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Rereferred To: State Court 3/23/98
STATE GOVERNMENT

SENATE FILE 2124
BY DVORSKY

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

A BILL FOR

1 An Act concerning assistive devices by providing for express
2 warranties, replacement of assistive devices, and providing
3 consumer remedies.

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

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S.F. 2124

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. "Assistive device" does not
10 mean any medical device, surgical device, or organ implanted
11 or transplanted into or attached directly to an individual.
12 "Assistive device" does not mean any device for which a
13 certificate of title is issued by the state department of
14 transportation but does mean any item, piece of equipment, or
15 product system otherwise meeting the definition of "assistive
16 device" that is incorporated, attached, or included as a
17 modification in or to such a certificated device.

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

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

23 4. "Collateral costs" means expenses incurred by a
24 consumer in connection with the repair of a nonconformity,
25 including the cost of shipping, sales tax, and of obtaining an
26 alternative assistive device.

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

28 a. The purchaser of an assistive device, if the assistive
29 device was purchased from an assistive device dealer or
30 manufacturer for purposes other than resale.

31 b. A person to whom the assistive device is transferred
32 for purposes other than resale, if the transfer occurs before
33 the expiration of an express warranty applicable to the
34 assistive device.

35 c. A person who may enforce the warranty.

1 d. A person who leases an assistive device from an
2 assistive device lessor under a written lease.

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

5 7. "Early termination cost" means any expense or
6 obligation that an assistive device lessor incurs as a result
7 of both the termination of a written lease before the
8 termination date set forth in the lease and the return of an
9 assistive device to the manufacturer. "Early termination
10 cost" includes a penalty for prepayment under a finance
11 arrangement.

12 8. "Early termination savings" means any expense or
13 obligation that an assistive device lessor avoids as a result
14 of both the termination of a written lease before the
15 termination date set forth in the lease and the return of an
16 assistive device to a manufacturer which shall include an
17 interest charge that the assistive device lessor would have
18 paid to finance the assistive device or, if the assistive
19 device lessor does not finance the assistive device, the
20 difference between the total payments remaining for the period
21 of the lease term remaining after the early termination and
22 the present value of those remaining payments at the date of
23 the early termination.

24 9. "Loaner" means an assistive device, provided free of
25 charge to the consumer, for use by the consumer, that need not
26 be new or be identical to, or have functional capabilities
27 equal to or greater than, those of the original assistive
28 device, but that meets all of the following conditions:

29 a. The loaner is in good working order.

30 b. The loaner performs, at a minimum, the most essential
31 functions of the original assistive device, in light of the
32 disabilities of the consumer.

33 c. Any differences between the loaner and the original
34 assistive device do not create a threat to the consumer's
35 health or safety.

1 10. "Manufacturer" means a person who manufactures or
2 assembles assistive devices and agents of that person,
3 including an importer, a distributor, a factory branch,
4 distributor branch, and any warrantors of the assistive
5 device, but does not include an assistive device dealer or
6 assistive device lessor.

7 11. "Nonconformity" means any defect, malfunction, or
8 condition which substantially impairs the use, value, or
9 safety of an assistive device or any of its component parts,
10 but does not include a condition, defect, or malfunction that
11 is the result of abuse, neglect, or unauthorized modification
12 or alteration of the assistive device by the consumer.

13 12. "Reasonable attempt to repair" means any of the
14 following occurring within the term of an express warranty
15 applicable to a new assistive device or within one year after
16 first delivery of the assistive device to a consumer,
17 whichever is sooner:

18 a. The manufacturer, assistive device lessor, or any of
19 the manufacturer's authorized assistive device dealers accept
20 return of the new assistive device for repair at least two
21 times.

22 b. The manufacturer, assistive device lessor, or any of
23 the manufacturer's authorized assistive device dealers place
24 the assistive device out of service for an aggregate of at
25 least thirty cumulative days because of warranty non-
26 conformities.

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

28 1. A manufacturer or assistive device lessor who sells or
29 leases an assistive device to a consumer, either directly or
30 through an assistive device dealer, shall furnish the consumer
31 with an express warranty for the assistive device, warranting
32 the assistive device to be free of any nonconformity. The
33 duration of the express warranty shall be not less than one
34 year after first delivery of the assistive device to the
35 consumer. If a manufacturer fails to furnish an express

1 warranty as required by this section, the assistive device
2 shall be covered by an express warranty as if the manufacturer
3 had furnished an express warranty to the consumer as required
4 by this section.

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

7 Sec. 3. NEW SECTION. 216E.3 ASSISTIVE DEVICE REPLACEMENT
8 OR REFUND.

9 1. If an assistive device does not conform to an
10 applicable express warranty and the consumer reports the
11 nonconformity to the manufacturer, the assistive device
12 lessor, or any of the manufacturer's authorized assistive
13 device dealers, and makes the assistive device available for
14 repair before one year after first delivery of the device to
15 the consumer or within the period of the express warranty if
16 the warranty is longer than one year, a reasonable attempt to
17 repair the nonconformity shall be made.

18 2. If, after a reasonable attempt to repair, the
19 nonconformity is not repaired, the manufacturer shall carry
20 out the requirements of either paragraph "a" or "b" upon the
21 request of a consumer.

22 a. The manufacturer shall provide for a refund by doing
23 one of the following:

24 (1) If the assistive device was purchased by the consumer,
25 accept return of the assistive device and refund to the
26 consumer and to any holder of perfected security interest in
27 the consumer's assistive device, as the holder's interest may
28 appear, the full purchase price plus any finance charge paid
29 by the consumer at the point of sale and collateral costs,
30 less a reasonable allowance for use.

31 (2) If the assistive device was leased by the consumer,
32 accept return of the assistive device, refund to the assistive
33 device lessor and to any holder of a perfected security
34 interest in the assistive device, as the holder's interest may
35 appear, the current value of the written lease and refund to

1 the consumer the amount that the consumer paid under the
2 written lease plus any collateral costs, less a reasonable
3 allowance for use. The manufacturer shall have a cause of
4 action against the dealer or lessor for reimbursement of any
5 amount that the manufacturer pays to a consumer which exceeds
6 the net price received by the manufacturer for the assistive
7 device.

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

11 (1) Offers to transfer possession of the assistive device
12 to the manufacturer. No later than thirty days after that
13 offer, the manufacturer shall provide the consumer with the
14 comparable new assistive device or a refund. When the
15 manufacturer provides the new assistive device or refund, the
16 consumer shall return the assistive device having the
17 nonconformity to the manufacturer, along with any endorsements
18 necessary to transfer legal possession to the manufacturer.

19 (2) Offers to return the assistive device to the
20 manufacturer. No later than thirty days after the offer, the
21 manufacturer shall provide a refund to the consumer. When the
22 manufacturer provides a refund, the consumer shall return the
23 assistive device having the nonconformity to the manufacturer.

24 (3) Offers to transfer possession of a leased assistive
25 device to the manufacturer. No later than thirty days after
26 the offer, the manufacturer shall provide a refund to the
27 assistive device lessor. When the manufacturer provides the
28 refund, the assistive device lessor shall provide to the
29 manufacturer any endorsements necessary to transfer legal
30 possession to the manufacturer.

31 3. Under the provisions of this section, the current value
32 of the written lease equals the total amount for which that
33 lease obligates the consumer during the period of the lease
34 remaining after its early termination, plus the assistive
35 device lessor's early termination costs and the value of the

1 assistive device at the lease expiration date if the lease
2 sets forth that value, less the assistive device lessor's
3 early termination savings.

4 4. Under the provisions of this section, a reasonable
5 allowance for use shall not exceed the amount obtained by
6 multiplying the total amount for which the written lease
7 obligates the consumer by a fraction, the denominator of which
8 is one thousand eight hundred twenty-five and the numerator of
9 which is the number of days that the consumer used the
10 assistive device before first reporting the nonconformity to
11 the manufacturer, assistive device lessor, or assistive device
12 dealer.

13 5. A person shall not enforce a lease against a consumer
14 after the consumer receives a refund.

15 Sec. 4. NEW SECTION. 216E.4 MANUFACTURER'S DUTY TO
16 PROVIDE REIMBURSEMENT FOR TEMPORARY REPLACEMENT OF ASSISTIVE
17 DEVICES -- PENALTIES.

18 1. Whenever an assistive device covered by a
19 manufacturer's express warranty is tendered by a consumer to
20 the dealer from whom the assistive device was purchased or
21 exchanged for the repair of any defect, malfunction, or
22 nonconformity to which the warranty is applicable, the
23 manufacturer shall provide the consumer, at the consumer's
24 choice, for the duration of the repair period, either a rental
25 assistive device reimbursement of up to twenty dollars per
26 day, or a loaner, without cost to the consumer, if a loaner is
27 reasonably available or obtainable by the manufacturer,
28 assistive device lessor, or assistive device dealer, if any of
29 the following applies:

30 a. The repair period exceeds ten working days, including
31 the day on which the device is tendered to the manufacturer or
32 an assistive device dealer designated by the manufacturer for
33 repairs. If the assistive device dealer does not tender the
34 assistive device to the manufacturer in a timely enough manner
35 for the manufacturer to make the repairs within ten days, the

1 manufacturer shall have a cause of action against the
2 assistive device dealer for reimbursement of any penalties
3 that the manufacturer must pay.

4 b. The nonconformity is the same for which the assistive
5 device has been tendered to the assistive device dealer for
6 repair on at least two previous occasions.

7 2. The provisions of this section regarding a
8 manufacturer's duty shall apply for the period of the
9 applicable express warranty, or until the date any repair
10 required by the warranty is completed and the assistive device
11 is returned to the consumer with the nonconformity eliminated,
12 whichever is later, even if the assistive device is returned
13 after the end of the warranty period.

14 Sec. 5. NEW SECTION. 216E.5 NONCONFORMITY DISCLOSURE
15 REQUIREMENT.

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

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

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

25 2. Any waiver of rights by a consumer under this chapter
26 is void.

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

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

35 This chapter does not apply to a hearing aid sold, leased,

1 or transferred to a consumer by an audiologist licensed under
2 chapter 147, or a hearing aid dealer licensed under chapter
3 154A, if the audiologist or dealer provides either an express
4 warranty for the hearing aid or provides for service and
5 replacement of the hearing aid.

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EXPLANATION

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

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

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

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

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

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