

Approved: 3-6-96  
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on February 13, 1996 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Legislative Research Department  
Norman Furse, Revisor of Statutes  
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Joseph F. Kroll, Director, Bureau of Adult and Child Care, KDHE  
C. Steven Rarrick, Deputy Attorney General, Consumer Protection Div., Office of AG  
Mary Ellen Wright, Assistive Technology for Kansans  
Jim McCune, AARP  
Walter E. Anderson, Leao, consumer  
Jo Pack, Overland Park, consumer  
Jane Rhys, Kansas Council on Developmental Disabilities  
Gina McDonald, Kansas Association of Centers for Independent Living  
Shannon M. Jones, Statewide Independent Living Council of Kansas  
Josie Torrez, Families Together, Inc.  
Tom Young, AARP  
Vicky Martin, Kansas Department on Aging  
Dennis Jackson, Overland Park  
Michael Byington, Wichita Industries and Services for the Blind  
Sherry Dillon, Protective Services

Others attending: See attached list

**Hearing on SB 535-Repeal of certificate of need statutes**

Joe Kroll, KDHE, testified in support of SB 535 which would repeal obsolete statutes that implemented the state certificate of need program for medical care facilities and nursing homes. The program ended on July 1, 1985, because of a "sunset" clause in K.S.A. 65-4822. Mr. Kroll noted that the bill would officially repeal referenced statutes which have not been enforceable since 1985. (Attachment 1)

There were no opponents to SB 535. After Committee discussion, Senator Ramirez made a motion the Committee recommend SB 535 favorably for passage, seconded by Senator Hardenburger. The motion carried.

**Hearing on SB 628- Assistive technology lemon law act**

State Senator Doug Walker testified in support of SB 628 which would establish certain protection for persons who purchase or lease devices that provide assistance for major life activities. The bill replicates the Missouri Assistive Technology Lemon Law and requires manufacturers of assistive technology devices to provide a one-year warranty on all the products they sell in Kansas. Senator Walker also offered an amendment that would allow the Attorney General to intervene if a manufacturer fails to comply with the provisions of the bill instead of submitting the complaint to arbitration as described in the original bill. (Attachment 1)

C. Steven Rarrick, Office of the Attorney General, expressed support for SB 628 and suggested an amendment to the bill by extending the protection provided to the consumers by bringing the bill under the Kansas Consumer Protection Act. Mr. Rarrick also offered other amendments as noted in his written testimony. (Attachment 3)

Mary Ellen Wright, Assistive Technology for Kansans, expressed support for SB 628 and suggested that the bill

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S  
Statehouse, at 10:00 a.m. on February 13, 1996.

be amended to allow an individual to file a complaint with the Attorney General rather than become involved in arbitration. (Attachment 4)

Jim McCune, AARP, also expressed support for **SB 628** as well as the proposed amendment by Senator Walker. (Attachment 5)

The following individuals told of their personal experiences regarding assistive devices and/or support for **SB 628**: Walter E. Anderson, consumer (Attachment 6); Jo Pack, consumer (Attachment 7); Jane Rhys, KCDD (Attachment 8); Gina McDonald, KACIL (Attachment 9); Shannon Jones, SILCK (Attachment 10); Josie Torrez, Families Together, Inc. (Attachment 11); Tom Young, AARP (Attachment 12); Vicky Martin, Kansas Department on Aging (Attachment 13); Dennis Jackson, consumer; Michael Byington, Wichita ISB; and Sherry Dillon, Protective Services.

The Chair noted that staff would draft balloon amendments to the bill for the Committee's consideration.

There were no opponents to the bill.

**Approval of Minutes**

Senator Hardenburger made a motion to approve the Committee minutes of February 6, 7 and 8, 1996, seconded by Senator Walker. The motion carried.

**Adjournment**

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for February 14, 1996.

# SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 2-13-96

| NAME                  | REPRESENTING   |
|-----------------------|--|
| Margellen Orie Wright | assis. Tech. for Kansas  |
| Walter Jackson        | Positive Tech's Region 3   |
| Dennis Jackson        | Topeka independent living  |
| Jim McCann            | AAFP   |
| Sherry Diet           | Kansas Advocacy & Protection <span style="float: right;">vs</span> |
| Josie Torres          | Families Together, Inc.  |
| Thannon Jones         | SILCK  |
| Margie Prussigrew     | Inter Lab, Intern  |
| Gina McDonald         | KACIL  |
| Vicky Martin          | KDOA   |
| Robert Hight          | KS A.G.  |
| Steve Barrick         | A.G.   |
| Wayne C. M. nich      | KC DHH   |
| Rud M. Peter          | T.I.L.R.C.   |
| Coack                 | By KAPS + Coetland Berry   |
| Honey Lindberg        | AG   |
| Rick Smith            | AG   |
| Charley Young         | Via Christi  |
| John Young            | AAFP   |





Department of Health and Environment

James J. O'Connell, Secretary

TESTIMONY PRESENTED TO  
THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE  
BY  
THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

SENATE BILL 535

Thank you for the opportunity to present testimony this morning related to SB 535. This bill proposes repeal of the provisions of K.S.A. 65-4801 through K.S.A. 65-4822.

K.S.A. 65-4801 et seq. is the enabling legislation which implemented the state Certificate of Need (CON) program between 1976 and 1985. This program required medical care facilities and nursing homes to apply for and receive state approval prior to the commencement of new construction, provision of new services, or other significant capital expenditures. The applicant was required to demonstrate the community need for such projects.

K.S.A. 65-4822 includes a "sunset provision" with an effective date of July 1, 1985.

The provisions of K.S.A. 65-4801 to 65-4821 expired effective that date.

Although K.S.A. 65-4801 et seq. is no longer effective due to the "sunset provision," the referenced statutes remain in the statute books. Occasionally, KDHE staff still receive inquiries from out of state health care providers and others seeking clarification related to these CON statutes. Passage of SB 535 would officially repeal referenced statutes which have not been enforceable since 1985.

Presented by: Joseph F. Kroll, Director  
Bureau of Adult and Child Care  
Kansas Department of Health and Environment

Date: February 13, 1996

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

Madam Chair and Members of the Committee:

SB 628 is a bill which replicates the Missouri Assistive Technology Lemon Law. At least seven other states have similar laws.

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 on page 1, lines 16 through 26, and include such things 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 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 sold 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.

The bill needs to be amended to delete all of section 5 on pages 4 and 5 and insert in its place : The Attorney General shall have jurisdiction to enforce this section pursuant to the rights and remedies available under KSA 50-6 23 et seq. This change allows the Attorney General to intervene if a manufacturer fails to comply with the provisions of this bill instead of submitting the complaint to arbitration as described in the original bill.

# ASSISTIVE TECHNOLOGY LEMON LAW FACT SHEET

✓ **It is critical for assistive technology to work correctly.**

*When an assistive technology device is not working, it is more than an inconvenience. It can keep individuals with a disability from working, communicating, or living independently. No device will work forever and routine repair is expected; however, devices that are clearly "lemons" should be replaced.*

✓ **Not all assistive technology has a warranty.**

*While some manufacturers offer a one year warranty and a few even offer multi-year warranties, many do not. For example, a \$4,600 specialized telephone used by a deaf-blind individual comes with only a 90 day warranty; an \$2,500 alternative keyboard used by an individual with significant paralysis also comes with only a 90 day warranty; and a \$2,000 motorized wheelchair adaptation used by an individual who cannot walk comes with only a six month warranty.*

✓ **"Lemon" protection is needed even with a warranty.**

*Some devices are just plain defective. It is not uncommon to hear consumers tell of repeatedly taking devices in for repair, only to have the device continue to malfunction. Such devices are obviously "lemons" and should be replaced through provisions similar to those in automobile lemon laws.*

✓ **Comparison shopping for assistive technology is rarely possible.**

*Assistive technology devices are not mass produced. For instance, if a consumer needs a computerized hearing aid, fit to their hearing loss, only one manufacturer may offer such a device. The device may be distributed by only one entity within driving distance. This consumer cannot shop around and utilize the free market to address the problem of a lemon device. In addition, some devices are funded by third party payors who have only one approved vendor. As a result, the consumer does not have the opportunity to choose their vendor even if more than one exists.*

✓ **Lemon laws protect investments in assistive technology.**

*Many devices are purchased by third party payors and tax dollars such as Vocational Rehabilitation, Medicaid, and employer health benefit plans. Lemons bought with these dollars obviously waste money on the initial purchase. This dollar waste is multiplied by the loss of personal productivity, missed workdays, expenditure of staff time to acquire a non-functioning device, need for public assistance in lieu of a functioning device and so on.*

✓ **Assistive technology lemon laws are working in other states.**

*Georgia, Louisiana, Maryland, New York, Wisconsin, California and Washington have assistive technology lemon laws which have not resulted in frivolous complaints or undue hardship on vendors. Lemon laws are a positive way to protect both consumers and quality businesses.*





CARLA J. STOVALL  
ATTORNEY GENERAL

State of Kansas

## Office of the Attorney General

CONSUMER PROTECTION DIVISION

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Testimony of

C. Steven Rarrick, Deputy Attorney General

Consumer Protection Division

Office of Attorney General Carla J. Stovall

Before the Senate Public Health & Welfare Committee

RE: SB 628

February 13, 1996

Chairperson Praeger 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. 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, I am asking you to not only consider the concept as outlined in this bill, but to extend the protection provided these consumers by amending it to bring it under the Kansas Consumer Protection Act. If you pass this bill with the amendments suggested, you would be allowing the protections in this bill to be enforced by the Attorney General similar to our enforcement of the Lemon Law for automobiles.

Not only would I ask that you consider strengthening the bill by giving the Attorney General the power to enforce, but I would also encourage you to keep the arbitration provision (optional for the consumer, not the manufacturer). Optional arbitration would seem to be a valuable consideration to be included in the act because persons with defective assistive devices may need a quick resolution of these matters.

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The following are our suggested amendments to strengthen the bill:

1. P. 2, line 29, last word should read "*alteration*," not "alternation."
2. P. 3, line 5, should read "impairs the '*use*' and/or value," not "impairs the value."
3. P. 3, line 42, should read "plus the assistive '*device*' dealer's early termination costs," not "assistive dealer's early termination costs."
4. P. 4, line 41, should read "state unless full '*written*' disclosure," not "full disclosure."
5. P. 4, line 42, should be "buyer '*or*' lessee," not "buyer '*of*' lessee."
6. Add the following at page 5, line 18, New Section 7:

*(a) This act shall be part of and supplemental to the Kansas consumer protection act.*

*(b) Any failure to comply with the provisions and/or requirements of this act is a deceptive and/or unconscionable act or practice within the meaning of K.S.A. 50-626 and K.S.A. 50-627 and amendments thereto.*

*(c) The attorney general shall have jurisdiction to enforce this section in the event the consumer elects not to pursue violations of this act through arbitration or private action.*

*(d) Nothing in this act shall in any way limit or affect the rights or remedies which are otherwise available to a consumer under the uniform consumer credit code, or to any person under the uniform commercial code, or to any person under this or any other law, statutory or otherwise.*

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



Assitive  
Technology  
For  
Kansans

A Project  
Coordinated 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 SENATE PUBLIC HEALTH AND WELFARE COMMITTEE  
REGARDING SENATE BILL 628  
PROVIDED BY MARY ELLEN O'BRIEN WRIGHT  
ASSISTIVE TECHNOLOGY FOR KANSANS  
FEBRUARY 13, 1996

I represent Assitive 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.

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 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.

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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.

We have asked that the bill be amended to allow an individual to file a complaint with the Attorney General, rather than become involved in arbitration. Our reason for this is because of our concern that arbitration could prove too costly for people who have disabilities, their families, or people who are elderly. Traditionally, many of these individuals are on limited incomes and would not be able to afford lawyers fees, court fees, etc.

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.

Thank you for your time and consideration.



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

KANSAS STATE LEGISLATIVE COMMITTEE

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Hays, KS 67601  
(913) 625-6680

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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. 628

Thank you.

Honorable Senators

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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 Leaon , 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.

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. 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 limited warranty" In Compliance With The Federal Law Applicable 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

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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 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 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 with 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 unconvienced, but be out the money for a service call.

The rear tans-axle also has a protective cover called a shroud..this was never properly installed on the scooter, by 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 had to be ordered and payed for at my expense.

The scooter as best as I can remember has been re-called one

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or two times by the Mfg. for replacement of the spring mechanism controlling the braking system. 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 Technology 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 this scooter, hearing aids, special glasses, cane and the like, 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-conviencie a 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 oppportunity to speak before you today.



WRITTEN STATEMENT OF JO PACK

My name is Jo Pack. I live in Overland Park, Kansas, and I suffer from post polio syndrome. I have multiple physical problems, including those stemming from polio. Three years ago I found myself unable to stand on my own and my doctor prescribed a wheelchair for me. This first wheelchair was unwieldy and difficult to maneuver because of its size. Because I had difficulty using this wheelchair, my doctor thought it best if I obtained a "Hemy" chair. This is a wheelchair built to "spec." It is lighter and would enable me to move around easier and faster. It would also allow me to move with my feet. With the help of a non-profit agency called Whole Person I was able to find such a chair. The manufacturer was Invacare. It manufactured the Action wheelchair which could be built to "spec." The Action chair which you see me in today was touted as being a superlite wheelchair with great flexibility, comfort and use. It had add on accessories, could be customized for my personal use, and appeared to be just what the doctor ordered.

Because of the spenddown amount, medicaid would not pay for the Action chair and I had to use private insurance. The cost of the chair was \$2,262.59. Because of the need for good seating in the chair, I had to be measured by a seating evaluator. The seating evaluator did not properly measure me for the chair, which I did not find out until its arrival in December of 1994. The result was that the wheelchair never allowed my feet to touch the floor and I found myself falling forward. The Action chair required a cushion and the seating evaluator did not take this

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into account when taking measurements. After this was found out, the seating evaluator refused to have anything to do with correcting the problem.

The main problem, however, is with the manufacturer and the local dealer in Lenexa, Kansas. The design of the chair is terrible. Unlike most wheelchairs, there is no way to fold the Action wheelchair, which makes it difficult to handle in transporting the chair. The quick release axle cannot be locked in place securely and for some unknown reason pushes the right wheel out so much that it appears ready to pop off. The wheelcasters won't correct themselves because they are not set at the right angle. The inability of the wheelcasters to straighten themselves causes me to go sideways when I want to go straight. I have found myself at times going around in a circle.

Furthermore, the flip-up footplate and leg rest is poorly constructed. The left one completely fell apart after three months of use.

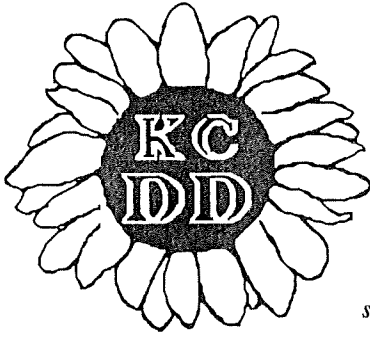
The dealer should bear a significant part of the blame for the problems I have experienced with this chair. The seat cushion and lumbar pad were never provided with the chair when it was brought to my home. Without the cushion I cannot sit comfortably in the chair. In fact, I have to constantly guard against sliding out because of the nylon construction. Without the lumbar pad, I cannot sit back in the chair. There is simply nothing solid there to support my back. The manufacturer should have known this and the dealer knew it.

The dealer had a man bring the chair out who knew nothing

about it or how to put it together. He had absolutely no knowledge of how the chair went together, how the accessories fit, or what items were missing. The anti-tip locks were missing. Because of this, I have taken more spills than I care to remember due to the wheelchair tipping over backwards. The wheelchair also lacked spoke protectors and I am continually getting my fingers caught in the wheel spokes. Also the push to lock wheel lock is not the lock I ordered. I wanted a pull to lock wheel lock. The way it is now, the wheel is always being locked by the forward motion of my hand. I also ordered and paid for a tray which was never provided.

I have made numerous contacts with the dealer who has refused to supply the tray, spoke protectors, anti-tip locks, or any of the other items. To make matters worse, the dealer told the manufacturer's representative and the seating evaluator that my problems with the Action chair were remedied. This is absolutely not true.

Now I need a better wheelchair than Invacare can give me. I no longer have the strength to manually maneuver in a regular wheelchair. I need a motorized wheelchair. The arthritic and degenerative condition of my back, knees and legs have worsened from my use of this defective chair, which continues to lack essential parts. I cannot afford another wheelchair. I no longer have private insurance and I cannot obtain assistance from Medicaid because of the spenddown. I feel that the seating evaluator, the manufacturer and the dealer are responsible for my plight. They have done nothing to remedy the situation.



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

### **PUBLIC HEALTH AND WELFARE**

**FEBRUARY 13, 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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This bill will protect those individuals' money, or in some cases, the state's money which is used to purchase these devices. We urge you to pass this bill to protect the rights of those who need such devices. Thank you for the opportunity of testifying and I would be happy to answer any questions you may have.

Jane Rhys, Executive Director  
Kansas Council on Developmental Disabilities  
Docking State Office Building, Room 141  
915 SW Harrison  
Topeka, KS 66612-1570  
913 296-2608



**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:  
Senate Committee on  
Public Health and Welfare  
Senator Praeger, Chair  
February 13, 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 a 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, I would be happy to stand for questions.

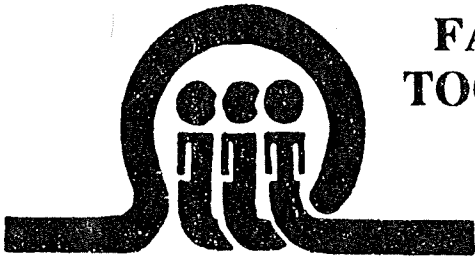
**Testimony Presented to  
Senate Public Health and Welfare Committee  
Regarding SB 628  
by  
Statewide Independent Living Council of Kansas  
Shannon M. Jones  
February 13, 1996**

Good morning. 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.



**FAMILIES  
TOGETHER,  
INC.**

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\* 501 Jackson, Suite 400  
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(913) 233-4787 FAX  
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in Kansas for parents

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**ASSISTING FAMILIES THAT INCLUDE A CHILD WITH A DISABILITY**

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To: Senate Public Health & Welfare Committee  
From: Josie Torrez, Families Together, Inc.  
Date: February 13, 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.

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

Senate Public Health and Welfare  
Date: 2-13-96  
Attachment No. 12

Testimony to the  
Committee on Public Health and Welfare  
By Vicky Martin, Kansas Department on Aging  
February 13, 1996

Good morning, I am Vicky Martin, Kansas Department on Aging.

I am pleased to have this opportunity to present testimony in support of Senate Bill 628 as amended by Kansas Association of Centers for Independent Living (KACIL).

Many older Kansans rely on assistive technology to access the world in which they live. They might not call it assistive technology, but would probably tell you that they use a wheelchair, have hearing aides or a volume control on their telephone.

Assistive technology devices allow more independence by providing mobility in going to a doctor appointment, grocery store or other personal appointments. For some persons it will also make a difference in whether they hear or not hear what their doctor, care giver, or granddaughter says to them. Assistive devices are critical in the lives of many older Kansans, in their work, family relations, medical needs, friendships and cultural pursuits, In fact, every facet of their lives.

Some assistive devices fail to work as advertised or malfunction and adequate repair or replacement is not forthcoming. The name lemon is indeed appropriate for a device that has had four unsuccessful repair attempts.

All consumers expect value for their money and governmental agencies should be as concerned to receive value for any public dollars spent on assistive technology products. SB 628 will assist in accountability and value for both public and private dollars.

The Department on Aging supports the provisions of SB 628, and asks that Kansas joins the 12 other states with assistive device lemon laws.

Thank you for your attention.

Senate Public Health and Welfare  
Date: 2-13-96  
Attachment No. 13