

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Carlos Mayans at 1:30 p.m. on March 5, 1996 in Room 423-S of the Capitol.

All members were present except: Representative Landwehr
Representative Gilmore
Representative Goodwin
Representative Yoh

Committee staff present: Norman Furse, Revision of Statutes
Bill Wolff, Legislative Research Department
Francie Marshall, Committee Secretary

Conferees appearing before the committee: Senator Doug Walker
Deputy Attorney General Steve Rarrick
Mary Ellen Wright, Assistive Technology for Kansas
Walter Anderson, Individual
Dennis Jackson, Individual
Josie Torrez, Families Together
Vicky Martin, Department of Aging
Wendell Lewis, Kansas Council of Developmental Disabilities
Jim McCune, AARP

Others attending: See Guest List: Attachment 1

Chairperson Mayans opened the meeting by asking the members to review the minutes from the March 4, 1996 meeting.

SB 628 - Assistive technology lemon law act

The following proponents testified in support of **SB 628**:
Senator Doug Walker (see Attachment 2),
Deputy Attorney General Steve Rarrick (see Attachment 3),
Mary Ellen Wright, Assistive Technology for Kansas (see Attachment 4),
Walter Anderson, Individual (see Attachment 5),
Dennis Jackson, Individual (see Attachment 6),
Josie Torrez, Families Together (see Attachment 7),
Vicky Martin, Department of Aging (see Attachment 8),
Wendell Lewis, Kansas Council of Developmental Disabilities (see Attachment 9),
Jim McCune, AARP (see Attachment 10).

The following proponents submitted written testimony in support of **SB 628**:
Gina McDonald, Kansas Association of Center for Independent Living (see Attachment 11),
Patty Evert, Individual (see Attachment 12),
Tom Young (see Attachment 13),
Sam Fisher (see Attachment 14),
Marlys Shomber (see Attachment 15),
Michael Byington, Wichita Industries & Services for the Blind (see Attachment 16),
Sherry Diele, Kansas Advocacy and Protective Services (see Attachment 17),
Randy Fisher (see Attachment 18),
Shannon Jones, Statewide Independent Living Council of Kansas (see Attachment 19),
Richard D. Charlton, Sunflower Subchapter / Mid--America Chapter/Paralyzed Veterans of America (see Attachment 20).

Discussion followed the testimonies of the proponents. Several concerns were raised dealing with rental equipment, types of sources to purchase equipment, the effect on consumer costs, and how the public is informed of this law. Ms. Wright stated that Assistive Technology for Kansas reaches about 14,000 people with their information. Representative Merritt commented that lease payments of equipment paid for unneeded equipment was not addressed in this bill. Furse questioned Deputy Attorney General Steve Rarrick for clarification about the fraction used in calculating an allowance, as stated in the bill on Page 3, Line 30. Freeborn complimented the proponents good work in preparing and organizing for this hearing.

The hearing on **SB 628** was closed.

Chairperson Mayans then called for action on **SB 628**.

On motion of Representative Haley, seconded by Representative Henry, the committee voted to pass the bill favorably. Representative Flaharty will carry the bill.

Chairperson Mayans announced the next meeting is scheduled for Thursday, March 7, 1996.

The meeting was adjourned at 2:25 p.m.

House Health & Human Services COMMITTEE GUEST LIST

DATE March 5, 1996

NAME	REPRESENTING
Preston Barton	DD Council
Wendell Lewis	KCDD
Wendell Lewis	Citizen Advocate
Norris Jackson	TIRK/Disability rights advocate
HAROLD C. PITTS	KCOA- AARP
Doug Campbell	KSOB
Sandy Strand	Ks. Advocates for Better Care
TK Shively	Ks Legal Services
Lucille Pauli	KS Assoc. for the Blind
Jim McCum	AARP
J. Kelly E. Tronnum-Peil	KACIL
Mary Ellen Baird Wright	KACIL
Vicky Martin	KDOA
Randy Fisher	KCDC
Karlton R. Cruse	KCDHH
Sara Sack	Assistive Technology for Kansas
Sheila Simonson	Assistive Technology for Kansas
Melissa Wengemann	Hein Ebert & Weir
TERRY HOWREN	KBA

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House Health & Human Services COMMITTEE GUEST LIST

DATE March 5, 1996

NAME	REPRESENTING
Jerrin Reynolds	Kansas Optometric Assoc
Ruth Maus	Kansas Health Institute

DOUG WALKER
SENATOR, 12TH DISTRICT
ANDERSON, BOURBON, FRANKLIN,
LINN, MIAMI COUNTIES



TOPEKA

SENATE CHAMBER

OFFICE OF DEMOCRATIC WHIP

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER:
EDUCATION
PUBLIC HEALTH AND WELFARE
MEMBER: ENERGY AND NATURAL RESOURCES
FEDERAL AND STATE AFFAIRS
HEALTH CARE DECISIONS FOR THE '90s

TESTIMONY IN SUPPORT OF SB 628 ASSISTIVE TECHNOLOGY LEMON LAW.

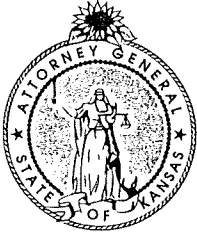
This bill requires manufacturers of assistive technology devices to provide a one-year warranty on all the products they sell in Kansas. Assistive Technology devices are defined as wheelchairs, motorized scooters, hearing aids, voice synthesizers, Braille printers, and other devices designed to enable a person with a disability to communicate, hear or maneuver.

Under the provisions of the bill, if the device is defective, fails, or breaks at least four times during the first year, or is out of service for thirty days due to defects, the device can be returned to the manufacturer for a refund or the manufacturer can replace the device. Any repairs necessary to the device which are not due to abuse, neglect or alterations by the consumer will be done at no cost to the consumer.

Any device returned to the manufacturer as defective cannot be resold in Kansas unless it is fully disclosed to the consumer that this is a used device, and the reason for its return to the manufacturer must be clearly stated.

Enforcement of this statute would fall to the Attorney General under the Consumer Protection Act, or it could be taken to arbitration.

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CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION DIVISION

301 S.W. 10TH, LOWER LEVEL, TOPEKA 66612-1597

PHONE: (913) 296-3751 FAX: (913) 291-3699

CONSUMER HOTLINE
1-800-432-2310

Testimony of

C. Steven Rarrick, Deputy Attorney General

Consumer Protection Division

Office of Attorney General Carla J. Stovall

Before the House Health & Human Services Committee

RE: SB 628

March 6, 1996

Chairperson Mayans and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla Stovall to testify in support of SB 628. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The Attorney General supports SB 628 as amended. This bill provides express warranty requirements and procedures and methodology for repairs, returns, and refunds for both sales and leases of assistive devices. This bill affects individuals needing expensive and VERY necessary equipment to communicate, see, hear or maneuver. The bill provides these individuals the opportunity to seek remedies not currently provided them under Kansas law.

Senate Bill 628 is modeled after the Missouri Assistive Technology Lemon Law passed in 1995. Our office has contacted the office of the Missouri Attorney General to see how the Missouri act (which went into effect in August 1995) is working. When contacted, the Missouri Attorney General's office was unable to say whether they had jurisdiction to enforce the new law as drafted and had received no complaints under the new law.

Because of this uncertainty, we are pleased that Senate Public Health & Welfare Committee granted our request to extend the protection provided these consumers by amending it to bring it under the Kansas Consumer Protection Act. If you pass this bill as amended, you will be allowing the protections in this bill to be enforced by the Attorney General similar to our enforcement of the Lemon Law for automobiles.

On behalf of Attorney General Stovall, I urge your favorable consideration of Senate Bill 628. Thank you.

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Assistive
Technology
For
Kansans

A Project
Coordin. by the
University of Kansas
At Parsons
For Statewide
Information and
Referral Phone
800-526-3648
(Voice)
800-500-1034
(TTY)

TESTIMONY PROVIDED BEFORE
THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
REGARDING SENATE BILL 628
PROVIDED BY MARY ELLEN O'BRIEN WRIGHT
ASSISTIVE TECHNOLOGY FOR KANSANS
MARCH 5, 1996

I represent Assistive Technology for Kansans, a federal grant subcontracted to organizations throughout the state, whose primary purpose is to ensure that Kansans with disabilities have increased and improved access to assistive technology devices and related services. I am here today in support of Senate Bill 628, as amended.

The ever developing and advancing technology that has touched all of our lives has become an integral part of the life of people with disabilities, enabling them to live independently, communicate, travel, work, and socialize. Such assistive technology permits them to perform daily functions which many of us take for granted. Manual and motorized wheelchairs afford some the opportunity to travel; communication boards permit others to speak; hearing aids make speech and environmental sound accessible to those who cannot hear; and computers with print enhancers or voice synthesizers help some access the world of employment. And these are just a few examples of the wide variety of assistive technology used each day.

Proper operation of such equipment and devices is critical for an individual to function and participate. All of us have been inconvenienced at one time or another by a car that breaks down. At worst, it is just that, an inconvenience. We are still able to arrange a ride with a family member or friend, or to take some form of public transportation. If a wheelchair or van lift break down, it is not just a matter of making other arrangements. It can keep someone from moving about in his/her home, traveling to school, work, or appointments. In one case of which we are aware, an individual was actually trapped within her van in the heat of summer.

Some assistive technology is very costly, and a major investment for the consumer. If equipment repeatedly malfunctions and is not replaced, the financial loss can be devastating, particularly for someone who may already be on a limited income. Some assistive technology is purchased by third party payors such as Medicaid, Vocational Rehabilitation, and Special Education. Repeatedly malfunctioning equipment that is not replaced could mean a financial loss for a state or federal program. It is not

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always possible to "shop around" given the unique and limited nature of some assistive technology, as well as the fact that some third party payors specify certain vendors.

Although manufacturers usually offer warranties, the warranties may cover only limited periods of time, such as 60 or 90 days. In addition, warranties sometimes cover equipment from the date of purchase rather than the date of delivery. "High end" assistive technology can be very costly, and a major personal and financial investment for a consumer with a disability, or the family of a child with a disability. A 60 to 90 day warranty period is an inadequate amount of time for expensive equipment that is so essential for daily living.

I would like to provide you with an example of one individual with whom Assistive Technology for Kansans has worked:

Sherri, a 32 years old resident of Saline County, works part-time assembling circuit boards for a small company in north central Kansas. She recently moved out of her parents' home and has her own apartment. Some support with basic independent living, a manual wheelchair, and accessible transportation have permitted Sherri to live a life of her own. There is one problem, however. Sherri's manual chair is two years old and has broken down four times in the last year. During the first year it broke down three times and Sherri was without it for more than 90 days. Apparently Sherri and her parents had trouble getting the vendor to respond quickly to her repair needs. When repairs have occurred, they have been "quick fixes" that do not last. When her chair is being repaired, there is not always a loaner chair available, nor are loaner chairs always in the best condition. Consequently, Sherri has had considerable difficulty getting around. Sherri worries a great deal about missing work as she needs her paycheck to live on and does not want to move back with her parents. Sherri, her parents, and friends have been troubled by the lack of response on the part of this particular vendor, and believe that a "lemon law" would have saved her a great deal of time and stress.

Recognizing the importance of assistive technology in the lives of people with disabilities, fourteen states have passed "lemon laws" since 1992. We ask for your support in allowing the state of Kansas to do the same by voting favorably on Senate Bill 628.

Thank you for your time and consideration.

HONORABLE REPRESENTATIVES

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It is a distinct privilege to appear before you today regarding Senate Bill No 628; my name is Walter E. Anderson, in a few mos. I will be 64 yrs of age; I live in rural Leاون , Ks. For the last ten years I have been in and out of the hospital due to several chronic disabling diseases. Without assistive technology I would not be here today. As can be readily observed I rely on this type of technology quite heavily.

Assistive Technology enables me to serve on two Disability Advisory Boards...to volunteer time with Senior Services..to do Poetry programs in Care Homes..to write a monthly column "The View From a Wheelchair" along with numerous other personal, and volunteer activity.

When assistive technology does not work it can be a nightmare for those of us who rely upon it.

This scooter was purchased for me March 6, 1992. Prior to that I used a wheel chair. It is my opinion, that I was given a demonstrator model to begin with. It seems to me this is a practice that ought not to exist.

The brakes on this unit have never worked properly. Within..... the first three months (Mid May 1992) I had cracked the front shroud due to brake failure. It was taken back to the dealer; where upon the dealers representative told me I would have to take to an auto body trim shop to have it repaired. As the warranty did not cover such accidents. Nothing was done to the brakes at this time; also by now the bumper molding on both of the sides of the scooter, was falling off. My request that the tires be puncture proof was also met with you will need to go to a specialty tire shop for that.

The warranty covered all but electrical parts,for all of one years; those exempted parts were covered for 6mos. This is a

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to Products Manufactured After July 4th. 1975.

In June of 1992 I accidentally met another dealer who also sold the Tri-Rolls she was concerned that a new scooter was in such a state of dis-repair. Taking the advice given I called the Mfg. a lady by the name of Rita in Customer service told me the front shroud which is the entire front end end was covered under warranty. But I would have to contact the dealership. Around July thirteenth a letter was sent to the President of the dealership telling of my contacting the manufacturer regarding my complaints. July the thirteenth I was asked to come to the supply house with the scooter: Sixty miles round trip. Within the week a new front end was installed. which was the entire front shroud. Within a few months the brakes again began to fail, a Mfgs. representative was contacted and again I was told they all worked like that. Repeated attempts attempts to correct the brake problem through the dealership were all futile. In the meantime there were 1 or 2 service calls at my home which cost \$30.00 each. The consumer is again without re-course.

Approximately the Tenth of August 1993 (the year date on the ticket is not clear)the steering mechanism known as the tiller needed additional work...a new boot for tiller \$33.60, Swivel adjustment top \$61.70...swivel adjustment knob \$61.90 ...adjustment handle \$19.95. All of this should have been replaced under the original warranty...which by now expired.

After the sale was made the dealer no longer made free service calls to where I live, which was approx. twelve miles outside the given distance from Wichita. Thus a disabled person is not only inconvenienced, but be out the money for a service call.

The rear trans-axle also has a protective cover called a shroud..this was never properly installed on the scooter, by

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the dealership...again this is a needed itemn protecting the trans axle. Again my basic complaints were ignored; when it did come off and could not be found...a new one had to be ordered and payed for at my expense.

The scooter as best as I can remember has been re-called one or two times by the Mfg. for replacement of the spring mechanism controlling the braking systemn. Four years latter the brakes still do not work properly...at the mid point speed range which is 2.5 mph the brakes fail to respond promptly. Crossing a street can be hazardous with no brakes at 4.5 mi. an hour which is what often happens. Is it safe for the consumer? not really.

A lemon law is needed to protect the consumer, as we do not have much recourse at the present. Mfg. and dealer warranties obviously are not sufficient. Assistive Technolgy devices are critical in the lives of persons with disabilities. They enable us to do volunteer work, go to school, to live in our homes and work. Without Ass't Technology such as this scooter, hearing aids , special glasses, cane and at one time a respirator, my life would be much different than it is today. Without some protection, such as this Bill # 628, the consumer is at a dis-advantage as the present system is not always reliable. To often the consumer has to pay or be without.

To be without some assistive technology for a a full 30 days without a loaner or subsituite device could be more than an in-convienece as often our very existence depends this technology.

Would I reccommend this brand of scooter, or the dealer-ship to anyone else.? No I would not.

Thank you for the opportunity to speak before you today.

Medical Equipment Lemon Law

My name is Dennis Jackson and I use a wheelchair.

My particular wheelchair was purchased for me through Kansas Vocational Rehabilitation Services and cost the state approximately \$900.00-\$1,000.00. Like most wheelchairs, my chair has maker-specific replacement parts which are quite expensive. Each time my chair needs repairs, the cost is \$30.00 an hour for labor plus parts. Since I need my chair, I have to find a way to pay the cost, no matter how high.

I believe the lemon law is necessary because if I have a "piece of junk" for a wheelchair, I would have a "piece of legislation" that would protect me from paying for on-going repairs due to poor workmanship, poor construction materials or a defect that is connected to the wheelchair and not my use or misuse of it. If a person who uses a wheelchair or other necessary medical equipment is on a limited income such as Social Security, that person does not need the added burden of worrying about repairs to equipment that is necessary in their daily living.

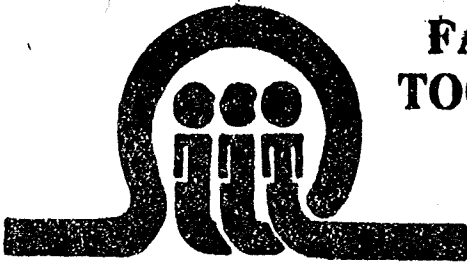
At a time when it seems everything from the high cost of government to the implementation of the ADA is being blamed on people with disabilities, causing us to be viewed by the public at large as free-loaders and a financial drain on the government and taxpayers, the lemon law would provide the security of knowing that defective equipment would not be a burden to us, and that our ability to function would not be hampered because we were unfortunate enough to have purchased a defective piece of medical equipment.

To pass this bill is consumer protection at its best.

Thank you.

Dennis Jackson,
A person with a disability

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attm# 6



**FAMILIES
TOGETHER,
INC.**

PARENT CENTER:
* 501 Jackson, Suite 400
Topeka, KS 66603
(913) 233-4777 V/TDD
(913) 233-4787 FAX
1-800-264-6343 Toll free
in Kansas for parents

SATELLITE OFFICE:
* 3330 W. Douglas, Suite 102
Wichita, KS 67203
(316) 945-7747
* 116 E. Chestnut, Suite 103
Garden City, KS 67846
(316) 276-6364

ASSISTING FAMILIES THAT INCLUDE A CHILD WITH A DISABILITY

To: House Health & Human Services Committee
From: Josie Torrez, Families Together, Inc.
Date: March 5, 1996
Re: SB 628 Assistive technology lemon law act

Thank you for the opportunity to provide testimony to your committee. I am Josie Torrez and I represent Families Together, Inc. We have three offices in Kansas; one in Wichita, Garden City and Topeka. The majority of our staff are family members of young people with disabilities. We assist families in Kansas that include a child or youth with a disability, age birth through 21.

Assistive Technology has helped many children with disabilities in Kansas. The children benefitting are finding there is a whole new world out there. The families are finding their children can do so much more than anyone ever dreamed possible. The children can now perform daily functions which others take for granted.

Some families call our office when the technology purchased for their child is on the blink. We try to assist them or refer them on to someone who can help them. Usually it's the manufacturer we refer them to. It's so frustrating to the family when the technology continues to malfunction and can't be replaced due to the high costs involved. Many times the manufacturer has a 60 day or 90 day warranty. A warranty of 60

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to 90 days is not an adequate time period for equipment that is very expensive and essential and we find that technology does not usually break down during this time period.

We support this bill; especially the requirement of a minimum of a one year warranty from date of arrival instead of the purchase date. We also support the replacement of the equipment if it breaks down four times in the warranty period or is out of service for thirty consecutive days or more.

In speaking to our staff, we feel it would be more convenient to families having many problems and were considering a complaint, to file the complaint with the Attorney General in lieu of arbitration. Many families go through arbitration with the school system, medical system, etc. Let's make this easier both financially and emotionally for families.

Thank you for allowing me to testify on behalf of families that include children or youth with disabilities.

Testimony to the
The House of Representatives Health and Human Services Committee
Senate Bill 628: "Assistive Technology Lemon Law Act"
March 5, 1996

Thank you for your attention to this testimony in support of Senate Bill 628, presented by Vicky Martin with Kansas Department on Aging.

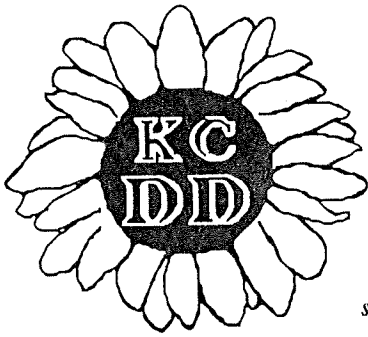
Kansas Department on Aging represents many older Kansans who rely on assistive technology to help them accomplish the normal routines of the day. The elder might not call it assistive technology, but would probably tell you that they use a wheelchair, or have hearing aides.

Doctor appointments, grocery shopping, chores, and activities with family and friends are the things each of us must do as a part of our days. People must therefore be able to move around, to travel outside their homes, to talk and hear someone else talking. Assistive technology devices may be the critical ingredient that allows a person to accomplish these tasks. If the assistive device does not work properly, then the person may also not be able to work, or play. Much is dependent on the assistive device working properly and safely, and if it doesn't the consumer should have a reasonable recourse to protect their enhanced independence as well as their investment.

All consumers should be able to expect value for their money, and reasonable recourse if the product does not operate properly or safely. In addition, governmental agencies with public dollars are sometimes the consumers of assistive technology devices on behalf of their clients. Accountability for these public dollars must include reasonable recourse if the product does not operate properly or safely. SB 628 will assist in accountability and value for both public and private dollars.

Kansas Department on Aging supports SB 628. I would be happy to address any questions, and can be reached at (913) 296-6295.

H & HS Comm
3-5-96
atm # 8



Kansas Council on Developmental Disabilities

BILL GRAVES, Governor
TOM ROSE, Chairperson
JANE RHYS, Executive Director

Docking State Off. Bldg., Room 141, 915 Harrison
Topeka, KS 66612-1570
Phone (913) 296-2608, FAX (913) 296-2861

"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"

HEALTH AND HUMAN SERVICES

MARCH 5, 1996

Testimony in Regard to S.B. 628

AN ACT CONCERNING ASSISTIVE DEVICES USED FOR MAJOR LIFE ACTIVITIES.

To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities.

Mr. Chairman, Members of the Committee, I am appearing today on behalf of the Kansas Council on Developmental Disabilities in support of S.B. 628, concerning assistive technology devices, their warranties, and consumers' rights to return defective devices.

The Kansas Council is a federally mandated, federally funded council composed of individuals who are appointed by the Governor. At least half of the membership are persons with developmental disabilities or their immediate relatives. We also have representatives of the major agencies who provide services for individuals with developmental disabilities. Our mission is to advocate for individuals with developmental disabilities, to see that they have choices regarding their participation in society, just as you and I have choices.

We support this bill which will permit consumers who purchase defective assistive devices to recover the costs of such device and associated expenses. Although some of these devices are inexpensive, many are not. Communication devices can range in costs from \$545 to \$8,034, motorized wheelchairs can cost \$3,899, \$9,636, \$11,690, or upwards of \$25,000. Other expensive items include a van equipped with hand controls \$32,137; van lifts \$6,000 to \$22,977; lift walker \$1,995, patient lift \$1,501; a Cursewell reader \$5,495; a stair lift \$57,560 and many other devices which persons with disabilities need to maintain or gain independence.

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Calvin #9

As previously stated, there are many less expensive devices and equipment needed by persons with disabilities which are necessary just for day to day living, such as cushions, back supports, braces, prosthesis', special shoes, and various other assistive devices. The need for so many and various devices makes people who need them easy prey for unscrupulous individuals and companies. This bill will protect those individuals' money, or, in some cases, the state's money, which is used to purchase these devices. As not only an individual who advocates for persons with disabilities, but as a persons who uses assistive devices, I urge you to pass this bill. Thank you for the opportunity to testify and I would be happy to answer any questions you may have.

Wendell Lewis, Past Chairperson
Kansas Council on Developmental Disabilities
Docking State Office Building, Room 141
915 SW Harrison
Topeka, KS 66612-1570
913 296-2608



Bringing the wisdom of experience and leadership to serve all generations.

KANSAS STATE LEGISLATIVE COMMITTEE

CHAIR

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(913) 625-6680

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2155 Blue Hills Road
Manhattan, KS 66502
(913) 537-4566

SECRETARY

Mr. James Haught
537 Saint Andrews Drive
Wichita, KS 67230
(316) 733-4652

I am Jim McCune, a member of the Capital City Task Force of the American Association of Retired Persons (AARP). I represent AARP on the Board of Assistive Technology for Kansans. AARP has a position on the matter before you which follows:

"AARP believes Kansans should have the right to warranty and "lemon" protection for medical assistive technology devices used by consumers with disabilities. Medical assistive devices include, but are not limited to, motorized/manual wheelchairs, scooters, telecommunication devices, hearing aids, speech synthethizers, scanners, oxygen equipment, and braille printers. Included should be devices that enhance the mobility of an individual, enhance an individual's ability to hear and see, and enhance an individual's ability to communicate, i.e. enable persons with disabilities to maneuver, hear, see and communicate."

AARP's concern is not only with persons with disabilities, but would also include older people who may not be considered disabled. I wear a hearing aid, but don't really consider myself to be disabled or handicapped. I have a hearing problem without my hearing aid, so I believe you would say I have a disability.

We ask for your support in the passage of Senate Bill 268 as ammended by Senator Walker.

Thank you.

H + K SCmm
3-5-96
attm # 10



Gina McDonald
Executive Director

Member Agencies:

**ILC of
Southcentral Kansas**
Wichita, KS
316/942-6300 Voice/TT

Independence, Inc.
Lawrence, KS
913/841-0333 Voice
913/841-1046 TT

Independent Connection
Salina, KS
913/827-9383 Voice/TT

LINK, Inc.
Hays, KS
913/625-6942 Voice/TT

The WHOLE PERSON, Inc.
Kansas City, MO
816/561-0304 Voice
816/531-7749 TT

**Topeka Independent
Living Resource Center**
Topeka, KS
913/233-4572 V/TT

**Southeast Kansas
Independent Living, Inc.**
Parsons, KS
316/421-5502 Voice
316/421-6551 TT

**Accessing Southwest
Kansas (ASK), Inc.**
Dodge City, KS
316/225-6070 Voice/TT
1-800/871-0297

Testimony to:
House Committee on
Health and Human Services
Representative Mayans, Chair
March 5, 1996
Senate Bill 628

My name is Gina McDonald and I am the Executive Director for the Kansas Association of Centers for Independent Living (KACIL). KACIL is an advocacy organization and we represent nine Centers for Independent Living across the state. KACIL advocates for the rights of people with disabilities at the local, state, and national level.

KACIL supports the passage of S.B. 628, the Assistive Technology Lemon Law. This will afford consumers protection from unusable equipment. KACIL supports the testimony of the Assistive Technology for Kansans Project.

As a user of Assistive Technology, I can tell you that it is very frustrating to purchase equipment which is usually quite expensive, and then to have it spend a great deal of time in the shop or back at the manufacturer. This law will protect consumers and the state from spending resources on ineffective equipment. For entities covered under the Americans with Disabilities Act, they too will be protected in buying assistive technology for their consumers.

Thank you.

H & H. S. Comm.
3-5-96
Atn # 11

My name is Patty Evert. I am a resident of Topeka, Kansas. I am presently in the hospital at the Rehabilitation Institute in Kansas City and am unable to be here today to give my testimony in person. I have Multiple Sclerosis, a degenerative disease condition which leads to progressive disability. I moved from a walker to a wheelchair in 1995. At that time I had an 1985 Oldsmobile 98 for transportation. I had difficulty transferring to the wheelchair from that vehicle, so I decided to purchase a van which would allow me to use a lift. I started to look for a used lift.

I was told of a man in Kansas City who used to work for a reputable dealership and had taken six demo lifts when he left the job. I found a van and purchased it in early June of 1995. I contacted the man with the used lifts in Kansas City and took the van to him. The cost of the lift, installing the lift, and installation of the hand controls in the van was about \$2,850. I had him install the lift. The lift worked the first time or two, but then it would not work, leaving me stuck in the van in the heat of summer. This would be a dangerous situation for anyone, but was particularly bad for me with my disability. I got stuck at Venture one night, as well. I contacted the man in Kansas City many times. He came and looked at the lift a couple of times and worked on it. He replaced some switches. But it didn't matter, nothing fixed it.

I was then back in the hospital and didn't drive for awhile. When I came out the van lift still had problems. I went to a doctor's appointment. The lift didn't come down right. I called 10th Street Medical to have them look at the lift. As I was on the lift at 10th Street Medical, lowering myself, it dropped a foot, scaring me to death. 10th Street Medical checked the lift over and told me I had been sold a piece of junk. I called the dealership that the man in Kansas City had supposedly worked for and they said he had never worked for them and that they don't have demo lifts. They said that they wouldn't trust the lift at all.

The lift finally collapsed onto my concrete driveway. I'd almost gotten on the lift, but I decided not to, then it collapsed. 10th Street Medical said it's now only worth what I could get as scrap metal. I went without personal transportation for two months because I could not afford to purchase a new lift. Then I purchased a lift from 10th Street Medical.

I called a lawyer, but there doesn't seem to be anything I can do about my situation under present law. I am just out the money I spent on the first lift.

Patty Evert
3617 SW Mission
Topeka, Kansas 66614

H. & H. S. Comm.
3-5-96
AHM #12

2/13/96

SB 628

ASSISTIVE DEVICES,

THANK YOU FOR ALLOWING ME TO TELL MY STORY

MY FATHER -IN-LAW IS A PARAPLEGIC HE WEIGHT ABOUT 170 POUNDS AND NEEDS AN ASSISTIVE DEVICE TO GET FROM THE BED TO THE WHEEL CHAIR. HIS MEDICAL INSURANCE COMPANY SENT OUT A LIFT SUCH AS YOU WOULD USE TO RAISE SUCH A PERSON FROM A THERAPY POOL A CHAIN HOIST IF YOU WILL. WORSE THAN THAT IT HAD A LIFTING PAD WITH IT THAT WAS THE SIZE YOU WOULD USE FOR A CHILD. NEEDLESS TO SAY IT WAS NOT USABLE. HOWEVER WE COULD NOT GET THE SUPPLIER OF THIS LIFT TO EVEN REMOVE IT FROM THE HOUSE LET ALONE REPLACE THE CHILD'S SLING WITH AN ADULT SIZE. AFTER ALMOST A YEAR OF COMPLAINING TO THE PROVIDER, THE INSURANCE COMPANY, AND MEDICARE WE WERE ABLE TO GET THE UNUSABLE LIFT REMOVED FROM THE HOUSE

I WOULD USE A LEVERAGE METHOD TO GET HIM OUT OF BED. BY PLACING MY KNEES AGAINST HIS I WOULD ROCK BACK WITH MY WEIGHT AND ROTATE HIM FROM THE BED TO HIS WHEEL CHAIR. REPEATING THE PROCESS IN REVERSE EACH NIGHT. IF I HAD NOT BEEN AVAILABLE MY FATHER-IN-LAW WOULD HAVE BEEN CONFINED TO HIS BED.

MY WIFE DISCOVERED A COMPANY IN COLORADO WHICH MADE A LIFTING DEVICE BASED ON THE VERY PRINCIPAL I WAS USING. AND MY FATHER-IN-LAW PURCHASED A LEVERAGE LIFT AND IS USING IT TO THIS DAY.

UNDER THIS LAW , AS I UNDERSTAND IT, THE ORIGINAL PROVIDER WOULD BE OBLIGATED TO PROVIDE A LIFT WHICH WORKED OR REFUND THE COST TO THE CONSUMER.

I WOULD URGE YOU TO PASS SENATE BILL 628 TO PROTECT PEOPLE WHO NEED ASSISTIVE DEVICES. NOT ONLY NEED SUCH DEVICES BUT MUST HAVE THEM TO LEAD A NORMAL LIFE. MANY TIMES AN ASSISTIVE DEVICE MAKES THE DIFFERENCE IN WHETHER THE INDIVIDUAL CAN LIVE ALONE OR MUST BE CONFINED.

TOM YOUNG

H.S. Comm.
3-5-96
Att #13

02/12/96

08:37

DECKER CONSTRUCTION 5-251-6825

FEBRUARY 12, 1996

DEAR SIRS,

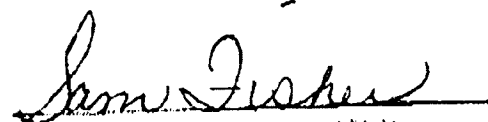
FOR 2 1/2 YEARS WE HAVE LIVED WITH A WHEELCHAIR LIFT THAT HAS MALFUNCTIONED ON A REGULAR BASIS. WE BROUGHT OUR PROBLEMS TO THE ATTENTION OF THE DEALER-INSTALLER AND THE MANUFACTURER FROM THE TIME IT WAS INSTALLED TILL THE LAST LETTER TO THE PRESIDENT OF MOBILE TECH, RON MAMMEL ON FEBRUARY 5, 1995. OUR SON HAS BEEN WITHOUT A LIFT NOW FOR OVER TWO MONTHS DUE TO AN ELECTRICAL PROBLEM, THAT WAS THE LAST STRAW. THANKFULLY IT HAPPENED AT OUR HOME NOT WHEN MY WIFE AND SON WERE ON THE ROAD. WE ARE PRESENTLY LOOKING FOR A NEW LIFT AND WITHOUT FUNDING WE WON'T BE ABLE TO AFFORD ONE.

OUR SON IS NOT ONLY LIVING WITH HIS DISABILITY BUT SEEMS TO BE AT A TERRIBLE DISADVANTAGE, AS A CONSUMER WITH SERVICES AND COSTS HIGH FOR ITEMS SPECIALLY FOR THE HANDICAPPED.

PLEASE PASS THE LEMON LAW. THIS LAW COULD HAVE SAVED OUR SON A LOT OF GRIEF AND FRIGHTENING MOMENTS. HE NEEDS YOUR HELP PLEASE PASS A LEMON LAW.

THANK YOU,

SINCERELY,


SAM FISHER AND FAMILY

H $\frac{1}{2}$ H.S. Comm.
3-5-96
Attn #14

Marlys Shomber
P.O. Box 421
Altamont, KS 6530

February 12, 1996

Senate Committee on Health and Public Welfare
State Capitol
Topeka, KS 66604

RE: Senate Bill 628, Lemon Law

Recently I ordered a Buddy Bed Shaker from a company specializing in assistive technology devices for independent living. The product was supposed to vibrate the bed when my alarm clock went off in the morning; this is very important because I have been late for work since I do not hear my alarm.

When I received the product, it did not function in the way that it was promoted. I contacted the company and they told me to send it back for repair. In the next two and one-half months, the product was returned three times but failed to work as promoted.

In the meantime, I tried another product from a different company and found it worked effectively. The original company refused to provide a refund to me since the product had been in my possession for over three months. When I pointed out that it had never worked correctly, they still refused to refund money and only offered to again attempt to fix the item.

I contacted the Assistive Technology for Kansans project and a member of their staff wrote a letter to the company. The company did subsequently refund my money, but this was after numerous calls and seeking assistance from an advocacy agency. The product never worked correctly and I was left to just work it out for myself. It would have helped if there had been some recourse in Kansas for me. I sincerely hope that Kansas will pass the lemon law currently being considered.

Sincerely,

Marlys Shomber

Marlys Shomber

H&H S. Comm
3-5-96
Attn #15

WICHITA INDUSTRIES & SERVICES FOR THE BLIND, INC.

March 5, 1996

REASONS LEMON LAWS IN KANSAS NEED TO BE EXTENDED AND
ENACTED TO COVER ASSISTIVE TECHNOLOGY USED BY PERSONS
WHO HAVE DISABILITIES

testimony by Michael Byington,
WISB Governmental Affairs office

Our organization rises in support of lemon law coverage with regard to assistive technology for persons who have disabilities. This bill, as amended by the Senate Committee, would provide some much needed assurances that disabled consumers, and in many cases, the Kansas tax payers, get what they are paying for.

Wichita Industries and Services for the Blind (WISB) is a not for profit corporation offering employment and services to people who are blind. We offer some of our services on a State-wide basis, but offer others in only certain geographic areas of Kansas. We administer the Assistive Technology for Kansas site for the Southeast area of Kansas, and in this program, we serve all disability groups. We therefore have considerable experience with the negative impacts consumers experience when the assistive technology they use to live or work independently breaks down frequently and is not dependable.

The protections and enforcement provisions of this legislation are appropriate. They will not discourage reputable manufacturers and dealers of assistive technology from operating in the State, or discourage the development of new technology, but they will provide some assurance that the consumer receives the functional services he or she has been promised through the acquisition of the adaptive equipment.

Most manufacturers and dealers of adaptive equipment for persons having disabilities are honest and try to offer quality products. These manufacturers and dealers have no reason to be concerned about this proposed legislation. This legislation would, however, provide protections for persons using new technology just out on the market.

Such protections are of benefit not only to the disabled individual, but also to tax payers. Medicare, Medicaid, and Vocational Rehabilitation are all examples of tax supported programs which provide a good deal of equipment

A not-for-profit
agency providing
employment &
services to people
who are blind.

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Fax (316) 267-4312

925 Sunshine Road
Kansas City, Kansas 66115
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Fax (913) 281-2450

1600 North Walnut
Fittsburg, Kansas 66762
(316) 231-8500

H&H.S. Comm.
3-5-96
Attn: # 16

to assist persons having disabilities in living and/or working independently.

I will provide an example of where experimental technology, not appropriately supported by the manufacturer, ended up disappointing a severely disabled consumer very much, and ended up cheating the Kansas taxpayers. This involves a case of which I am personally aware because, until recently, I worked in WISB's State-wide deaf-blind services unit.

I worked with a 22 year old gentleman who was living in a nursing home. He very much wanted to live in the community, but the obstacles he had to overcome included being totally blind, using a wheelchair, having an ostomy, being head injured, and having a severe hearing impairment. As I was attempting to help this gentleman set up his program to live independently, he and I contacted a company for information concerning adaptive equipment. I was going to recommend a proven piece of technology this company sells which provides persons who are blind and hearing impaired with vibrating stimulation when they are about to run into an object. I felt this product would help the gentleman move around a little more freely and safely in his new, more independent environment. The company representative talked the gentleman, the vocational rehabilitation counselor providing the funding, and me into instead ordering an experimental piece of equipment which cost over five times as much as the device we were going to buy originally. This device was alleged to mount on the wheelchair and to provide differing vibration stimulation for obstacles to the right, left, above, and also to provide a very specialized type of vibratory stimulation to inform the user of drop-offs. If this technology would work, it in fact could provide the consumer with a great deal of greater independence to move about than can normally be afforded a blind person using a wheelchair. My client had great hope of being able to go outside of his home for a walk, or roll, on his own. He had great hope of being able to be better oriented in his workplace or in a large apartment complex. The long and the short of it, however, is that the gadget never worked. It was not sufficiently durable for the task it needed to perform and broke the first day the gentleman tried to use it. It went in for repairs twice, and each time, the gentleman had the use of it for only a few hours before it broke again. When it came back from its third visit to its manufacturer, I attempted to do training with the gentleman on its use and we found it was completely

inaccurate and undependable in its identification of drop-offs. Obviously it was not safe to use, so it was sent back to the factory for a fourth time. By this time the company informed the gentleman that the 90 day warranty was up, and it would be very expensive to repair the device. It has thus not been repaired and is not currently used or useable. My client is now living in an accessible apartment at the Timbers Apartment complex in Wichita. Given his disabilities, he is in many ways very independent and is to be commended for his efforts, but he still can not realize his dream of being able to go for a simple walk outside by himself. As the device was bought with Vocational Rehabilitation funds, the tax payers are out around \$5,000.00 for a device which only worked for a few hours and never worked right.

The proposed legislation you have before you would protect the tax payer from this type of inefficient expenditure. It would allow a consumer to attempt to try new technology without fearing that they would have no other options if this technology does not perform as promised. This is an important law, and very much needed in this State. Thank you.

KAPS *KANSAS ADVOCACY & PROTECTIVE SERVICES, INC.*

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MEMO TO: House Committee on Health and Human Services
FROM: Kansas Advocacy & Protective Services, Inc.
DATE: March 5, 1996
RE: Staff Report on SB 628--Assistive Technology Lemon Law

Kansas Advocacy & Protective Services, Inc. (KAPS) is a federally funded non-profit corporation which advocates for the rights of Kansans with disabilities. KAPS administers four programs: (1) Protection & Advocacy for Individuals with Developmental Disabilities (PADD); (2) Protection & Advocacy for Individuals with Mental Illness (PAIMI); (3) Protection & Advocacy for Individual Rights; and (4) Protection & Advocacy for Assistive Technology (PAAT).

KAPS staff supports SB 628, as amended by the Senate. We believe that the protections afforded by the bill will benefit persons with disabilities, as well as our elderly citizens, who have been victimized by vendors who sell or lease assistive technology devices and then walk away from their responsibility when a problem arises with the device. Persons with disabilities rely on assistive technology devices in order to live independently, to work and to enjoy life.

KAPS staff supports the amendments made by the Senate which provides the Kansas Attorney General jurisdiction to enforce the provisions of the lemon law. Many consumers cannot afford to litigate against the financial resources of a large company. Consumers of assistive technology devices will now have an effective avenue to pursue their claims when they have been wronged. Furthermore, the lemon law does not prohibit those consumers who can afford to pursue their claims through arbitration or litigation from doing so.

We believe that SB 628 is important. We urge the Committee to recommend passage of the bill, as amended by the Senate.

Thank you for the opportunity to address your Committee. I would be happy to answer any questions.

HHS Comm
3-5-96
Attn. # 17



Kansas Department of Human Resources

Bill Graves, Governor
Wayne L. Franklin, Secretary

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1-800-295-5232 (KCDC)
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(913) 296-6529

House Health and Human Services Committee
SB 628
March 5, 1996

Thank you for this opportunity to provide testimony in support of SB 628, the Lemon Law for Assistive Technology.

I represent the Kansas Commission on Disability Concerns, a State agency established by law to carry on a continuing program to promote a higher quality of life for people with disabilities. One of our responsibilities is to submit recommendations to the legislature believed necessary to promote the independence of people with disabilities.

The Commission firmly believes that people who rely upon assistive technology for their independence should not be subjected to unnecessary delays or problems associated with the breakdown of their equipment. Providing individuals with legal remedies for non-compliance by vendors is good public policy and a way of recognizing the magnitude of problems caused by faulty or broken assistive technology.

The Kansas Commission on Disability Concerns encourages passage of SB 628. Thank you very much.

H & H.S. Comm.
3-5-96
Attn #18

**Testimony Presented to
House Health and Human Services Committee
Regarding SB 628
by
Statewide Independent Living Council of Kansas
Shannon M. Jones
March 5, 1996**

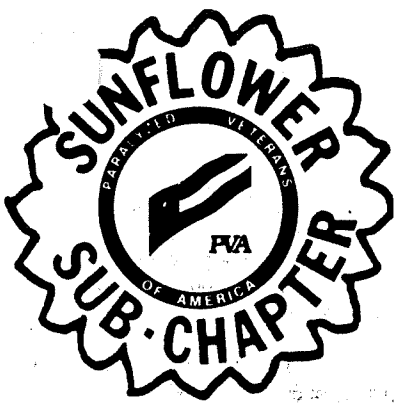
Good afternoon. My name is Shannon Jones and I am the executive director for the Statewide Independent Living Council of Kansas (SILCK). The mandate of the Council is to study existing services for people with disabilities and make recommendations to improve and expand services that will enable Kansans with disabilities to achieve their optimal level of independence and improve their quality of life.

I am here today to support Senate Bill 628, with Senator Walker's recommended amendment and to fully support the testimony given by Mary Ellen O'Brien Wright from the Assistive Technology Project. In today's world assistive devices are critical in the lives of persons with disabilities. Due to technical advancements, assistive devices have greatly improved but they are also very complex and intricate in nature.

Similar to purchasing a car, consumers need to be protected from having to pay for devices with substantial defects. This not only is a waste of dollars but also a loss a personal productivity.

I urge this committee to support SB 628.

H & H.S. Comm.
3-5-96
Attn: #19



A Division of
Mid-America Chapter PVA

SB 628
Assistive Technology Lemon Law Act
Hearing Before
The House Health and Human Services Committee
March 5, 1996

I'm Richard D. Charlton, Sr., Legislative Liaison, for Sunflower Subchapter / Mid -- America Chapter/Paralyzed Veterans of America. All of our members have an injury or disease affecting the spinal column. This generally results in greatly restricted mobility because of to paraplegia or quadraplegia.

We require the use of assistive devices for mobility and/or daily activities. This equipment is critical for our mobility and many times our survival. It is usually very expensive. When we get a piece of equipment that is a lemon, we hope that it will be replaced. This is not always the case. We are a captive audience. An excellent example is the following: one of our members purchased an electric wheelchair in 1984 for \$4,500. Shortly after receiving his wheelchair, he found that the metal frame was defective. The steel pins that support the swing -- out footrests kept falling out. After numerous attempts to have this repaired by the dealer, the individual had to buy a new frame at his own expense. He could not afford to purchase another electric wheelchair but was stuck with the defective chair. Thanks to the persistence of a different dealer, the manufacturer finally replaced the wheelchair six long years later.

We need an assistive device lemon law to protect the buyers of adaptive equipment. Such a law would protect the individual purchaser from being stuck with a bad product. This law would give us the choice of having the equipment replaced or a refund of the purchase price.

H & H.S. Comm.
3-5-96

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