after the first delivery
 4 of the hearing aid to the consumer for a hearing aid that has
 5 a retail value of at least one hundred dollars (\$100) but less
 6 than five hundred dollars (\$500) at the time of purchase; or
 7 (2) one (1) year after the first delivery of the hearing aid to the
 8 consumer for the hearing aid that has a retail value of at least
 9 five hundred dollars (\$500).

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

- 12 (1) has a physical or mental impairment that substantially
 13 limits at least one (1) major life activity (as defined in 29
 14 USC(9)(B);
 15 (2) has a record of the impairment; and
 16 (3) is regarded as having the impairment.

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

- 18 (1) leases hearing aids to consumers; or
 19 (2) holds the rights of a person described in subdivision (1);
 20 under a written lease.

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

26 **Sec. 11. As used in this chapter, "nonconforming hearing aid"**
 27 **means, with respect to a new hearing aid, any of the following,**
 28 **occurring within the term of an express warranty applicable to a**
 29 **new hearing aid:**

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

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

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



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

2 (1) needs only adjustment, modification, or upgrade;

3 (2) must be adjusted due to an exacerbation in the condition
4 of an individual with a disability or to improve the fit of the
5 hearing aid;

6 (3) must be cleaned;

7 (4) needs routine maintenance;

8 (5) has a condition or defect that is the result of normal use,
9 including accumulation of ear wax, perspiration, or moisture;

10 or

11 (6) has a condition or defect that is the result of abuse, neglect,
12 misuse, or unauthorized modification or alteration of the
13 hearing aid.

14 Sec. 13. (a) A manufacturer who sells a hearing aid to a
15 consumer, either directly or through a dealer or lessor, shall
16 furnish the consumer with an express warranty for the hearing aid.
17 If a manufacturer fails to furnish an express warranty, the hearing
18 aid is considered to be covered by an express warranty, as if the
19 manufacturer had furnished an express warranty to the consumer
20 as required by this section.

21 (b) The effective period of an express warranty for a hearing aid
22 does not begin until the consumer first takes possession of the
23 hearing aid.

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

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

31 (A) if the hearing aid was purchased, the manufacturer
32 shall refund to the consumer the full purchase price plus
33 any finance charge or tax paid by the consumer at the
34 point of sale plus collateral costs, less a reasonable
35 allowance for use; or

36 (B) if the hearing aid was leased, the manufacturer shall
37 refund to the lessor the current value of the written lease
38 and refund to the consumer the amount that the consumer
39 paid under the written lease plus any collateral costs, less
40 a reasonable allowance for use.

41 A dealer or lessor shall reimburse the manufacturer for the
42 amount the manufacturer pays to a consumer that exceeds the

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1 net price received by the manufacturer for the hearing aid,
2 less any professional fitting and dispensing charges.

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

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

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

28 (c) A reasonable allowance for use must be calculated by using
29 the depreciation strategy defined in the federal Office of
30 Management and Budget's Circular A-87 (34 CFR 74-76, 34 CFR
31 79-82, and 34 CFR 85-86) to determine the current value of the
32 used hearing aid.

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

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

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

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

42 (A) purchased;



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- 1 **(B) leased; or**
- 2 **(C) exchanged;**
- 3 **for the repair of a nonconformity covered by the warranty;**
- 4 **and**
- 5 **(2) at least one (1) of the following conditions exists:**
- 6 **(A) The repair period exceeds ten (10) business days,**
- 7 **including the day the hearing aid is tendered to the dealer,**
- 8 **manufacturer, or lessor, but excluding overnight shipping**
- 9 **time and scheduling time for professional fitting and**
- 10 **dispensing.**
- 11 **(B) The nonconformity is the same for which the hearing**
- 12 **aid has been tendered to the dealer for repair on at least**
- 13 **two (2) previous occasions for the same nonconformity.**
- 14 **(b) The manufacturer shall provide directly to the consumer for**
- 15 **the duration of a repair period described in subsection (a) either:**
- 16 **(1) a usable hearing aid that is not necessarily new or**
- 17 **identical, but is in good working order and relates to the**
- 18 **consumer's audiogram; or**
- 19 **(2) a rental reimbursement of not more than twenty dollars**
- 20 **(\$20) per day.**

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

27 **(c) The manufacturer's duty under this section applies for a**
 28 **period that ends on the expiration date of the manufacturer's**
 29 **express warranty.**

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

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

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

- 38 **(1) not more than the amount of any pecuniary loss, plus**
- 39 **costs, disbursements, and reasonable attorney's fees; and**
- 40 **(2) equitable relief that the court determines is appropriate.**

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

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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



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attempts (as described in section 11(1) of this chapter) have been made to repair 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

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forth an expiration date value, less the lessor's early termination savings.

(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

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shall reimburse the manufacturer for any penalties that the manufacturer must pay.

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