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3/17/97 Do Pass
4/7/97 Referred back State Gov. (P. 1013)

SENATE FILE 225
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO SF 159)

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 devices, and providing consumer
3 remedies.

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

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S.F. 225

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 payments remaining for the period
12 of the lease term remaining after the early termination and
13 the present value of those remaining payments at the date of
14 the early termination.

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

20 a. The loaner is in good working order.

21 b. The loaner performs, at a minimum, the most essential
22 functions of the original assistive device, in light of the
23 disabilities of the consumer.

24 c. Any differences between the loaner and the original
25 assistive device do not create a threat to the consumer's
26 health or safety.

27 10. "Manufacturer" means a person who manufactures or
28 assembles assistive devices and agents of that person,
29 including an importer, a distributor, a factory branch,
30 distributor branch, and any warrantors of the assistive
31 device, but does not include an assistive device dealer or
32 assistive device lessor.

33 11. "Nonconformity" means any defect, malfunction, or
34 condition which substantially impairs the use, value, or
35 safety of an assistive device or any of its component parts,

1 but does not include a condition, defect, or malfunction that
2 is the result of abuse, neglect, or unauthorized modification
3 or alteration of the assistive device by the consumer.

4 12. "Reasonable attempt to repair" means any of the
5 following occurring within the term of an express warranty
6 applicable to a new assistive device or within one year after
7 first delivery of the assistive device to a consumer,
8 whichever is sooner:

9 a. The manufacturer, assistive device lessor, or any of
10 the manufacturer's authorized assistive device dealers accept
11 return of the new assistive device for repair at least two
12 times.

13 b. The manufacturer, assistive device lessor, or any of
14 the manufacturer's authorized assistive device dealers place
15 the assistive device out of service for an aggregate of at
16 least thirty cumulative days because of warranty non-
17 conformities.

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

19 1. A manufacturer or assistive device lessor who sells or
20 leases an assistive device to a consumer, either directly or
21 through an assistive device dealer, shall furnish the consumer
22 with an express warranty for the assistive device, warranting
23 the assistive device to be free of any nonconformity. The
24 duration of the express warranty shall be not less than one
25 year after first delivery of the assistive device to the
26 consumer. If a manufacturer fails to furnish an express
27 warranty as required by this section, the assistive device
28 shall be covered by an express warranty as if the manufacturer
29 had furnished an express warranty to the consumer as required
30 by this section.

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

33 Sec. 3. NEW SECTION. 216E.3 ASSISTIVE DEVICE REPLACEMENT
34 OR REFUND.

35 1. If an assistive device does not conform to an

1 applicable express warranty and the consumer reports the
2 nonconformity to the manufacturer, the assistive device
3 lessor, or any of the manufacturer's authorized assistive
4 device dealers, and makes the assistive device available for
5 repair before one year after first delivery of the device to
6 the consumer or within the period of the express warranty if
7 the warranty is longer than one year, a reasonable attempt to
8 repair the nonconformity shall be made.

9 2. If, after a reasonable attempt to repair, the
10 nonconformity is not repaired, the manufacturer shall carry
11 out the requirements of either paragraph "a" or "b" upon the
12 request of a consumer.

13 a. The manufacturer shall provide for a refund by doing
14 one of the following:

15 (1) If the assistive device was purchased by the consumer,
16 accept return of the assistive device and refund to the
17 consumer and to any holder of perfected security interest in
18 the consumer's assistive device, as the holder's interest may
19 appear, the full purchase price plus any finance charge paid
20 by the consumer at the point of sale and collateral costs,
21 less a reasonable allowance for use.

22 (2) If the assistive device was leased by the consumer,
23 accept return of the assistive device, refund to the assistive
24 device lessor and to any holder of a perfected security
25 interest in the assistive device, as the holder's interest may
26 appear, the current value of the written lease and refund to
27 the consumer the amount that the consumer paid under the
28 written lease plus any collateral costs, less a reasonable
29 allowance for use. The manufacturer shall have a cause of
30 action against the dealer or lessor for reimbursement of any
31 amount that the manufacturer pays to a consumer which exceeds
32 the net price received by the manufacturer for the assistive
33 device.

34 b. The manufacturer shall provide a comparable new
35 assistive device or offer a refund to the consumer if the

1 consumer does any one of the following:

2 (1) Offers to transfer possession of the assistive device
3 to the manufacturer. No later than thirty days after that
4 offer, the manufacturer shall provide the consumer with the
5 comparable new assistive device or a refund. When the
6 manufacturer provides the new assistive device or refund, the
7 consumer shall return the assistive device having the
8 nonconformity to the manufacturer, along with any endorsements
9 necessary to transfer legal possession to the manufacturer.

10 (2) Offers to return the assistive device to the
11 manufacturer. No later than thirty days after the offer, the
12 manufacturer shall provide a refund to the consumer. When the
13 manufacturer provides a refund, the consumer shall return the
14 assistive device having the nonconformity to the manufacturer.

15 (3) Offers to transfer possession of a leased assistive
16 device to the manufacturer. No later than thirty days after
17 the offer, the manufacturer shall provide a refund to the
18 assistive device lessor. When the manufacturer provides the
19 refund, the assistive device lessor shall provide to the
20 manufacturer any endorsements necessary to transfer legal
21 possession to the manufacturer.

22 3. Under the provisions of this section, the current value
23 of the written lease equals the total amount for which that
24 lease obligates the consumer during the period of the lease
25 remaining after its early termination, plus the assistive
26 device lessor's early termination costs and the value of the
27 assistive device at the lease expiration date if the lease
28 sets forth that value, less the assistive device lessor's
29 early termination savings.

30 4. Under the provisions of this section, a reasonable
31 allowance for use shall not exceed the amount obtained by
32 multiplying the total amount for which the written lease
33 obligates the consumer by a fraction, the denominator of which
34 is one thousand eight hundred twenty-five and the numerator of
35 which is the number of days that the consumer used the

1 assistive device before first reporting the nonconformity to
2 the manufacturer, assistive device lessor, or assistive device
3 dealer.

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

6 Sec. 4. NEW SECTION. 216E.4 MANUFACTURER'S DUTY TO
7 PROVIDE REIMBURSEMENT FOR TEMPORARY REPLACEMENT OF ASSISTIVE
8 DEVICES -- PENALTIES.

9 1. Whenever an assistive device covered by a
10 manufacturer's express warranty is tendered by a consumer to
11 the dealer from whom the assistive device was purchased or
12 exchanged for the repair of any defect, malfunction, or
13 nonconformity to which the warranty is applicable, the
14 manufacturer shall provide the consumer, at the consumer's
15 choice, for the duration of the repair period, either a rental
16 assistive device reimbursement of up to twenty dollars per
17 day, or a loaner, without cost to the consumer, if a loaner is
18 reasonably available or obtainable by the manufacturer,
19 assistive device lessor, or assistive device dealer, if any of
20 the following applies:

21 a. The repair period exceeds ten working days, including
22 the day on which the device is tendered to the manufacturer or
23 an assistive device dealer designated by the manufacturer for
24 repairs. If the assistive device dealer does not tender the
25 assistive device to the manufacturer in a timely enough manner
26 for the manufacturer to make the repairs within ten days, the
27 manufacturer shall have a cause of action against the
28 assistive device dealer for reimbursement of any penalties
29 that the manufacturer must pay.

30 b. The nonconformity is the same for which the assistive
31 device has been tendered to the assistive device dealer for
32 repair on at least two previous occasions.

33 2. The provisions of this section regarding a
34 manufacturer's duty shall apply for the period of the
35 manufacturer's express warranty or for two years from delivery

1 of the assistive device to the customer, whichever period of
2 time ends sooner.

3 Sec. 5. NEW SECTION. 216E.5 NONCONFORMITY DISCLOSURE
4 REQUIREMENT.

5 An assistive device returned by a consumer or assistive
6 device lessor in this state or any other state for
7 nonconformity shall not be sold or leased again in this state
8 unless full written disclosure of the reason for return is
9 made to any prospective buyer or lessee by the manufacturer,
10 assistive device dealer, or assistive device lessor.

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

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

14 2. Any waiver of rights by a consumer under this chapter
15 is void.

16 3. In addition to pursuing any other remedy, a consumer
17 may bring an action to recover any damages caused by a
18 violation of this chapter. The court shall award a consumer
19 who prevails in such an action no more than three times the
20 amount of any pecuniary loss, together with costs and
21 reasonable attorney fees, and any equitable relief that the
22 court determines is appropriate.

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

24 This chapter does not apply to a hearing aid sold, leased,
25 or transferred to a consumer by an audiologist licensed under
26 chapter 147, or a hearing aid dealer licensed under chapter
27 154A, if the audiologist or dealer provides either an express
28 warranty for the hearing aid or provides for service and
29 replacement of the hearing aid.

30 EXPLANATION

31 This bill creates a new chapter regarding warranties for
32 assistive devices. The bill defines, for the purposes of this
33 chapter, "assistive devices", "consumer", "loaner",
34 "manufacturer", and other terms used in the chapter concerning
35 repair and cost.

1 The bill provides for a warranty on assistive devices of at
2 least one year. The bill further provides for the repair of a
3 nonconforming assistive device and provides a consumer with
4 the ability to obtain a refund or a replacement device if the
5 nonconformity is not repaired. The bill also provides that,
6 if certain conditions are met, a manufacturer must provide to
7 a consumer either at least partial reimbursement for inability
8 to use an assistive device or a free loaner assistive device
9 if the device is being repaired.

10 The bill also provides that a resale of a device returned
11 for a nonconformity must disclose the reason for the return to
12 a new consumer of the device.

13 The bill does not limit a consumer's right to pursue other
14 remedies concerning an assistive device and provides for a
15 civil action to obtain damages for a violation of this new
16 chapter.

17 The bill provides that hearing aids sold, leased, or
18 transferred to a consumer from an audiologist or hearing aid
19 dealer are exempt from this new chapter if the audiologist or
20 dealer provides an express warranty or provides for service
21 and replacement of the hearing aid.

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SENATE FILE 225

S-3209

1 Amend Senate File 225 as follows:

2 1. Page 1, line 9, by inserting after the figure
3 "225C.46." the following: ""Assistive device" does
4 not mean any device or attachment to a device for
5 which a certificate of title is issued by the state
6 department of transportation or any device or organ
7 implanted or transplanted into or attached directly to
8 an individual."

By SHELDON RITTMER

S-3209 FILED MARCH 24, 1997

SENATE FILE 225

S-3228

1 Amend Senate File 225 as follows:

2 1. Page 1, line 9, by inserting after the figure
3 "225C.46." the following: ""Assistive device" does
4 not mean any device for which a certificate of title
5 is issued by the state department of transportation or
6 any device or organ implanted or transplanted into or
7 attached directly to an individual."

By ROBERT DVORSKY
SHELDON RITTMER

S-3228 FILED MARCH 25, 1997