

substituted for HF 2430

SENATE FILE 2189

SENATE FILE 2189
BY COMMITTEE ON COMMERCE
Commerce (p. 412)
(SUCCESSOR TO SSB 2154)

Passed Senate, Date 3/10/92 (p. 1019) Passed House, Date 4/2/92 (p. 1019)
Vote: Ayes 52 Nays 0 Vote: Ayes 97 Nays 0

Approved April 22, 1992 (p. 1535)
Senate 4/2/92 (p. 1019)
4/2/92, p. 1019

A BILL FOR

1 An Act relating to invention development services, and making
2 penalties applicable.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 2189

H-5588

- 1 Amend Senate File 2189, as passed by the Senate, as
- 2 follows:
- 3 1. Page 5, line 26, by striking the figure
- 4 "527G.4" and inserting the following: "523G.4".
- 5 2. Page 9, line 9, by striking the figure
- 6 "527G.5" and inserting the following: "523G.5".
- 7 3. Page 14, line 27, by striking the figure
- 8 "523G.7" and inserting the following: "523G.6".
- 9 4. Title page, line 1, by inserting after the
- 10 word "services," the following: "providing for
- 11 fees,".

By GILL of Woodbury

H-5588 FILED MARCH 30, 1992

Adopted 4/2 (p. 1019)

55-2189

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1 Section 1. FINDINGS. The general assembly finds and
2 declares all of the following:

3 1. Some members of the general public, commonly referred
4 to as inventors, are engaged in the pursuit of creating
5 original concepts which may be rendered into an artistic,
6 educational, or technological expression, including works,
7 compositions, designs, machines, manufacturing or engineering
8 techniques, analyses, or processes.

9 2. These achievements or improvements often benefit the
10 public welfare and are fostered by copyright, patent, and
11 trademark laws which protect the property rights of inventors.

12 3. Inventors committing time and capital in this process
13 are convinced of the commercial potential of their inventions,
14 but often do not have the resources or expertise necessary to
15 develop, manufacture, or market the inventions.

16 4. Inventors do not generally earn a livelihood from
17 developing, manufacturing, promoting, or marketing inventions;
18 manufacturing or marketing products; marketing designs;
19 publishing or exhibiting works or compositions; or owning,
20 operating, or controlling commercial enterprises.

21 5. There is a significant number of other persons,
22 sometimes referred to as invention developers, who profit from
23 the eagerness of inventors to expend substantial sums for
24 services represented as important to exploit the commercial
25 value of inventions.

26 6. Invention developers' services are generally offered
27 for sums ranging from five hundred to eight thousand dollars
28 and either a percentage of the income that may be derived from
29 the sale or marketing of an invention or a partial ownership
30 interest in the invention.

31 7. Inventors generally play a passive role in the
32 development, promotion, publishing, exhibition, manufacture,
33 marketing, or sale of their inventions after executing a
34 contract with an invention developer, and usually do little
35 more than receive periodic reports issued by the invention

1 developer.

2 8. An extremely small number of inventors realize profits
3 from inventions, regardless of the services purchased from
4 invention developers.

5 9. Invention development services are frequently connected
6 to sales practices and business methods which are fraudulent
7 or deceitful, and may impose financial hardship upon persons
8 residing in this state.

9 10. Existing legal provisions protecting inventors are
10 inadequate to prevent these abuses.

11 11. The invention development services field has a
12 significant impact upon the economy and well-being of this
13 state and its local communities, and the provisions of this
14 Act regulating the activities of investment developers are
15 necessary for the public welfare.

16 Sec. 2. NEW SECTION. 523G.1 SHORT TITLE.

17 This chapter shall be known and may be cited as the
18 "Invention Development Services Act".

19 Sec. 3. NEW SECTION. 523G.2 PURPOSE OF THE CHAPTER.

20 The general assembly declares that the purpose of this
21 chapter is to safeguard the public against fraud, deceit,
22 imposition, and financial hardship, and to foster and
23 encourage competition, fair dealing, and prosperity in the
24 field of invention development services by prohibiting or
25 restricting deceptive practices, misleading advertising,
26 onerous contract terms, harmful financial practices, and other
27 unfair, dishonest, deceptive, destructive, unscrupulous,
28 fraudulent, or discriminatory practices which threaten the
29 public welfare.

30 Sec. 4. NEW SECTION. 523G.3 DEFINITIONS.

31 As used in this chapter, unless the context otherwise
32 requires:

33 1. "Business record" means a record maintained by an
34 invention developer relating to invention development
35 services, including but not limited to contracts, files,

1 accounts, books, papers, photographs, and audio or visual
2 tapes.

3 2. "Commissioner" means the commissioner of insurance or a
4 person designated by the commissioner to act on the
5 commissioner's behalf.

6 3. "Contract" means an agreement between an invention
7 developer and a customer under which the invention developer
8 promises to perform invention development services for the
9 customer.

10 4. "Customer" means a person who is solicited by, inquires
11 about, seeks the services of, or enters into a contract with
12 an invention developer.

13 5. "Deceptive practice" means communicating a false or
14 fraudulent statement, providing false pretense, making a false
15 promise or misleading statement, misrepresenting a fact,
16 omitting a material fact, or failing to make all disclosures
17 required by this chapter.

18 6. "Fee" means a payment made by a customer to an
19 invention developer, including reimbursements for expenditures
20 made or costs incurred by the invention developer. However,
21 "fee" does not include a payment made from a portion of the
22 income received by the customer which resulted from invention
23 development services performed by the invention developer.

24 7. "Invention" means an original concept which may be
25 rendered into an artistic, educational, or technological
26 expression, including works, compositions, designs, machines,
27 manufacturing or engineering techniques, analyses, or
28 processes.

29 8. "Invention developer" means a person who performs
30 invention development services in this state or offers,
31 through any means of communication, to perform invention
32 development services in this state. However, an invention
33 developer does not include the following:

34 a. A person licensed by a state or the United States to
35 render legal advice, if the person acts within the scope of

1 the license. However, if the person is a corporation, all of
2 its stockholders or members must be licensed. If the person
3 is a partnership, all of its partners must be licensed.

4 b. A department or agency of a federal or state
5 government.

6 c. A political subdivision.

7 d. A nonprofit organization registered pursuant to state
8 law.

9 e. A charitable, scientific, educational, or religious
10 organization registered pursuant to state law.

11 f. A person who does not charge a fee for invention
12 development services.

13 g. A person who provides researching, marketing,
14 surveying, or other kinds of consulting services to
15 professional manufacturers, marketers, publishers, or others
16 purchasing such services as an adjunct to their traditional
17 commercial enterprises.

18 9. "Invention development services" or "services" means
19 acts required, promised to be performed, or actually performed
20 by an invention developer for a customer pursuant to a
21 contract which involves facilitating the development,
22 promotion, licensing, publishing, exhibiting, or marketing of
23 an invention.

24 Sec. 5. NEW SECTION. 523G.1 INITIAL DISCLOSURES.

25 1. If an invention developer contemplates entering into a
26 contract or if the invention developer contemplates
27 performance of a phase covered in a contract, the invention
28 developer shall notify the customer by a written statement.
29 The invention developer shall deliver to the customer the
30 written notice together with a copy of each contract or a
31 written summary of the general terms of each contract,
32 including the total cost or consideration required from the
33 customer, before the customer first executes the contract.

34 2. The invention developer shall make a written disclosure
35 to the customer of the information required in this section.

1 The disclosure shall be made in either the first written
2 communication from the invention developer to a specific
3 customer or at the first meeting between the invention
4 developer and a customer. The written disclosure shall
5 contain all of the following:

6 a. The median fee based on fees charged to all customers
7 who have executed contracts with the invention developer in
8 the preceding six months, excluding customers who have
9 executed a contract in the preceding thirty days.

10 b. A single statement setting forth both of the following:

11 (1) The total number of customers who have executed
12 contracts with the invention developer, except that the number
13 need not reflect those customers who have executed contracts
14 within the preceding thirty days.

15 (2) The number of customers who have received from the
16 invention developer's services an amount of money in excess of
17 the amount of money paid by those customers to the invention
18 developer pursuant to a contract. The amount received by a
19 customer reported on the statement shall only include income
20 earned from the successful development, promotion, licensing,
21 publishing, exhibiting, or marketing of the customer's
22 invention pursuant to the contract executed between the
23 invention developer and the customer.

24 c. A notice appearing in substantially the following form:

25 **WARNING**

26 The following disclosure is required by section 527G.4 of
27 the Iowa Code:

28 The person you are dealing with is an invention developer
29 regulated under chapter 523G of the Iowa Code. Unless an
30 invention developer is an attorney licensed to practice in
31 this state, the invention developer is prohibited from
32 providing you legal advice concerning patent, copyright, or
33 trademark law or to advise you of whether your creation, idea,
34 or invention may be patentable or may be protected under the
35 patent, copyright, or trademark laws of the United States or

1 any other law. A registered patent agent may give advice as
2 to patentability and protection available under the patent
3 laws.

4 A patent, copyright, or trademark protection cannot be
5 acquired for you by the invention developer. Your potential
6 patent rights may be adversely affected by any attempt to
7 commercialize your idea or invention before a patent
8 application covering it is filed. Nonconfidential disclosures
9 of your creation, idea, or invention may also trigger a one-
10 year statutory deadline for filing a patent application in the
11 United States, after which you would be banned from receiving
12 any patent protection in the United States, and would prevent
13 you from obtaining valid patent rights in countries whose law
14 provides that patent applications must be filed before there
15 is a public disclosure.

16 Your failure to identify and investigate existing patents,
17 trademarks, or registered copyrights may place you in jeopardy
18 of infringing the copyright, patent, or trademark rights of
19 other persons if you proceed to make, use, or sell your
20 creation, idea, or invention.

21 If you assign even a partial interest in the invention to
22 the invention developer, the invention developer may have the
23 right to assign or license its interest in the invention, or
24 make, use, and sell the creation, idea, or invention without
25 your consent and may not have to share the profits with you.

26 d. A copy of a current registration certificate issued
27 pursuant to section 523G.10.

28 Sec. 6. NEW SECTION. 523G.5 CONTRACTS.

29 1. A contract shall set forth information required in this
30 section in at least ten point type.

31 2. The contract shall describe fully and in detail the
32 services that the invention developer contracts to perform for
33 the customer.

34 3. The contract shall state the following information:

35 a. If the invention developer contracts to construct one

1 or more prototypes, models, or devices embodying the invention
2 of the customer, the total number of prototypes to be
3 constructed and whether the invention developer contracts to
4 sell or distribute such prototypes, models, or devices.

5 b. If an oral or written estimate of customer earnings is
6 made, the estimate and the data upon which it is based.

7 c. A single statement setting forth both of the following:

8 (1) The total number of customers who have executed
9 contracts with the invention developer, except that the number
10 need not reflect those customers who have contracted within
11 the preceding thirty days.

12 (2) The number of customers who have received from the
13 invention developer's services an amount of money in excess of
14 the amount of money paid by those customers to the invention
15 developer pursuant to a contract. The amount received by a
16 customer reported on the statement shall only include payments
17 for services performed by the invention developer involving
18 the development, promotion, licensing, publishing, exhibiting,
19 or marketing of the customer's invention pursuant to their
20 contract.

21 d. The expected date of completion of the invention
22 development services.

23 e. The extent to which the terms of the contract
24 effectuate or make possible the purchase by the invention
25 developer of an interest in the title to an invention.

26 f. A statement explaining that the invention developer is
27 required to maintain all records and correspondence relating
28 to the invention development services performed for that
29 customer for a period not less than three years after
30 expiration of the contract.

31 g. A statement explaining that the records and
32 correspondence required to be maintained pursuant to section
33 523G.8 shall be made available to the customer or
34 representative for review and copying at the expense of the
35 customer on the premises of the invention developer during

1 normal business hours upon seven days' written notice from the
2 date of delivery sent by certified mail.

3 h. The name of the person contracting to perform the
4 invention development services, all names under which the
5 person is doing or has done business as an invention developer
6 during the previous ten years, the names of all parent and
7 subsidiary entities to the person, and the names of all
8 entities that have a contractual obligation to perform
9 invention development services for the person.

10 i. The principal business address of the invention
11 developer and the name and address of its agent in this state
12 authorized to receive service of process in this state.

13 4. a. The customer has an unconditional right to cancel a
14 contract for invention development services at any time before
15 the third business day following the date the customer
16 receives an executed copy of the contract.

17 b. The customer must notify the invention developer of a
18 cancellation by written notice delivered personally or by
19 certified mail. A notice delivered personally must be
20 delivered to the invention developer's place of business by
21 the end of the third business day following the date that the
22 contract was executed, and the cancellation shall take effect
23 upon delivery. Upon delivery of the personal notice, the
24 invention developer shall return a receipt to the customer
25 acknowledging receipt of the cancellation. A notice delivered
26 by certified mail must be mailed by midnight of the third day
27 following the date that the contract was executed, and the
28 cancellation shall become effective upon the date the receipt
29 is signed. A notice of cancellation may take any form which
30 indicates that the customer no longer intends to be bound by
31 the contract.

32 c. Within ten business days after receipt of the notice of
33 cancellation, the invention developer shall deliver to the
34 customer, personally or by certified mail, all moneys paid,
35 any note or other evidence of indebtedness, and all materials

1 provided by the customer. The invention developer may
2 condition payment upon a receipt by the customer acknowledging
3 personal delivery.

4 5. The following shall be included in the contract:

5 a. A disclosure statement in substantially the following
6 form shall appear in boldface type and be located
7 conspicuously on a cover sheet that contains no other writing:

8 NOTICE

9 The following disclosure is required by section 527G.5 of
10 the Iowa Code and is expressly made a part of this contract:

11 You have the right to cancel this contract for any reason
12 at any time within three (3) business days from the date you
13 and the invention developer sign the contract and you receive
14 a fully executed copy. To exercise this option you may use
15 certified mail or personally deliver to this invention
16 developer written notice of your cancellation. The method and
17 time for notification is set forth in this contract
18 immediately above the place for your signature. The invention
19 developer must return by certified mail or personal delivery,
20 within ten business days after receipt of the cancellation
21 notice, all money paid and all materials provided either by
22 you or by another party on your behalf.

23 Unless the invention developer is an attorney, the
24 invention developer is prohibited from giving you legal advice
25 concerning patent, copyright, or trademark law, whether your
26 creation, idea, or invention may be patentable, or protected
27 under the patent, copyright, or trademark laws of the United
28 States or any other law. A registered patent agent may give
29 advice as to patentability and protection available under the
30 patent laws.

31 A patent, copyright, or trademark protection will not be
32 acquired for you by the invention developer or by this
33 contract. Your potential patent rights may be adversely
34 affected by any attempt to commercialize your idea or
35 invention before a patent application covering it is filed.

1 Nonconfidential disclosures of your idea or invention may also
2 trigger certain statutory deadlines for filing a patent
3 application in the United States and would prevent you from
4 obtaining valid patent rights in countries whose law provides
5 that patent applications must be filed before there is a
6 public disclosure. Your failure to identify and investigate
7 existing patents, trademarks, or registered copyrights may
8 place you in jeopardy of infringing the copyright, patent, or
9 trademark rights of other persons if you proceed to make, use,
10 or sell your idea or invention.

11 b. A disclosure statement in substantially the following
12 form shall appear in ten point boldface type immediately above
13 the place where the customer is to sign:

14 ATTENTION!

15 (READ CAREFULLY)

16 You have three (3) business days during which you may
17 cancel this contract for any reason. You must deliver written
18 notice of the cancellation by certified mail or personally to
19 the invention developer. This opportunity to cancel the
20 contract will expire on the last date that you are allowed to
21 mail or deliver notice. If you choose to use certified mail
22 to deliver your notice, it must be placed in the United States
23 mail addressed to (insert name of invention developer), at
24 (insert address of invention developer's place of business)
25 with first class postage prepaid before midnight of (insert
26 proper date). If you choose to personally deliver your notice
27 to the invention developer, it must be delivered by the end of
28 the normal business day on (insert proper date). You are
29 advised to obtain a written statement from the invention
30 developer acknowledging receipt.

31 Sec. 7. NEW SECTION. 523G.6 EVIDENCE OF FINANCIAL
32 RESPONSIBILITY.

33 1. An invention developer shall maintain as security
34 evidence of financial responsibility as approved by the
35 commissioner. The security shall be either a bond or cash

1 deposit in an amount which is equal to the greater of either
2 ten percent of the invention developer's gross income from the
3 invention development business in this state during the
4 invention developer's preceding fiscal year, or twenty-five
5 thousand dollars. The commissioner shall approve the security
6 before the invention developer renders or offers to render
7 invention development services in this state. The invention
8 developer shall have ninety days beginning on the first day of
9 the invention developer's new fiscal year to change the
10 security as necessary to conform to the requirements of this
11 subsection.

12 2. A surety who issues a bond must be approved by the
13 commissioner. A copy of the bond shall be filed in a manner
14 and according to procedures approved by the commissioner. A
15 cash deposit shall be filed with the treasurer of state in a
16 manner and according to procedures approved by the treasurer
17 of state in consultation with the commissioner. The treasurer
18 of state shall not refund a deposit until sixty days following
19 either the date that the invention developer has ceased doing
20 business in the state or a bond has been filed with the
21 commissioner in compliance with this section.

22 3. The security shall be in favor of the state for the
23 benefit of any person entering into a contract with and
24 damaged by an invention developer, if the damages are caused
25 by one of the following:

26 a. A failure by the invention developer to perform the
27 terms of the contract.

28 b. The insolvency of the invention developer or the
29 cessation of the invention developer's business.

30 c. The intentional violation of a provision of this
31 chapter by the invention developer.

32 A person claiming against the security may maintain an
33 action at law against the invention developer. An action
34 against a bond may also include the surety. The aggregate
35 liability of the surety to all persons for all breaches of

1 conditions of the bond shall not exceed the amount of the
2 bond.

3 Sec. 8. NEW SECTION. 523G.7 NEGOTIABLE INSTRUMENTS.

4 An invention developer shall not take a negotiable
5 instrument from a customer as part of a contract, unless the
6 negotiable instrument is a check constituting evidence of the
7 customer's obligation. A person in possession of a negotiable
8 instrument is not a holder in due course as defined in section
9 554.3302, if the person takes a negotiable instrument from a
10 customer in violation of this section.

11 Sec. 9. NEW SECTION. 523G.8 RECORDS AND CORRESPONDENCE.

12 An invention developer shall maintain all records and
13 correspondence relating to performance of each invention
14 development contract for not less than three years after
15 expiration of the contract.

16 Sec. 10. NEW SECTION. 523G.9 COMPLIANCE WITH OTHER LAWS,
17 VIOLATIONS AND PENALTIES.

18 1. The provisions of this chapter are not exclusive and do
19 not relieve persons or a contract from compliance with other
20 applicable law.

21 2. A contract which fails to comply with the applicable
22 provisions of this chapter is unenforceable against the
23 customer as contrary to public policy, unless the invention
24 developer proves all of the following:

25 a. The noncompliance resulted from an error.

26 b. The invention developer followed reasonable procedures
27 adopted to avoid such errors.

28 c. The invention developer promptly made an appropriate
29 correction upon discovery of the noncompliance.

30 3. A contract executed by an invention developer is
31 unenforceable against the customer, if the invention developer
32 used deceptive practices, with an intent to cause reliance,
33 regardless of whether the customer was actually misled,
34 deceived, or damaged.

35 4. A provision of a contract which waives a provision of

1 this chapter is contrary to public policy and is void and
2 unenforceable.

3 5. A person may bring a civil action against an invention
4 developer that uses a deceptive practice. The person may be
5 awarded damages together with costs and disbursements,
6 including reasonable attorney fees. The court in its
7 discretion may increase the award of damages to an amount not
8 to exceed three times the damages or two thousand five hundred
9 dollars, whichever is greater.

10 6. Failure to make an initial disclosure required by
11 section 523G.4 shall render any contract subsequently entered
12 into between the customer and the invention developer voidable
13 by the customer.

14 7. A violation of this chapter or a rule adopted by the
15 commissioner pursuant to this chapter is a violation of
16 section 714.16. The remedies and penalties provided by
17 section 714.16, including but not limited to provisions
18 relating to injunctive relief and penalties, apply to
19 violations of this chapter.

20 Sec. 11. NEW SECTION. 523G.10 REGISTRATION STATEMENT.

21 1. An invention developer shall file a registration
22 statement with the commissioner not later than May 1 of each
23 year. The registration statement shall contain all of the
24 following information:

25 a. The name and address of the invention developer.

26 b. The name and address of each owner, officer, or other
27 official of the invention developer's business. However, if
28 the invention developer is a corporation, the registration
29 statement shall contain the names and addresses of the chief
30 executive officer and the members of the board of directors.

31 c. A description of the invention development services
32 offered.

33 d. A copy of each form of contract used by the invention
34 developer.

35 e. A copy of the invention developer's most recent

1 financial statement, including balance sheets and related
2 statements of income of the invention developer, prepared in
3 accordance with generally accepted accounting principles,
4 audited by a certified public accountant, and dated not more
5 than twelve months prior to the date of the application.

6 f. The total number of customers who have contracted with
7 the invention developer in this state during the invention
8 developer's preceding fiscal year.

9 g. The invention developer's gross income from the
10 invention development business in this state during the
11 invention developer's preceding fiscal year.

12 h. The number of customers who have received from the
13 invention developer's services an amount of money in excess of
14 the amount of money paid by those customers to the invention
15 developer pursuant to a contract. The amount received by a
16 customer reported on the statement shall only include income
17 earned from the successful development, promotion, licensing,
18 publishing, exhibiting, or marketing of the customer's
19 invention pursuant to the contract executed between the
20 invention developer and the customer.

21 2. The invention developer shall submit an annual fee to
22 the commissioner in the amount of two hundred fifty dollars.
23 The fees shall be deposited into the general fund of the
24 state.

25 3. The invention developer shall submit a copy of the
26 surety bond or proof of cash deposit as required by section
27 523G.7.

28 4. The commissioner shall issue a certificate of
29 compliance to invention developers that have complied with
30 registration requirements of this section.

31 Sec. 12. NEW SECTION. 523G.11 POWERS AND DUTIES OF THE
32 COMMISSIONER.

33 The commissioner shall administer and enforce the
34 provisions of this chapter and may do all of the following:

35 1. Adopt rules necessary to administer this chapter in

1 accordance with chapter 17A.

2 2. Investigate the business and business records of
3 invention developers and conduct necessary investigative
4 procedures.

5 3. Administer oaths and affirmations, subpoena witnesses,
6 receive evidence, and require the production of business
7 records relating to an investigation or proceedings.

8 4. Apply to the district court for issuance of an order
9 requiring a person's appearance before the commissioner, if
10 the person has refused to obey a subpoena issued by the
11 commissioner. The person may also be required to produce
12 documentary evidence germane to the subject of the
13 investigation. Failure to obey a court order under this
14 subsection constitutes contempt of court.

15 5. Issue an order directed at an invention developer to
16 cease and desist from engaging in an act which is in violation
17 of this chapter or a rule adopted by the commissioner. The
18 order shall be based on an investigation which provides
19 reasonable evidence of a violation.

20 Sec. 13. CONDITION TO ENACTMENT OF CERTAIN PROVISIONS.

21 Sections 523G.6, 523G.10, and 523G.11 of this Act,
22 regarding duties and authority of the insurance commissioner,
23 shall only be implemented if and when the general assembly
24 makes an appropriation of at least ten thousand dollars and
25 provides for the retention of one part-time clerk for a total
26 of at least one-half full-time equivalent position devoted to
27 the insurance division of the department of commerce for the
28 implementation of the sections.

29 EXPLANATION

30 This bill creates a new chapter, known as the "Invention
31 Development Services Act". The bill regulates invention
32 developers engaged in the business of developing original
33 concepts which may be rendered into an artistic, educational,
34 or technological expression, including works, compositions,
35 designs, machines, manufacturing or engineering techniques,

1 analyses, or processes, referred to as "inventions". The bill
2 excludes from the definition of an "invention developer" a
3 person licensed to render legal advice, governmental entities,
4 nonprofit and philanthropic organizations, educational
5 institutions, a person offering gratuitous services, and a
6 person engaged in services on behalf of commercial
7 enterprises.

8 The bill requires that invention developers disclose
9 information regarding the developer's business and
10 profitability of its customers. The bill requires that
11 contracts between the parties be in writing and provides that
12 essential terms be included within the contract. The bill
13 provides that a customer has a right to cancel a contract
14 within three days following its execution.

15 The bill requires that a developer submit a surety bond or
16 cash deposit. It limits payments by negotiable instruments.
17 The bill establishes recordkeeping requirements. It makes
18 nonconforming contracts unenforceable, prohibits waivers of
19 statutory protections, authorizes civil actions, and makes
20 violations of the chapter a violation of chapter 714, the
21 "Iowa Consumer Fraud Act".

22 The bill requires an annual filing of a registration
23 statement with the insurance division. It provides authority
24 to the commissioner of insurance to administer and enforce the
25 chapter's provisions. The commissioner may adopt rules to
26 carry out the provisions of the chapter. The commissioner may
27 also conduct investigations, issue subpoenas, examine records,
28 and issue orders.

29 The bill provides that provisions authorizing the
30 commissioner to administer and enforce the provisions of the
31 chapter are conditioned upon an appropriation of moneys to the
32 insurance division.

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HOUSE AMENDMENT TO
SENATE FILE 2189

S-5530

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11 fees,".

RECEIVED FROM THE HOUSE

S-5530 FILED APRIL 2, 1992

Senate File 2189

SENATE FILE 2189
FISCAL NOTE

A fiscal note for Senate File 2189 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2189 creates a new Chapter of the Code of Iowa entitled "Invention Development Services Act" to regulate invention developers and requires the Insurance Commissioner to administer and enforce provisions of the Chapter. The Insurance Commissioner is also given authority to adopt rules, conduct investigations, issue subpoenas, examine records, and issue orders.

Fiscal Impact:

This bill will increase General Fund expenditures by \$10,000 in FY 1993 and FY 1994 for an additional 0.5 FTE for the Insurance Division of the Department of Commerce. Because it is unclear how many invention developers will file with the State, no estimate of revenue for annual filing fees is possible. However, no significant revenue is anticipated.

Source: Department of Commerce - Insurance Division (ISB 5199.7, MAS)

FILED APRIL 2, 1992

BY DENNIS PROUTY, FISCAL DIRECTOR

DOYLE, CH.
JENSEN
PALMER 2/12/92
SLIFE
VARN

SSB 2154
Commerce Now

SENATE/HOUSE FILE 2189
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to invention development services, and making
2 penalties applicable.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. FINDINGS. The general assembly finds and
2 declares all of the following:

3 1. Some members of the general public, commonly referred
4 to as inventors, are engaged in the pursuit of creating
5 original concepts which may be rendered into an artistic,
6 educational, or technological expression, including works,
7 compositions, designs, machines, manufacturing or engineering
8 techniques, analyses, or processes.

9 2. These achievements or improvements often benefit the
10 public welfare and are fostered by copyright, patent, and
11 trademark laws which protect the property rights of inventors.

12 3. Inventors committing time and capital in this process
13 are convinced of the commercial potential of their inventions,
14 but often do not have the resources or expertise necessary to
15 develop, manufacture, or market the inventions.

16 4. Inventors do not generally earn a livelihood from
17 developing, manufacturing, promoting, or marketing inventions;
18 manufacturing or marketing products; marketing designs;
19 publishing or exhibiting works or compositions; or owning,
20 operating, or controlling commercial enterprises.

21 5. There is a significant number of other persons,
22 sometimes referred to as invention developers, who profit from
23 the eagerness of inventors to expend substantial sums for
24 services represented as important to exploit the commercial
25 value of inventions.

26 6. Invention developers' services are generally offered
27 for sums ranging from five hundred to eight thousand dollars
28 and either a percentage of the income that may be derived from
29 the sale or marketing of an invention or a partial ownership
30 interest in the invention.

31 7. Inventors generally play a passive role in the
32 development, promotion, publishing, exhibition, manufacture,
33 marketing, or sale of their inventions after executing a
34 contract with an invention developer, and usually do little
35 more than receive periodic reports issued by the invention

1 developer.

2 8. An extremely small number of inventors realize profits
3 from inventions, regardless of the services purchased from
4 invention developers.

5 9. Invention development services are frequently connected
6 to sales practices and business methods which are fraudulent
7 or deceitful, and may impose financial hardship upon persons
8 residing in this state.

9 10. Existing legal provisions protecting inventors are
10 inadequate to prevent these abuses.

11 11. The invention development services field has a
12 significant impact upon the economy and well-being of this
13 state and its local communities, and the provisions of this
14 Act regulating the activities of investment developers are
15 necessary for the public welfare.

16 Sec. 2. NEW SECTION. 523G.1 SHORT TITLE.

17 This chapter shall be known and may be cited as the
18 "Invention Development Services Act".

19 Sec. 3. NEW SECTION. 523G.2 PURPOSE OF THE CHAPTER.

20 The general assembly declares that the purpose of this
21 chapter is to safeguard the public against fraud, deceit,
22 imposition, and financial hardship, and to foster and
23 encourage competition, fair dealing, and prosperity in the
24 field of invention development services by prohibiting or
25 restricting deceptive practices, misleading advertising,
26 onerous contract terms, harmful financial practices, and other
27 unfair, dishonest, deceptive, destructive, unscrupulous,
28 fraudulent, or discriminatory practices which threaten the
29 public welfare.

30 Sec. 4. NEW SECTION. 523G.3 DEFINITIONS.

31 As used in this chapter, unless the context otherwise
32 requires:

33 1. "Business record" means a record maintained by an
34 invention developer relating to invention development
35 services, including but not limited to contracts, files,

1 accounts, books, papers, photographs, and audio or visual
2 tapes.

3 2. "Commissioner" means the commissioner of insurance or a
4 person designated by the commissioner to act on the
5 commissioner's behalf.

6 3. "Contract" means an agreement between an invention
7 developer and a customer under which the invention developer
8 promises to perform invention development services for the
9 customer.

10 4. "Customer" means a person who is solicited by, inquires
11 about, seeks the services of, or enters into a contract with
12 an invention developer.

13 5. "Deceptive practice" means communicating a false or
14 fraudulent statement, providing false pretense, making a false
15 promise or misleading statement, misrepresenting a fact,
16 omitting a material fact, or failing to make all disclosures
17 required by this chapter.

18 6. "Fee" means a payment made by a customer to an
19 invention developer, including reimbursements for expenditures
20 made or costs incurred by the invention developer. However,
21 "fee" does not include a payment made from a portion of the
22 income received by the customer which resulted from invention
23 development services performed by the invention developer.

24 7. "Invention" means an original concept which may be
25 rendered into an artistic, educational, or technological
26 expression, including works, compositions, designs, machines,
27 manufacturing or engineering techniques, analyses, or
28 processes.

29 8. "Invention developer" means a person who performs
30 invention development services in this state or offers,
31 through any means of communication, to perform invention
32 development services in this state. However, an invention
33 developer does not include the following:

34 a. A person licensed by a state or the United States to
35 render legal advice, if the person acts within the scope of

1 the license. However, if the person is a corporation, all of
2 its stockholders or members must be licensed. If the person
3 is a partnership, all of its partners must be licensed.

4 b. A department or agency of a federal or state
5 government.

6 c. A political subdivision.

7 d. A nonprofit organization registered pursuant to state
8 law.

9 e. A charitable, scientific, educational, or religious
10 organization registered pursuant to state law.

11 f. A person who does not charge a fee for invention
12 development services.

13 g. A person who provides researching, marketing,
14 surveying, or other kinds of consulting services to
15 professional manufacturers, marketers, publishers, or others
16 purchasing such services as an adjunct to their traditional
17 commercial enterprises.

18 9. "Invention development services" or "services" means
19 acts required, promised to be performed, or actually performed
20 by an invention developer for a customer pursuant to a
21 contract which involves facilitating the development,
22 promotion, licensing, publishing, exhibiting, or marketing of
23 an invention.

24 Sec. 5. NEW SECTION. 523G.4 INITIAL DISCLOSURES.

25 1. If an invention developer contemplates entering into a
26 contract or if the invention developer contemplates
27 performance of a phase covered in a contract, the invention
28 developer shall notify the customer by a written statement.
29 The invention developer shall deliver to the customer the
30 written notice together with a copy of each contract or a
31 written summary of the general terms of each contract,
32 including the total cost or consideration required from the
33 customer, before the customer first executes the contract.

34 2. The invention developer shall make a written disclosure
35 to the customer of the information required in this section.

1 The disclosure shall be made in either the first written
2 communication from the invention developer to a specific
3 customer or at the first meeting between the invention
4 developer and a customer. The written disclosure shall
5 contain all of the following:

6 a. The median fee based on fees charged to all customers
7 who have executed contracts with the invention developer in
8 the preceding six months, excluding customers who have
9 executed a contract in the preceding thirty days.

10 b. A single statement setting forth both of the following:

11 (1) The total number of customers who have executed
12 contracts with the invention developer, except that the number
13 need not reflect those customers who have executed contracts
14 within the preceding thirty days.

15 (2) The number of customers who have received from the
16 invention developer's services an amount of money in excess of
17 the amount of money paid by those customers to the invention
18 developer pursuant to a contract. The amount received by a
19 customer reported on the statement shall only include income
20 earned from the successful development, promotion, licensing,
21 publishing, exhibiting, or marketing of the customer's
22 invention pursuant to the contract executed between the
23 invention developer and the customer.

24 c. A notice appearing in substantially the following form:

25

WARNING

26 The following disclosure is required by section 527G.4 of
27 the Iowa Code:

28 The person you are dealing with is an invention developer
29 regulated under chapter 523G of the Iowa Code. Unless an
30 invention developer is an attorney licensed to practice in
31 this state, the invention developer is prohibited from
32 providing you legal advice concerning patent, copyright, or
33 trademark law or to advise you of whether your creation, idea,
34 or invention may be patentable or may be protected under the
35 patent, copyright, or trademark laws of the United States or

1 any other law. A registered patent agent may give advice as
2 to patentability and protection available under the patent
3 laws.

4 A patent, copyright, or trademark protection cannot be
5 acquired for you by the invention developer. Your potential
6 patent rights may be adversely affected by any attempt to
7 commercialize your idea or invention before a patent
8 application covering it is filed. Nonconfidential disclosures
9 of your creation, idea, or invention may also trigger a one-
10 year statutory deadline for filing a patent application in the
11 United States, after which you would be banned from receiving
12 any patent protection in the United States, and would prevent
13 you from obtaining valid patent rights in countries whose law
14 provides that patent applications must be filed before there
15 is a public disclosure.

16 Your failure to identify and investigate existing patents,
17 trademarks, or registered copyrights may place you in jeopardy
18 of infringing the copyright, patent, or trademark rights of
19 other persons if you proceed to make, use, or sell your
20 creation, idea, or invention.

21 If you assign even a partial interest in the invention to
22 the invention developer, the invention developer may have the
23 right to assign or license its interest in the invention, or
24 make, use, and sell the creation, idea, or invention without
25 your consent and may not have to share the profits with you.

26 d. A copy of a current registration certificate issued
27 pursuant to section 523G.10.

28 Sec. 6. NEW SECTION. 523G.5 CONTRACTS.

29 1. A contract shall set forth information required in this
30 section in at least ten point type.

31 2. The contract shall describe fully and in detail the
32 services that the invention developer contracts to perform for
33 the customer.

34 3. The contract shall state the following information:

35 a. If the invention developer contracts to construct one

1 or more prototypes, models, or devices embodying the invention
2 of the customer, the total number of prototypes to be
3 constructed and whether the invention developer contracts to
4 sell or distribute such prototypes, models, or devices.

5 b. If an oral or written estimate of customer earnings is
6 made, the estimate and the data upon which it is based.

7 c. A single statement setting forth both of the following:

8 (1) The total number of customers who have executed
9 contracts with the invention developer, except that the number
10 need not reflect those customers who have contracted within
11 the preceding thirty days.

12 (2) The number of customers who have received from the
13 invention developer's services an amount of money in excess of
14 the amount of money paid by those customers to the invention
15 developer pursuant to a contract. The amount received by a
16 customer reported on the statement shall only include payments
17 for services performed by the invention developer involving
18 the development, promotion, licensing, publishing, exhibiting,
19 or marketing of the customer's invention pursuant to their
20 contract.

21 d. The expected date of completion of the invention
22 development services.

23 e. The extent to which the terms of the contract
24 effectuate or make possible the purchase by the invention
25 developer of an interest in the title to an invention.

26 f. A statement explaining that the invention developer is
27 required to maintain all records and correspondence relating
28 to the invention development services performed for that
29 customer for a period not less than three years after
30 expiration of the contract.

31 g. A statement explaining that the records and
32 correspondence required to be maintained pursuant to section
33 523G.8 shall be made available to the customer or
34 representative for review and copying at the expense of the
35 customer on the premises of the invention developer during

1 normal business hours upon seven days' written notice from the
2 date of delivery sent by certified mail.

3 h. The name of the person contracting to perform the
4 invention development services, all names under which the
5 person is doing or has done business as an invention developer
6 during the previous ten years, the names of all parent and
7 subsidiary entities to the person, and the names of all
8 entities that have a contractual obligation to perform
9 invention development services for the person.

10 i. The principal business address of the invention
11 developer and the name and address of its agent in this state
12 authorized to receive service of process in this state.

13 4. a. The customer has an unconditional right to cancel a
14 contract for invention development services at any time before
15 the third business day following the date the customer
16 receives an executed copy of the contract.

17 b. The customer must notify the invention developer of a
18 cancellation by written notice delivered personally or by
19 certified mail. A notice delivered personally must be
20 delivered to the invention developer's place of business by
21 the end of the third business day following the date that the
22 contract was executed, and the cancellation shall take effect
23 upon delivery. Upon delivery of the personal notice, the
24 invention developer shall return a receipt to the customer
25 acknowledging receipt of the cancellation. A notice delivered
26 by certified mail must be mailed by midnight of the third day
27 following the date that the contract was executed, and the
28 cancellation shall become effective upon the date the receipt
29 is signed. A notice of cancellation may take any form which
30 indicates that the customer no longer intends to be bound by
31 the contract.

32 c. Within ten business days after receipt of the notice of
33 cancellation, the invention developer shall deliver to the
34 customer, personally or by certified mail, all moneys paid,
35 any note or other evidence of indebtedness, and all materials

1 provided by the customer. The invention developer may
2 condition payment upon a receipt by the customer acknowledging
3 personal delivery.

4 5. The following shall be included in the contract:

5 a. A disclosure statement in substantially the following
6 form shall appear in boldface type and be located
7 conspicuously on a cover sheet that contains no other writing:

8 NOTICE

9 The following disclosure is required by section 527G.5 of
10 the Iowa Code and is expressly made a part of this contract:

11 You have the right to cancel this contract for any reason
12 at any time within three (3) business days from the date you
13 and the invention developer sign the contract and you receive
14 a fully executed copy. To exercise this option you may use
15 certified mail or personally deliver to this invention
16 developer written notice of your cancellation. The method and
17 time for notification is set forth in this contract
18 immediately above the place for your signature. The invention
19 developer must return by certified mail or personal delivery,
20 within ten business days after receipt of the cancellation
21 notice, all money paid and all materials provided either by
22 you or by another party on your behalf.

23 Unless the invention developer is an attorney, the
24 invention developer is prohibited from giving you legal advice
25 concerning patent, copyright, or trademark law, whether your
26 creation, idea, or invention may be patentable, or protected
27 under the patent, copyright, or trademark laws of the United
28 States or any other law. A registered patent agent may give
29 advice as to patentability and protection available under the
30 patent laws.

31 A patent, copyright, or trademark protection will not be
32 acquired for you by the invention developer or by this
33 contract. Your potential patent rights may be adversely
34 affected by any attempt to commercialize your idea or
35 invention before a patent application covering it is filed.

1 Nonconfidential disclosures of your idea or invention may also
2 trigger certain statutory deadlines for filing a patent
3 application in the United States and would prevent you from
4 obtaining valid patent rights in countries whose law provides
5 that patent applications must be filed before there is a
6 public disclosure. Your failure to identify and investigate
7 existing patents, trademarks, or registered copyrights may
8 place you in jeopardy of infringing the copyright, patent, or
9 trademark rights of other persons if you proceed to make, use,
10 or sell your idea or invention.

11 b. A disclosure statement in substantially the following
12 form shall appear in ten point boldface type immediately above
13 the place where the customer is to sign:

14 ATTENTION!

15 (READ CAREFULLY)

16 You have three (3) business days during which you may
17 cancel this contract for any reason. You must deliver written
18 notice of the cancellation by certified mail or personally to
19 the invention developer. This opportunity to cancel the
20 contract will expire on the last date that you are allowed to
21 mail or deliver notice. If you choose to use certified mail
22 to deliver your notice, it must be placed in the United States
23 mail addressed to (insert name of invention developer), at
24 (insert address of invention developer's place of business)
25 with first class postage prepaid before midnight of (insert
26 proper date). If you choose to personally deliver your notice
27 to the invention developer, it must be delivered by the end of
28 the normal business day on (insert proper date). You are
29 advised to obtain a written statement from the invention
30 developer acknowledging receipt.

31 Sec. 7. NEW SECTION. 523G.6 EVIDENCE OF FINANCIAL
32 RESPONSIBILITY.

33 1. An invention developer shall maintain as security
34 evidence of financial responsibility as approved by the
35 commissioner. The security shall be either a bond or cash

1 deposit in an amount which is equal to the greater of either
2 ten percent of the invention developer's gross income from the
3 invention development business in this state during the
4 invention developer's preceding fiscal year, or twenty-five
5 thousand dollars. The commissioner shall approve the security
6 before the invention developer renders or offers to render
7 invention development services in this state. The invention
8 developer shall have ninety days beginning on the first day of
9 the invention developer's new fiscal year to change the
10 security as necessary to conform to the requirements of this
11 subsection.

12 2. A surety who issues a bond must be approved by the
13 commissioner. A copy of the bond shall be filed in a manner
14 and according to procedures approved by the commissioner. A
15 cash deposit shall be filed with the treasurer of state in a
16 manner and according to procedures approved by the treasurer
17 of state in consultation with the commissioner. The treasurer
18 of state shall not refund a deposit until sixty days following
19 either the date that the invention developer has ceased doing
20 business in the state or a bond has been filed with the
21 commissioner in compliance with this section.

22 3. The security shall be in favor of the state for the
23 benefit of any person entering into a contract with and
24 damaged by an invention developer, if the damages are caused
25 by one of the following:

26 a. A failure by the invention developer to perform the
27 terms of the contract.

28 b. The insolvency of the invention developer or the
29 cessation of the invention developer's business.

30 c. The intentional violation of a provision of this
31 chapter by the invention developer.

32 A person claiming against the security may maintain an
33 action at law against the invention developer. An action
34 against a bond may also include the surety. The aggregate
35 liability of the surety to all persons for all breaches of

1 conditions of the bond shall not exceed the amount of the
2 bond.

3 Sec. 8. NEW SECTION. 523G.7 NEGOTIABLE INSTRUMENTS.

4 An invention developer shall not take a negotiable
5 instrument from a customer as part of a contract, unless the
6 negotiable instrument is a check constituting evidence of the
7 customer's obligation. A person in possession of a negotiable
8 instrument is not a holder in due course as defined in section
9 554.3302, if the person takes a negotiable instrument from a
10 customer in violation of this section.

11 Sec. 9. NEW SECTION. 523G.8 RECORDS AND CORRESPONDENCE.

12 An invention developer shall maintain all records and
13 correspondence relating to performance of each invention
14 development contract for not less than three years after
15 expiration of the contract.

16 Sec. 10. NEW SECTION. 523G.9 COMPLIANCE WITH OTHER LAWS,
17 VIOLATIONS AND PENALTIES.

18 1. The provisions of this chapter are not exclusive and do
19 not relieve persons or a contract from compliance with other
20 applicable law.

21 2. A contract which fails to comply with the applicable
22 provisions of this chapter is unenforceable against the
23 customer as contrary to public policy, unless the invention
24 developer proves all of the following:

25 a. The noncompliance resulted from an error.

26 b. The invention developer followed reasonable procedures
27 adopted to avoid such errors.

28 c. The invention developer promptly made an appropriate
29 correction upon discovery of the noncompliance.

30 3. A contract executed by an invention developer is
31 unenforceable against the customer, if the invention developer
32 used deceptive practices, with an intent to cause reliance,
33 regardless of whether the customer was actually misled,
34 deceived, or damaged.

35 4. A provision of a contract which waives a provision of

1 this chapter is contrary to public policy and is void and
2 unenforceable.

3 5. A person may bring a civil action against an invention
4 developer that uses a deceptive practice. The person may be
5 awarded damages together with costs and disbursements,
6 including reasonable attorney fees. The court in its
7 discretion may increase the award of damages to an amount not
8 to exceed three times the damages or two thousand five hundred
9 dollars, whichever is greater.

10 6. Failure to make an initial disclosure required by
11 section 523G.4 shall render any contract subsequently entered
12 into between the customer and the invention developer voidable
13 by the customer.

14 7. A violation of this chapter or a rule adopted by the
15 commissioner pursuant to this chapter is a violation of
16 section 714.16. The remedies and penalties provided by
17 section 714.16, including but not limited to provisions
18 relating to injunctive relief and penalties, apply to
19 violations of this chapter.

20 Sec. 11. NEW SECTION. 523G.10 REGISTRATION STATEMENT.

21 1. An invention developer shall file a registration
22 statement with the commissioner not later than May 1 of each
23 year. The registration statement shall contain all of the
24 following information:

25 a. The name and address of the invention developer.

26 b. The name and address of each owner, officer, or other
27 official of the invention developer's business. However, if
28 the invention developer is a corporation, the registration
29 statement shall contain the names and addresses of the chief
30 executive officer and the members of the board of directors.

31 c. A description of the invention development services
32 offered.

33 d. A copy of each form of contract used by the invention
34 developer.

35 e. A copy of the invention developer's most recent

1 financial statement, including balance sheets and related
2 statements of income of the invention developer, prepared in
3 accordance with generally accepted accounting principles,
4 audited by a certified public accountant, and dated not more
5 than twelve months prior to the date of the application.

6 f. The total number of customers who have contracted with
7 the invention developer in this state during the invention
8 developer's preceding fiscal year.

9 g. The invention developer's gross income from the
10 invention development business in this state during the
11 invention developer's preceding fiscal year.

12 h. The number of customers who have received from the
13 invention developer's services an amount of money in excess of
14 the amount of money paid by those customers to the invention
15 developer pursuant to a contract. The amount received by a
16 customer reported on the statement shall only include income
17 earned from the successful development, promotion, licensing,
18 publishing, exhibiting, or marketing of the customer's
19 invention pursuant to the contract executed between the
20 invention developer and the customer.

21 2. The invention developer shall submit an annual fee to
22 the commissioner in the amount of two hundred fifty dollars.
23 The fees shall be deposited into the general fund of the
24 state.

25 3. The invention developer shall submit a copy of the
26 surety bond or proof of cash deposit as required by section
27 523G.7.

28 4. The commissioner shall issue a certificate of
29 compliance to invention developers that have complied with
30 registration requirements of this section.

31 Sec. 12. NEW SECTION. 523G.11 POWERS AND DUTIES OF THE
32 COMMISSIONER.

33 The commissioner shall administer and enforce the
34 provisions of this chapter and may do all of the following:

35 1. Adopt rules necessary to administer this chapter in

1 accordance with chapter 17A.

2 2. Investigate the business and business records of
3 invention developers and conduct necessary investigative
4 procedures.

5 3. Administer oaths and affirmations, subpoena witnesses,
6 receive evidence, and require the production of business
7 records relating to an investigation or proceedings.

8 4. Apply to the district court for issuance of an order
9 requiring a person's appearance before the commissioner, if
10 the person has refused to obey a subpoena issued by the
11 commissioner. The person may also be required to produce
12 documentary evidence germane to the subject of the
13 investigation. Failure to obey a court order under this
14 subsection constitutes contempt of court.

15 5. Issue an order directed at an invention developer to
16 cease and desist from engaging in an act which is in violation
17 of this chapter or a rule adopted by the commissioner. The
18 order shall be based on an investigation which provides
19 reasonable evidence of a violation.

20 Sec. 13. CONDITION TO ENACTMENT OF CERTAIN PROVISIONS.

21 Sections 523G.6, 523G.10, and 523G.11 of this Act,
22 regarding duties and authority of the insurance commissioner,
23 shall only be implemented if and when the general assembly
24 makes an appropriation of at least ten thousand dollars and
25 provides for the retention of one part-time clerk for a total
26 of at least one-half full-time equivalent position devoted to
27 the insurance division of the department of commerce for the
28 implementation of the sections.

29 EXPLANATION

30 This bill creates a new chapter, known as the "Invention
31 Development Services Act". The bill regulates invention
32 developers engaged in the business of developing original
33 concepts which may be rendered into an artistic, educational,
34 or technological expression, including works, compositions,
35 designs, machines, manufacturing or engineering techniques,

1 analyses, or processes, referred to as "inventions". The bill
2 excludes from the definition of an "invention developer" a
3 person licensed to render legal advice, governmental entities,
4 nonprofit and philanthropic organizations, educational
5 institutions, a person offering gratuitous services, and a
6 person engaged in services on behalf of commercial
7 enterprises.

8 The bill requires that invention developers disclose
9 information regarding the developer's business and
10 profitability of its customers. The bill requires that
11 contracts between the parties be in writing and provides that
12 essential terms be included within the contract. The bill
13 provides that a customer has a right to cancel a contract
14 within three days following its execution.

15 The bill requires that a developer submit a surety bond or
16 cash deposit. It limits payments by negotiable instruments.
17 The bill establishes recordkeeping requirements. It makes
18 nonconforming contracts unenforceable, prohibits waivers of
19 statutory protections, authorizes civil actions, and makes
20 violations of the chapter a violation of chapter 714, the
21 "Iowa Consumer Fraud Act".

22 The bill requires an annual filing of a registration
23 statement with the insurance division. It provides authority
24 to the commissioner of insurance to administer and enforce the
25 chapter's provisions. The commissioner may adopt rules to
26 carry out the provisions of the chapter. The commissioner may
27 also conduct investigations, issue subpoenas, examine records,
28 and issue orders.

29 The bill provides that provisions authorizing the
30 commissioner to administer and enforce the provisions of the
31 chapter are conditioned upon an appropriation of moneys to the
32 insurance division.

33 BACKGROUND STATEMENT

34 SUBMITTED BY THE AGENCY

35 This bill creates a new chapter which regulates persons

1 engaged in the business of developing inventions. It requires
2 a filing with the insurance division by invention developers
3 and reduces the potential injury to developers which might
4 occur without complete and accurate disclosure of material
5 information.

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SENATE FILE 2189

AN ACT
RELATING TO INVENTION DEVELOPMENT SERVICES, PROVIDING FOR FEES,
AND MAKING PENALTIES APPLICABLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. FINDINGS. The general assembly finds and declares all of the following:

1. Some members of the general public, commonly referred to as inventors, are engaged in the pursuit of creating original concepts which may be rendered into an artistic, educational, or technological expression, including works, compositions, designs, machines, manufacturing or engineering techniques, analyses, or processes.

2. These achievements or improvements often benefit the public welfare and are fostered by copyright, patent, and trademark laws which protect the property rights of inventors.

3. Inventors committing time and capital in this process are convinced of the commercial potential of their inventions, but often do not have the resources or expertise necessary to develop, manufacture, or market the inventions.

4. Inventors do not generally earn a livelihood from developing, manufacturing, promoting, or marketing inventions; manufacturing or marketing products; marketing designs; publishing or exhibiting works or compositions; or owning, operating, or controlling commercial enterprises.

5. There is a significant number of other persons, sometimes referred to as invention developers, who profit from

the eagerness of inventors to expend substantial sums for services represented as important to exploit the commercial value of inventions.

6. Invention developers' services are generally offered for sums ranging from five hundred to eight thousand dollars and either a percentage of the income that may be derived from the sale or marketing of an invention or a partial ownership interest in the invention.

7. Inventors generally play a passive role in the development, promotion, publishing, exhibition, manufacture, marketing, or sale of their inventions after executing a contract with an invention developer, and usually do little more than receive periodic reports issued by the invention developer.

8. An extremely small number of inventors realize profits from inventions, regardless of the services purchased from invention developers.

9. Invention development services are frequently connected to sales practices and business methods which are fraudulent or deceitful, and may impose financial hardship upon persons residing in this state.

10. Existing legal provisions protecting inventors are inadequate to prevent these abuses.

11. The invention development services field has a significant impact upon the economy and well-being of this state and its local communities, and the provisions of this Act regulating the activities of invention developers are necessary for the public welfare.

Sec. 2. NEW SECTION. 523G.1 SHORT TITLE.

This chapter shall be known and may be cited as the "Invention Development Services Act".

Sec. 3. NEW SECTION. 523G.2 PURPOSE OF THE CHAPTER.

The general assembly declares that the purpose of this chapter is to safeguard the public against fraud, deceit, imposition, and financial hardship, and to foster and

encourage competition, fair dealing, and prosperity in the field of invention development services by prohibiting or restricting deceptive practices, misleading advertising, onerous contract terms, harmful financial practices, and other unfair, dishonest, deceptive, destructive, unscrupulous, fraudulent, or discriminatory practices which threaten the public welfare.

Sec. 4. NEW SECTION. 523G.3 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Business record" means a record maintained by an invention developer relating to invention development services, including but not limited to contracts, files, accounts, books, papers, photographs, and audio or visual tapes.
2. "Commissioner" means the commissioner of insurance or a person designated by the commissioner to act on the commissioner's behalf.
3. "Contract" means an agreement between an invention developer and a customer under which the invention developer promises to perform invention development services for the customer.
4. "Customer" means a person who is solicited by, inquires about, seeks the services of, or enters into a contract with an invention developer.
5. "Deceptive practice" means communicating a false or fraudulent statement, providing false pretense, making a false promise or misleading statement, misrepresenting a fact, omitting a material fact, or failing to make all disclosures required by this chapter.
6. "Fee" means a payment made by a customer to an invention developer, including reimbursements for expenditures made or costs incurred by the invention developer. However, "fee" does not include a payment made from a portion of the income received by the customer which resulted from invention development services performed by the invention developer.

7. "Invention" means an original concept which may be rendered into an artistic, educational, or technological expression, including works, compositions, designs, machines, manufacturing or engineering techniques, analyses, or processes.

8. "Invention developer" means a person who performs invention development services in this state or offers, through any means of communication, to perform invention development services in this state. However, an invention developer does not include the following:

- a. A person licensed by a state or the United States to render legal advice, if the person acts within the scope of the license. However, if the person is a corporation, all of its stockholders or members must be licensed. If the person is a partnership, all of its partners must be licensed.
- b. A department or agency of a federal or state government.
- c. A political subdivision.
- d. A nonprofit organization registered pursuant to state law.
- e. A charitable, scientific, educational, or religious organization registered pursuant to state law.
- f. A person who does not charge a fee for invention development services.
- g. A person who provides researching, marketing, surveying, or other kinds of consulting services to professional manufacturers, marketers, publishers, or others purchasing such services as an adjunct to their traditional commercial enterprises.
9. "Invention development services" or "services" means acts required, promised to be performed, or actually performed by an invention developer for a customer pursuant to a contract which involves facilitating the development, promotion, licensing, publishing, exhibiting, or marketing of an invention.

Sec. 5. NEW SECTION. 523G.4 INITIAL DISCLOSURES.

1. If an invention developer contemplates entering into a contract or if the invention developer contemplates performance of a phase covered in a contract, the invention developer shall notify the customer by a written statement. The invention developer shall deliver to the customer the written notice together with a copy of each contract or a written summary of the general terms of each contract, including the total cost or consideration required from the customer, before the customer first executes the contract.

2. The invention developer shall make a written disclosure to the customer of the information required in this section. The disclosure shall be made in either the first written communication from the invention developer to a specific customer or at the first meeting between the invention developer and a customer. The written disclosure shall contain all of the following:

a. The median fee based on fees charged to all customers who have executed contracts with the invention developer in the preceding six months, excluding customers who have executed a contract in the preceding thirty days.

b. A single statement setting forth both of the following:

(1) The total number of customers who have executed contracts with the invention developer, except that the number need not reflect those customers who have executed contracts within the preceding thirty days.

(2) The number of customers who have received from the invention developer's services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract. The amount received by a customer reported on the statement shall only include income earned from the successful development, promotion, licensing, publishing, exhibiting, or marketing of the customer's invention pursuant to the contract executed between the invention developer and the customer.

c. A notice appearing in substantially the following form:

WARNING

The following disclosure is required by section 523G.4 of the Iowa Code.

The person you are dealing with is an invention developer regulated under chapter 523G of the Iowa Code. Unless an invention developer is an attorney licensed to practice in this state, the invention developer is prohibited from providing you legal advice concerning patent, copyright, or trademark law or to advise you of whether your creation, idea, or invention may be patentable or may be protected under the patent, copyright, or trademark laws of the United States or any other law. A registered patent agent may give advice as to patentability and protection available under the patent laws.

A patent, copyright, or trademark protection cannot be acquired for you by the invention developer. Your potential patent rights may be adversely affected by any attempt to commercialize your idea or invention before a patent application covering it is filed. Nonconfidential disclosures of your creation, idea, or invention may also trigger a one-year statutory deadline for filing a patent application in the United States, after which you would be banned from receiving any patent protection in the United States, and would prevent you from obtaining valid patent rights in countries whose law provides that patent applications must be filed before there is a public disclosure.

Your failure to identify and investigate existing patents, trademarks, or registered copyrights may place you in jeopardy of infringing the copyright, patent, or trademark rights of other persons if you proceed to make, use, or sell your creation, idea, or invention.

If you assign even a partial interest in the invention to the invention developer, the invention developer may have the right to assign or license its interest in the invention, or make, use, and sell the creation, idea, or invention without your consent and may not have to share the profits with you.

d. A copy of a current registration certificate issued pursuant to section 523G.10.

Sec. 6. NEW SECTION. 523G.5 CONTRACTS.

1. A contract shall set forth information required in this section in at least ten point type.

2. The contract shall describe fully and in detail the services that the invention developer contracts to perform for the customer.

3. The contract shall state the following information:

a. If the invention developer contracts to construct one or more prototypes, models, or devices embodying the invention of the customer, the total number of prototypes to be constructed and whether the invention developer contracts to sell or distribute such prototypes, models, or devices.

b. If an oral or written estimate of customer earnings is made, the estimate and the data upon which it is based.

c. A single statement setting forth both of the following:

(1) The total number of customers who have executed contracts with the invention developer, except that the number need not reflect those customers who have contracted within the preceding thirty days.

(2) The number of customers who have received from the invention developer's services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract. The amount received by a customer reported on the statement shall only include payments for services performed by the invention developer involving the development, promotion, licensing, publishing, exhibiting, or marketing of the customer's invention pursuant to their contract.

d. The expected date of completion of the invention development services.

e. The extent to which the terms of the contract effectuate or make possible the purchase by the invention developer of an interest in the title to an invention.

f. A statement explaining that the invention developer is required to maintain all records and correspondence relating to the invention development services performed for that customer for a period not less than three years after expiration of the contract.

g. A statement explaining that the records and correspondence required to be maintained pursuant to section 523G.8 shall be made available to the customer or representative for review and copying at the expense of the customer on the premises of the invention developer during normal business hours upon seven days' written notice from the date of delivery sent by certified mail.

h. The name of the person contracting to perform the invention development services, all names under which the person is doing or has done business as an invention developer during the previous ten years, the names of all parent and subsidiary entities to the person, and the names of all entities that have a contractual obligation to perform invention development services for the person.

1. The principal business address of the invention developer and the name and address of its agent in this state authorized to receive service of process in this state.

4. a. The customer has an unconditional right to cancel a contract for invention development services at any time before the third business day following the date the customer receives an executed copy of the contract.

b. The customer must notify the invention developer of a cancellation by written notice delivered personally or by certified mail. A notice delivered personally must be delivered to the invention developer's place of business by the end of the third business day following the date that the contract was executed, and the cancellation shall take effect upon delivery. Upon delivery of the personal notice, the invention developer shall return a receipt to the customer acknowledging receipt of the cancellation. A notice delivered

by certified mail must be mailed by midnight of the third day following the date that the contract was executed, and the cancellation shall become effective upon the date the receipt is signed. A notice of cancellation may take any form which indicates that the customer no longer intends to be bound by the contract.

c. Within ten business days after receipt of the notice of cancellation, the invention developer shall deliver to the customer, personally or by certified mail, all moneys paid, any note or other evidence of indebtedness, and all materials provided by the customer. The invention developer may condition payment upon a receipt by the customer acknowledging personal delivery.

5. The following shall be included in the contract:

a. A disclosure statement in substantially the following form shall appear in boldface type and be located conspicuously on a cover sheet that contains no other writing:

NOTICE

The following disclosure is required by section 523G.5 of the Iowa Code and is expressly made a part of this contract:

You have the right to cancel this contract for any reason at any time within three (3) business days from the date you and the invention developer sign the contract and you receive a fully executed copy. To exercise this option you may use certified mail or personally deliver to this invention developer written notice of your cancellation. The method and time for notification is set forth in this contract immediately above the place for your signature. The invention developer must return by certified mail or personal delivery, within ten business days after receipt of the cancellation notice, all money paid and all materials provided either by you or by another party on your behalf.

Unless the invention developer is an attorney, the invention developer is prohibited from giving you legal advice concerning patent, copyright, or trademark law, whether your

creation, idea, or invention may be patentable, or protected under the patent, copyright, or trademark laws of the United States or any other law. A registered patent agent may give advice as to patentability and protection available under the patent laws.

A patent, copyright, or trademark protection will not be acquired for you by the invention developer or by this contract. Your potential patent rights may be adversely affected by any attempt to commercialize your idea or invention before a patent application covering it is filed. Nonconfidential disclosures of your idea or invention may also trigger certain statutory deadlines for filing a patent application in the United States and would prevent you from obtaining valid patent rights in countries whose law provides that patent applications must be filed before there is a public disclosure. Your failure to identify and investigate existing patents, trademarks, or registered copyrights may place you in jeopardy of infringing the copyright, patent, or trademark rights of other persons if you proceed to make, use, or sell your idea or invention.

b. A disclosure statement in substantially the following form shall appear in ten point boldface type immediately above the place where the customer is to sign:

ATTENTION!

(READ CAREFULLY)

You have three (3) business days during which you may cancel this contract for any reason. You must deliver written notice of the cancellation by certified mail or personally to the invention developer. This opportunity to cancel the contract will expire on the last date that you are allowed to mail or deliver notice. If you choose to use certified mail to deliver your notice, it must be placed in the United States mail addressed to (insert name of invention developer), at (insert address of invention developer's place of business) with first class postage prepaid before midnight of (insert

proper date). If you choose to personally deliver your notice to the invention developer, it must be delivered by the end of the normal business day on (insert proper date). You are advised to obtain a written statement from the invention developer acknowledging receipt.

Sec. 7. NEW SECTION. 523G.6 EVIDENCE OF FINANCIAL RESPONSIBILITY.

1. An invention developer shall maintain as security evidence of financial responsibility as approved by the commissioner. The security shall be either a bond or cash deposit in an amount which is equal to the greater of either ten percent of the invention developer's gross income from the invention development business in this state during the invention developer's preceding fiscal year, or twenty-five thousand dollars. The commissioner shall approve the security before the invention developer renders or offers to render invention development services in this state. The invention developer shall have ninety days beginning on the first day of the invention developer's new fiscal year to change the security as necessary to conform to the requirements of this subsection.

2. A surety who issues a bond must be approved by the commissioner. A copy of the bond shall be filed in a manner and according to procedures approved by the commissioner. A cash deposit shall be filed with the treasurer of state in a manner and according to procedures approved by the treasurer of state in consultation with the commissioner. The treasurer of state shall not refund a deposit until sixty days following either the date that the invention developer has ceased doing business in the state or a bond has been filed with the commissioner in compliance with this section.

3. The security shall be in favor of the state for the benefit of any person entering into a contract with and damaged by an invention developer, if the damages are caused by one of the following:

a. A failure by the invention developer to perform the terms of the contract.

b. The insolvency of the invention developer or the cessation of the invention developer's business.

c. The intentional violation of a provision of this chapter by the invention developer.

A person claiming against the security may maintain an action at law against the invention developer. An action against a bond may also include the surety. The aggregate liability of the surety to all persons for all breaches of conditions of the bond shall not exceed the amount of the bond.

Sec. 8. NEW SECTION. 523G.7 NEGOTIABLE INSTRUMENTS.

An invention developer shall not take a negotiable instrument from a customer as part of a contract, unless the negotiable instrument is a check constituting evidence of the customer's obligation. A person in possession of a negotiable instrument is not a holder in due course as defined in section 554.3302, if the person takes a negotiable instrument from a customer in violation of this section.

Sec. 9. NEW SECTION. 523G.8 RECORDS AND CORRESPONDENCE

An invention developer shall maintain all records and correspondence relating to performance of each invention development contract for not less than three years after expiration of the contract.

Sec. 10. NEW SECTION. 523G.9 COMPLIANCE WITH OTHER LAWS, VIOLATIONS AND PENALTIES.

1. The provisions of this chapter are not exclusive and do not relieve persons or a contract from compliance with other applicable law.

2. A contract which fails to comply with the applicable provisions of this chapter is unenforceable against the customer as contrary to public policy, unless the invention developer proves all of the following:

a. The noncompliance resulted from an error.

b. The invention developer followed reasonable procedures adopted to avoid such errors.

c. The invention developer promptly made an appropriate correction upon discovery of the noncompliance.

3. A contract executed by an invention developer is unenforceable against the customer, if the invention developer used deceptive practices, with an intent to cause reliance, regardless of whether the customer was actually misled, deceived, or damaged.

4. A provision of a contract which waives a provision of this chapter is contrary to public policy and is void and unenforceable.

5. A person may bring a civil action against an invention developer that uses a deceptive practice. The person may be awarded damages together with costs and disbursements, including reasonable attorney fees. The court in its discretion may increase the award of damages to an amount not to exceed three times the damages or two thousand five hundred dollars, whichever is greater.

6. Failure to make an initial disclosure required by section 523G.4 shall render any contract subsequently entered into between the customer and the invention developer voidable by the customer.

7. A violation of this chapter or a rule adopted by the commissioner pursuant to this chapter is a violation of section 714.16. The remedies and penalties provided by section 714.16, including but not limited to provisions relating to injunctive relief and penalties, apply to violations of this chapter.

Sec. 11. NEW SECTION. 523G.10 REGISTRATION STATEMENT.

1. An invention developer shall file a registration statement with the commissioner not later than May 1 of each year. The registration statement shall contain all of the following information:

a. The name and address of the invention developer

b. The name and address of each owner, officer, or other official of the invention developer's business. However, if the invention developer is a corporation, the registration statement shall contain the names and addresses of the chief executive officer and the members of the board of directors.

c. A description of the invention development services offered.

d. A copy of each form of contract used by the invention developer.

e. A copy of the invention developer's most recent financial statement, including balance sheets and related statements of income of the invention developer, prepared in accordance with generally accepted accounting principles, audited by a certified public accountant, and dated not more than twelve months prior to the date of the application.

f. The total number of customers who have contracted with the invention developer in this state during the invention developer's preceding fiscal year.

g. The invention developer's gross income from the invention development business in this state during the invention developer's preceding fiscal year.

h. The number of customers who have received from the invention developer's services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract. The amount received by a customer reported on the statement shall only include income earned from the successful development, promotion, licensing, publishing, exhibiting, or marketing of the customer's invention pursuant to the contract executed between the invention developer and the customer.

2. The invention developer shall submit an annual fee to the commissioner in the amount of two hundred fifty dollars. The fees shall be deposited into the general fund of the state.

3. The invention developer shall submit a copy of the surety bond or proof of cash deposit as required by section 523G.6.

4. The commissioner shall issue a certificate of compliance to invention developers that have complied with registration requirements of this section.

Sec. 12. NEW SECTION. 523G.11 POWERS AND DUTIES OF THE COMMISSIONER.

The commissioner shall administer and enforce the provisions of this chapter and may do all of the following:

1. Adopt rules necessary to administer this chapter in accordance with chapter 17A.

2. Investigate the business and business records of invention developers and conduct necessary investigative procedures.

3. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of business records relating to an investigation or proceedings.

4. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner, if the person has refused to obey a subpoena issued by the commissioner. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

5. Issue an order directed at an invention developer to cease and desist from engaging in an act which is in violation of this chapter or a rule adopted by the commissioner. The order shall be based on an investigation which provides reasonable evidence of a violation.

Sec. 13. CONDITION TO ENACTMENT OF CERTAIN PROVISIONS

Sections 523G.6, 523G.10, and 523G.11 of this Act, regarding duties and authority of the insurance commissioner, shall only be implemented if and when the general assembly makes an appropriation of at least ten thousand dollars and

provides for the retention of one part-time clerk for a total of at least one-half full-time equivalent position devoted to the insurance division of the department of commerce for the implementation of the sections.

MICHAEL E. GRONSTAL
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2189, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved Sept 22, 1992

TERRY E. BRANSTAD
Governor