

SUBJECT: Creating the Assistive Technology Warranty Act

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Brimer, Rhodes, Corte, Dukes, Elkins, Giddings, Solomons, Woolley

0 nays

1 absent — Janek

WITNESSES: For — Lynn Armstrong; John Mewkowsky, Arcil, Inc.; Sean Pevsner; Elizabeth Tucker, United Cerebral Palsy of Texas; Tom Tyree, Disability Policy Consortium; Mark Whitburn; Maria Tamez

Against — Robert Kamm, Texas Association of Business and Chambers of Commerce

On — Roger Levy, Texas Rehabilitation Commission

BACKGROUND : Lemon laws protect consumers when they purchase motor vehicles that are defective. The law requires motor vehicle dealers to replace or accept the return of motor vehicles with a defect that creates a substantial impairment to the market value. The law guarantees against such defects for the term of the express warranties or two years or 24,000 miles.

The Deceptive Trade Practices Act (DTPA) allows consumers to hold sellers of goods and services strictly liable for deceptive acts. If the seller knowingly deceives the consumer, the consumer may receive exemplary damages equal to three times the actual damage award.

DIGEST: CSHB 87, the proposed Assistive Technology Warranty Act, would require a minimum one year warranty against defects or other nonconformity for any device that costs at least \$1,000 and was designed to assist a person with a disability in performing functions or activities. In addition to the one-year warranty, the act would require a 30-day return privilege for devices not made to custom specifications that failed to meet customer needs.

A manufacturer would be required to repair a nonconforming assistive technology device if the consumer reported the nonconformity and made the device available for repair within the warranty period. The consumer would be liable to the manufacturer for the cost of any repair performed out of warranty.

The consumer could return a device and receive a refund if a problem remained after four or more repairs or if the device was out of service for more than 30 cumulative days. The refund would be the difference between the cost of the device, including purchase price, finance charges and collateral costs such as replacements during the period when the device was inoperable, and an allowance for the use of the device. Refunds also would be allowed for leased devices. A manufacturer would not be required to accept a device that had been intentionally altered by the consumer in a manner that affected the device's use.

A manufacturer would have to make a replacement or refund available within 30 days of receiving a request. The consumer would not have to return the nonconforming device until the new device or a refund was received. The right to repair or return a device would not apply if the primary reason for the repair or return was a physical change that affected the consumer's ability to use the device.

Any manufacturer, lessor or dealer that sold a nonconforming device or resold a returned device would be required to inform the consumer of the device's nonconformance in writing.

Manufacturers, lessors or dealers violating the provisions of the Assistive Technology Warranty Act could be subject to a cause of action for damages. A prevailing consumer would be entitled to receive two times actual damages plus attorneys' fees and court costs.

CSHB 878 would not allow consumers to waive their right under the warranty and would not make the rights in the bill exclusive. The bill would become effective September 1, 1997.

SUPPORTERS
SAY:

Persons with disabilities or impairments should be able to count on the assistive devices they purchase. These devices should be free from defects or, in case of a problem, manufacturers should make all reasonable efforts to repair or replace them. This legislation would not be necessary if all manufacturers, lessors and dealers acted in a responsible manner to all persons who purchased such devices. However, because that is not always the case, this bill would impose statutory requirements to act responsibly.

The requirements placed on the manufacturers, lessors and dealers of these devices would impose no greater burden than what would be assumed by a responsible business person under similar circumstances. These devices are costly — the legislation would not apply to a device with a price tag of less than \$1,000 — and many such devices are mechanically or electronically complex. Allowing persons to sell or lease these devices without any assurances about their reliability would make it more difficult for persons with disabilities to use these devices to overcome their impairments.

Many of these assistive devices make it possible for persons with disabilities to perform daily functions in their lives. If these devices fail, the owner is faced with the alternative of paying more money for another device or hiring someone to perform the activities that use of the device allowed. Many disabled persons have a very difficult time presenting their grievances to sellers, and many do not have the financial resources to purchase replacement devices.

Warranties for such devices would not be limited to the warranties included in this legislation. If a person purchasing or leasing a device wished to pay more for an additional warranty, they could do so. This legislation would require only a minimum warranty against defects for one year.

The purpose of HB 878 is not to create another legal remedy, but to induce manufacturers, lessors and dealers of such devices to repair or replace them in a reasonable manner without having to resort to legal action. Consumers could use other remedies, such as the DTPA, to recover damages for breaches of such warranties.

**OPPONENTS
SAY:**

Warranty terms for goods and services should not be dictated by the state but determined by contractual relationship between the consumer and manufacturer or seller. Consumers who want an extended warranty can always pay for such protection. Those who would prefer not to have a warranty should be able to save some money on the purchase price of the device. Requiring all devices to carry a specific warranty would raise the price for all.

There are adequate remedies under current law, such as the DTPA, to protect those who purchase defective devices. Creating a separate remedy could create confusion about which remedy was appropriate to use.

NOTES:

The committee substitute added provisions on computing collateral costs; excepting custom-made items from the 30-day return guarantee; prohibiting returns of devices that were materially changed; and allowing expenses for expert witnesses to be considered in computing court costs.