

REPRINTED

FILED FEB 27 1996

SENATE FILE 2327

BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SF 2075)

Passed Senate, Date ^(p. 876) 3-19-96 Passed House, Date _____
 Vote: Ayes 46 Nays 4 Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act concerning assistive devices by providing for a warranty,
 2 replacement of devices, and providing consumer remedies.
 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4

SENATE FILE 2327

S-5391

1 Amend Senate File 2327 as follows:
 2 1. Page 6, line 21, by inserting after the word
 3 "full" the following: "written".
 4 2. Page 6, line 22, by inserting after the word
 5 "lessee" the following: "by the manufacturer,
 6 assistive device dealer, or assistive device lessor".

By PATRICK J. DELUHERY
 ROBERT E. DVORSKY

S-5391 FILED MARCH 19, 1996
 ADOPTED (P. 854)

SENATE FILE 2327

S-5405

1 Amend Senate File 2327 as follows:
 2 1. Page 3, line 7, by inserting after the word
 3 "device" the following: ", warranting the operation
 4 of the assistive device without defect, unless
 5 misused".

By TOM VILSACK
 PATRICK J. DELUHERY
 ROBERT DVORSKY

S-5405 FILED MARCH 19, 1996
 ADOPTED (P. 876)

3/19/96

1 Section 1. NEW SECTION. 216E.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 provides:

4 1. "Assistive device" means any item, piece of equipment,
5 or product system which is purchased, or whose transfer is
6 accepted in this state, and which is used to increase,
7 maintain, or improve the functional capabilities of
8 individuals with disabilities concerning a major life activity
9 as defined in section 225C.46.

10 2. "Assistive device dealer" means a person who is in the
11 business of selling assistive devices.

12 3. "Assistive device lessor" means a person who leases
13 assistive devices to consumers, or who holds the lessor's
14 rights, under a written lease.

15 4. "Collateral costs" means expenses incurred by a con-
16 sumer in connection with the repair of a nonconformity,
17 including the cost of shipping, sales tax, and of obtaining an
18 alternative assistive device.

19 5. "Consumer" means any one of the following:

20 a. The purchaser of an assistive device, if the assistive
21 device was purchased from an assistive device dealer or manu-
22 facturer for purposes other than resale.

23 b. A person to whom the assistive device is transferred
24 for purposes other than resale, if the transfer occurs before
25 the expiration of an express warranty applicable to the
26 assistive device.

27 c. A person who may enforce the warranty.

28 d. A person who leases an assistive device from an
29 assistive device lessor under a written lease.

30 6. "Demonstrator" means an assistive device used primarily
31 for the purpose of demonstration to the public.

32 7. "Early termination cost" means any expense or obliga-
33 tion that an assistive device lessor incurs as a result of
34 both the termination of a written lease before the termination
35 date set forth in the lease and the return of an assistive

1 device to the manufacturer. "Early termination cost" includes
2 a penalty for prepayment under a finance arrangement.

3 8. "Early termination savings" means any expense or
4 obligation that an assistive device lessor avoids as a result
5 of both the termination of a written lease before the termina-
6 tion date set forth in the lease and the return of an
7 assistive device to a manufacturer which shall include an
8 interest charge that the assistive device lessor would have
9 paid to finance the assistive device or, if the assistive
10 device lessor does not finance the assistive device, the
11 difference between the total period of the lease term
12 remaining after the early termination and the present value of
13 that amount at the date of the early termination.

14 9. "Manufacturer" means a person who manufactures or
15 assembles assistive devices and agents of that person, in-
16 cluding an importer, a distributor, a factory branch, dis-
17 tributor branch, and any warrantors of the manufacturer's
18 assistive device, but does not include an assistive device
19 dealer or assistive device lessor.

20 10. "Nonconformity" means any defect, malfunction, or
21 condition which substantially impairs the use, value, or
22 safety of an assistive device or any of its component parts,
23 but does not include a condition, defect, or malfunction that
24 is the result of abuse, neglect, or unauthorized modification
25 or alteration of the assistive device by the consumer.

26 11. "Reasonable attempt to repair" means any of the
27 following occurring within the term of an express warranty
28 applicable to a new assistive device or within one year after
29 first delivery of the assistive device to a consumer,
30 whichever is sooner:

31 a. The manufacturer, assistive device lessor, or any of
32 the manufacturer's authorized assistive device dealers accept
33 return of the new assistive device for repair at least two
34 times.

35 b. The assistive device is out of service for an aggregate

1 of at least thirty cumulative days because of warranty non-
2 conformities.

3 Sec. 2. NEW SECTION. 216E.2 EXPRESS WARRANTIES.

4 1. A manufacturer or assistive device lessor who sells or
5 leases an assistive device to a consumer, either directly or
6 through an assistive device dealer, shall furnish the consumer
7 with an express warranty for the assistive device. The
8 duration of the express warranty shall be not less than one
9 year after first delivery of the assistive device to the
10 consumer. If a manufacturer fails to furnish an express
11 warranty as required by this section, the assistive device
12 shall be covered by an express warranty as if the manufacturer
13 had furnished an express warranty to the consumer as required
14 by this section.

15 2. An express warranty does not take effect until the
16 consumer takes possession of the new assistive device.

17 Sec. 3. NEW SECTION. 216E.3 ASSISTIVE DEVICE REPLACEMENT
18 OR REFUND.

19 1. If an assistive device does not conform to an
20 applicable express warranty and the consumer reports the
21 nonconformity to the manufacturer, the assistive device
22 lessor, or any of the manufacturer's authorized assistive
23 device dealers, and makes the assistive device available for
24 repair before one year after first delivery of the device to
25 the consumer, a reasonable attempt to repair the nonconformity
26 shall be made.

27 2. If, after a reasonable attempt to repair, the
28 nonconformity is not repaired, the manufacturer shall carry
29 out the requirements of either paragraph "a" or "b" upon the
30 request of a consumer.

31 a. The manufacturer shall provide for a refund by doing
32 any one of the following:

- 33 (1) Accept return of the assistive device and refund to
34 the consumer and to any holder of perfected security interest
35 in the consumer's assistive device, as the holder's interest

1 may appear, the full purchase price plus any finance charge or
2 sales tax paid by the consumer at the point of sale and
3 collateral costs, including but not limited to shipping costs,
4 less a reasonable allowance for use.

5 (2) Accept return of the assistive device, refund to the
6 assistive device lessor and to any holder of a perfected
7 security interest in the assistive device, as the holder's
8 interest may appear, the current value of the written lease
9 and refund to the consumer the amount that the consumer paid
10 under the written lease plus any collateral costs, less a
11 reasonable allowance for use. The manufacturer shall have a
12 cause of action against the dealer or lessor for reimbursement
13 of any amount that the manufacturer pays to a consumer which
14 exceeds the net price received by the manufacturer for the
15 assistive device.

16 b. The manufacturer shall provide a comparable new
17 assistive device or offer a refund to the consumer if the
18 consumer does any one of the following:

19 (1) Offers to transfer possession of the assistive device
20 to the manufacturer. No later than thirty days after that
21 offer, the manufacturer shall provide the consumer with the
22 comparable new assistive device or a refund. When the
23 manufacturer provides the new assistive device or refund, the
24 consumer shall return the assistive device having the
25 nonconformity to the manufacturer, along with any endorsements
26 necessary to transfer legal possession to the manufacturer.

27 (2) Offers to return the assistive device having the
28 nonconformity to the manufacturer. No later than thirty days
29 after the offer, the manufacturer shall provide the refund to
30 the consumer. When the manufacturer provides the refund, the
31 consumer shall return to the manufacturer the assistive device
32 having the nonconformity.

33 (3) Offers to transfer possession of the assistive device
34 having the nonconformity to the manufacturer. No later than
35 thirty days after the offer, the manufacturer shall provide

1 the refund to the assistive device lessor. When the
2 manufacturer provides the refund, the assistive device lessor
3 shall provide to the manufacturer any endorsements necessary
4 to transfer legal possession to the manufacturer.

5 3. Under the provisions of this section, the current value
6 of the written lease equals the total amount for which that
7 lease obligates the consumer during the period of the lease
8 remaining after its early termination, plus the assistive
9 device dealer's early termination costs and the value of the
10 assistive device at the lease expiration date if the lease
11 sets forth that value, less the assistive device lessor's
12 early termination savings.

13 4. Under the provisions of this section, a reasonable
14 allowance for use shall not exceed the amount obtained by
15 multiplying the total amount for which the written lease
16 obligates the consumer by a fraction, the denominator of which
17 is one thousand eight hundred twenty-five and the numerator of
18 which is the number of days that the consumer used the
19 assistive device before first reporting the nonconformity to
20 the manufacturer, assistive device lessor, or assistive device
21 dealer.

22 5. A person shall not enforce the lease against the
23 consumer after the consumer receives a refund.

24 Sec. 4. NEW SECTION. 216E.4 MANUFACTURER'S DUTY TO
25 PROVIDE REIMBURSEMENT FOR TEMPORARY REPLACEMENT OF ASSISTIVE
26 DEVICES -- PENALTIES.

27 1. Whenever an assistive device covered by a
28 manufacturer's express warranty is tendered by a consumer to
29 the dealer from whom the assistive device was purchased or
30 exchanged for the repair of any defect, malfunction, or
31 nonconformity to which the warranty is applicable, the
32 manufacturer shall provide the consumer for the duration of
33 the repair period, a rental assistive device reimbursement of
34 up to twenty dollars per day if any of the following applies:

35 a. The repair period exceeds ten working days, including

1 the day on which the device is tendered to the manufacturer or
2 a dealer designated by the manufacturer for repairs. If the
3 dealer does not tender the assistive device to the
4 manufacturer in a timely enough manner for the manufacturer to
5 make the repairs within ten days, the manufacturer shall have
6 a cause of action against the dealer for reimbursement of any
7 penalties that the manufacturer must pay.

8 b. The nonconformity is the same for which the assistive
9 device has been tendered to the dealer for repair on at least
10 two previous occasions.

11 2. The provisions of this section regarding a
12 manufacturer's duty shall apply for the period of the
13 manufacturer's express warranty or for two years from delivery
14 of the assistive device to the customer, whichever period of
15 time ends sooner.

16 Sec. 5. NEW SECTION. 216E.5 NONCONFORMITY DISCLOSURE
17 REQUIREMENT.

18 An assistive device returned by a consumer or assistive
19 device lessor in this state or any other state for
20 nonconformity shall not be sold or leased again in this state
21 unless full disclosure of the reason for return is made to any
22 prospective buyer or lessee.

23 Sec. 6. NEW SECTION. 216E.6 REMEDIES.

24 1. This chapter shall not limit rights or remedies
25 available to a consumer under any other law.

26 2. Any waiver of rights by a consumer under the provisions
27 of this chapter shall be void.

28 3. In addition to pursuing any other remedy, a consumer
29 may bring an action to recover any damages caused by a
30 violation of this chapter. The court shall award a consumer
31 who prevails in such an action, no more than three times the
32 amount of any pecuniary loss, together with costs and
33 reasonable attorney fees, and any equitable relief that the
34 court determines is appropriate.

35 Sec. 7. NEW SECTION. 216E.7 EXEMPTIONS.

1 This chapter does not apply to a hearing aid sold, leased,
2 or transferred to a consumer by an audiologist licensed under
3 chapter 147, or a hearing aid dealer licensed under chapter
4 154A, if the audiologist or dealer provides either an express
5 warranty for the hearing aid or provides for service and
6 replacement of the hearing aid.

7 EXPLANATION

8 This bill creates a new chapter regarding warranties for
9 assistive devices. The bill defines, for the purposes of this
10 chapter, "assistive devices", "consumer", "manufacturer", and
11 other terms used in the chapter concerning repair and cost.

12 The bill provides for a warranty on assistive devices of at
13 least one year. The bill further provides for the repair of a
14 nonconforming assistive device and provides a consumer with
15 the ability to obtain a refund or a replacement device if the
16 nonconformity is not repaired. The bill also provides that a
17 manufacturer must provide at least partial reimbursement for
18 inability to use an assistive device to a consumer if the
19 device is being repaired if certain conditions are met.

20 The bill also provides that a resale of a device returned
21 for a nonconformity must disclose the reason for the return to
22 a new consumer of the device.

23 The bill does not limit a consumer's right to pursue other
24 remedies concerning an assistive device and provides for a
25 civil action to obtain damages for a violation of this new
26 chapter.

27 The bill provides that hearing aids sold, leased, or
28 transferred to a consumer from an audiologist or hearing aid
29 dealer are exempt from this new chapter if the audiologist or
30 dealer provides an express warranty or provides for service
31 and replacement of the hearing aid.

32
33
34
35

1 Section 1. NEW SECTION. 216E.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 provides:

4 1. "Assistive device" means any item, piece of equipment,
5 or product system which is purchased, or whose transfer is
6 accepted in this state, and which is used to increase,
7 maintain, or improve the functional capabilities of
8 individuals with disabilities concerning a major life activity
9 as defined in section 225C.46.

10 2. "Assistive device dealer" means a person who is in the
11 business of selling assistive devices.

12 3. "Assistive device lessor" means a person who leases
13 assistive devices to consumers, or who holds the lessor's
14 rights, under a written lease.

15 4. "Collateral costs" means expenses incurred by a con-
16 sumer in connection with the repair of a nonconformity,
17 including the cost of shipping, sales tax, and of obtaining an
18 alternative assistive device.

19 5. "Consumer" means any one of the following:

20 a. The purchaser of an assistive device, if the assistive
21 device was purchased from an assistive device dealer or manu-
22 facturer for purposes other than resale.

23 b. A person to whom the assistive device is transferred
24 for purposes other than resale, if the transfer occurs before
25 the expiration of an express warranty applicable to the
26 assistive device.

27 c. A person who may enforce the warranty.

28 d. A person who leases an assistive device from an
29 assistive device lessor under a written lease.

30 6. "Demonstrator" means an assistive device used primarily
31 for the purpose of demonstration to the public.

32 7. "Early termination cost" means any expense or obliga-
33 tion that an assistive device lessor incurs as a result of
34 both the termination of a written lease before the termination
35 date set forth in the lease and the return of an assistive

1 device to the manufacturer. "Early termination cost" includes
2 a penalty for prepayment under a finance arrangement.

3 8. "Early termination savings" means any expense or
4 obligation that an assistive device lessor avoids as a result
5 of both the termination of a written lease before the termina-
6 tion date set forth in the lease and the return of an
7 assistive device to a manufacturer which shall include an
8 interest charge that the assistive device lessor would have
9 paid to finance the assistive device or, if the assistive
10 device lessor does not finance the assistive device, the
11 difference between the total period of the lease term
12 remaining after the early termination and the present value of
13 that amount at the date of the early termination.

14 9. "Manufacturer" means a person who manufactures or
15 assembles assistive devices and agents of that person, in-
16 cluding an importer, a distributor, a factory branch, dis-
17 tributor branch, and any warrantors of the manufacturer's
18 assistive device, but does not include an assistive device
19 dealer or assistive device lessor.

20 10. "Nonconformity" means any defect, malfunction, or
21 condition which substantially impairs the use, value, or
22 safety of an assistive device or any of its component parts,
23 but does not include a condition, defect, or malfunction that
24 is the result of abuse, neglect, or unauthorized modification
25 or alteration of the assistive device by the consumer.

26 11. "Reasonable attempt to repair" means any of the
27 following occurring within the term of an express warranty
28 applicable to a new assistive device or within one year after
29 first delivery of the assistive device to a consumer,
30 whichever is sooner:

31 a. The manufacturer, assistive device lessor, or any of
32 the manufacturer's authorized assistive device dealers accept
33 return of the new assistive device for repair at least two
34 times.

35 b. The assistive device is out of service for an aggregate

1 of at least thirty cumulative days because of warranty non-
2 conformities.

3 Sec. 2. NEW SECTION. 216E.2 EXPRESS WARRANTIES.

4 1. A manufacturer or assistive device lessor who sells or
5 leases an assistive device to a consumer, either directly or
6 through an assistive device dealer, shall furnish the consumer
7 with an express warranty for the assistive device, warranting
8 the operation of the assistive device without defect, unless
9 misused. The duration of the express warranty shall be not
10 less than one year after first delivery of the assistive
11 device to the consumer. If a manufacturer fails to furnish an
12 express warranty as required by this section, the assistive
13 device shall be covered by an express warranty as if the
14 manufacturer had furnished an express warranty to the consumer
15 as required by this section.

16 2. An express warranty does not take effect until the
17 consumer takes possession of the new assistive device.

18 Sec. 3. NEW SECTION. 216E.3 ASSISTIVE DEVICE REPLACEMENT
19 OR REFUND.

20 1. If an assistive device does not conform to an
21 applicable express warranty and the consumer reports the
22 nonconformity to the manufacturer, the assistive device
23 lessor, or any of the manufacturer's authorized assistive
24 device dealers, and makes the assistive device available for
25 repair before one year after first delivery of the device to
26 the consumer, a reasonable attempt to repair the nonconformity
27 shall be made.

28 2. If, after a reasonable attempt to repair, the
29 nonconformity is not repaired, the manufacturer shall carry
30 out the requirements of either paragraph "a" or "b" upon the
31 request of a consumer.

32 a. The manufacturer shall provide for a refund by doing
33 any one of the following:

34 (1) Accept return of the assistive device and refund to
35 the consumer and to any holder of perfected security interest

1 in the consumer's assistive device, as the holder's interest
2 may appear, the full purchase price plus any finance charge or
3 sales tax paid by the consumer at the point of sale and
4 collateral costs, including but not limited to shipping costs,
5 less a reasonable allowance for use.

6 (2) Accept return of the assistive device, refund to the
7 assistive device lessor and to any holder of a perfected
8 security interest in the assistive device, as the holder's
9 interest may appear, the current value of the written lease
10 and refund to the consumer the amount that the consumer paid
11 under the written lease plus any collateral costs, less a
12 reasonable allowance for use. The manufacturer shall have a
13 cause of action against the dealer or lessor for reimbursement
14 of any amount that the manufacturer pays to a consumer which
15 exceeds the net price received by the manufacturer for the
16 assistive device.

17 b. The manufacturer shall provide a comparable new
18 assistive device or offer a refund to the consumer if the
19 consumer does any one of the following:

20 (1) Offers to transfer possession of the assistive device
21 to the manufacturer. No later than thirty days after that
22 offer, the manufacturer shall provide the consumer with the
23 comparable new assistive device or a refund. When the
24 manufacturer provides the new assistive device or refund, the
25 consumer shall return the assistive device having the
26 nonconformity to the manufacturer, along with any endorsements
27 necessary to transfer legal possession to the manufacturer.

28 (2) Offers to return the assistive device having the
29 nonconformity to the manufacturer. No later than thirty days
30 after the offer, the manufacturer shall provide the refund to
31 the consumer. When the manufacturer provides the refund, the
32 consumer shall return to the manufacturer the assistive device
33 having the nonconformity.

34 (3) Offers to transfer possession of the assistive device
35 having the nonconformity to the manufacturer. No later than

1 thirty days after the offer, the manufacturer shall provide
2 the refund to the assistive device lessor. When the
3 manufacturer provides the refund, the assistive device lessor
4 shall provide to the manufacturer any endorsements necessary
5 to transfer legal possession to the manufacturer.

6 3. Under the provisions of this section, the current value
7 of the written lease equals the total amount for which that
8 lease obligates the consumer during the period of the lease
9 remaining after its early termination, plus the assistive
10 device dealer's early termination costs and the value of the
11 assistive device at the lease expiration date if the lease
12 sets forth that value, less the assistive device lessor's
13 early termination savings.

14 4. Under the provisions of this section, a reasonable
15 allowance for use shall not exceed the amount obtained by
16 multiplying the total amount for which the written lease
17 obligates the consumer by a fraction, the denominator of which
18 is one thousand eight hundred twenty-five and the numerator of
19 which is the number of days that the consumer used the
20 assistive device before first reporting the nonconformity to
21 the manufacturer, assistive device lessor, or assistive device
22 dealer.

23 5. A person shall not enforce the lease against the
24 consumer after the consumer receives a refund.

25 Sec. 4. NEW SECTION. 216E.4 MANUFACTURER'S DUTY TO
26 PROVIDE REIMBURSEMENT FOR TEMPORARY REPLACEMENT OF ASSISTIVE
27 DEVICES -- PENALTIES.

28 1. Whenever an assistive device covered by a
29 manufacturer's express warranty is tendered by a consumer to
30 the dealer from whom the assistive device was purchased or
31 exchanged for the repair of any defect, malfunction, or
32 nonconformity to which the warranty is applicable, the
33 manufacturer shall provide the consumer for the duration of
34 the repair period, a rental assistive device reimbursement of
35 up to twenty dollars per day if any of the following applies:

1 a. The repair period exceeds ten working days, including
2 the day on which the device is tendered to the manufacturer or
3 a dealer designated by the manufacturer for repairs. If the
4 dealer does not tender the assistive device to the
5 manufacturer in a timely enough manner for the manufacturer to
6 make the repairs within ten days, the manufacturer shall have
7 a cause of action against the dealer for reimbursement of any
8 penalties that the manufacturer must pay.

9 b. The nonconformity is the same for which the assistive
10 device has been tendered to the dealer for repair on at least
11 two previous occasions.

12 2. The provisions of this section regarding a
13 manufacturer's duty shall apply for the period of the
14 manufacturer's express warranty or for two years from delivery
15 of the assistive device to the customer, whichever period of
16 time ends sooner.

17 Sec. 5. NEW SECTION. 216E.5 NONCONFORMITY DISCLOSURE
18 REQUIREMENT.

19 An assistive device returned by a consumer or assistive
20 device lessor in this state or any other state for
21 nonconformity shall not be sold or leased again in this state
22 unless full written disclosure of the reason for return is
23 made to any prospective buyer or lessee by the manufacturer,
24 assistive device dealer, or assistive device lessor.

25 Sec. 6. NEW SECTION. 216E.6 REMEDIES.

26 1. This chapter shall not limit rights or remedies
27 available to a consumer under any other law.

28 2. Any waiver of rights by a consumer under the provisions
29 of this chapter shall be void.

30 3. In addition to pursuing any other remedy, a consumer
31 may bring an action to recover any damages caused by a
32 violation of this chapter. The court shall award a consumer
33 who prevails in such an action, no more than three times the
34 amount of any pecuniary loss, together with costs and
35 reasonable attorney fees, and any equitable relief that the

1 court determines is appropriate.

2 Sec. 7. NEW SECTION. 216E.7 EXEMPTIONS.

3 This chapter does not apply to a hearing aid sold, leased,
4 or transferred to a consumer by an audiologist licensed under
5 chapter 147, or a hearing aid dealer licensed under chapter
6 154A, if the audiologist or dealer provides either an express
7 warranty for the hearing aid or provides for service and
8 replacement of the hearing aid.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35