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WHEELCHAIR "LEMON" LAW

House Bill 5095 as introduced
First Analysis (12-2-93)

Sponsor: Rep. H. Lynn Jondahl
Committee: Consumers

THE APPARENT PROBLEM:

In 1986 the Michigan legislature enacted its so-called "auto lemon law" (Public Act 87 of 1986), under which manufacturers of defective vehicles are required to either replace a defective vehicle or refund its full purchase price if the manufacturer fails, after a reasonable number of attempts, to repair the defect. Some people suggest that a similar approach to wheelchairs also is needed.

THE CONTENT OF THE BILL:

The bill would create a new act to regulate the selling and leasing of wheelchairs, to require manufacturers to provide express warranties for at least a year, and to require wheelchair manufacturers to replace, repair, or refund the purchase price (or leasing costs) of wheelchairs with substantial defects.

Express warranties. The bill would require manufacturers who sold wheelchairs to consumers (either directly or through a dealer) to give the consumer an express warranty effective for at least one year from the date of delivery. If a manufacturer failed to provide the required express warranty, the wheelchair still would be covered by an express warranty as if the manufacturer had provided the required warranty.

Replacement of or refund for defective wheelchairs. Manufacturers would be required to repair "nonconformities" -- conditions or defects that substantially impaired the use, value, or safety of the wheelchair and that fell under its warranty -- if a consumer reported the nonconformity and returned the chair for repairs within a year after the chair's delivery date. ("Nonconformities" wouldn't include conditions or defects resulting from abuse, neglect, or unauthorized modification of the chair by the consumer.) If, after a "reasonable attempt," a manufacturer couldn't repair a wheelchair, the manufacturer would be required (a) to replace (or refund the purchase price of) wheelchairs that had

been bought by the consumer or (b) to refund the lease. (A "reasonable attempt" would mean either that the chair was out of service for a total of 30 days or that attempts were made to repair the same defect at least four times.)

Replacement wheelchairs would have to be "comparable" to the chair being replaced. Refunds would have to include "collateral costs," that is, expenses that a consumer incurred in connection with the attempted repairs (including the costs of obtaining an alternative wheelchair or other device to help the consumer to remain mobile), minus a reasonable allowance for use (which couldn't be more than the amount obtained by multiplying the full purchase price of the chair by a fraction, specified in the bill, that included the number of days the wheelchair was driven before the nonconformity was reported). Refunds for leased chairs would be to both the lessor and the lessee: the manufacturer would have to give the lessor the current value of the written lease, and the consumer the amount he or she paid under the lease. (The current value of a written lease would equal the total amount owed by the consumer during the remainder of the lease, plus the dealer's early termination costs and the value of the chair when the lease would have expired, minus the lessor's early termination savings.)

To receive replacement wheelchairs or refunds, a consumer would have to offer to transfer (in the case of purchased chairs) or return (in the case of leased chairs) the defective wheelchair to the manufacturer. The manufacturer then would have 30 days (from the time of the offer) to replace the defective wheelchair or provide the refund. When the manufacturer replaced the chair or provided the refund to the consumer, he or she would have to transfer or return the defective wheelchair to the manufacturer. Those leasing defective wheelchairs also would have to offer to return the wheelchair to the manufacturer, who also would have 30 days to provide the refund.

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Sale or lease of defective wheelchairs returned to manufacturers. Wheelchairs returned to manufacturers under the bill or under similar laws in other states couldn't be sold or leased again in Michigan without full disclosure of the reason for the chair's return.

Other provisions. The bill would specify that it didn't limit a consumer's rights or remedies under any other state laws, and would allow consumers, in addition to pursuing any other remedies, to sue to recover for damages caused by violations of the bill's provisions. (Successful suits would be awarded twice the amount of any pecuniary loss plus costs and reasonable attorney fees.)

The bill also would void any waiver of rights under the bill by a consumer.

FISCAL IMPLICATIONS:

Fiscal information is unavailable.

ARGUMENTS:

For:

In 1992, Wisconsin passed a "wheelchair lemon law" patterned after that state's auto lemon law. The law entitles those who buy new motorized wheelchairs (or scooters) to a refund or replacement if the manufacturer (or its authorized dealer) fails to repair a substantial defect after at least four tries or if the defect keeps the chair out of service for 30 days. Since many motorized wheelchairs or scooters can cost as much as \$15,000, people who buy wheelchairs make a substantial investment, and when that investment doesn't work, the result is not only expensive financially but personally as well. As one worker who uses a wheelchair commented, when her wheelchair works, she works, and when it doesn't she doesn't. According to figures from the Michigan Chapter of the Paralyzed Veterans of America, there are 400,000 power scooters and between 100,000 to 150,000 motorized wheelchairs in service nationally. (Motorized wheelchairs and scooters are generally used by people with relatively more severe degrees of disability than people who use nonmotorized chairs.) The National Paralyzed Veterans of America estimates that approximately 500,000 wheelchairs are sold nationally every year, with 60 percent being sold to hospitals, nursing homes, and other such institutions, and the rest, presumably, to individuals.

There are cases where wheelchair users and their families are severely affected by "lemon" wheelchairs. According to a story in a newsletter for people with disabilities, one family in Muskegon struggled with a defective \$7,000 wheelchair for five years (while their 11-year-old son outgrew the chair), estimating that their son was able to use the wheelchair for only five months of the five years. The wheelchair came with only a 90-day limited manufacturer's warranty, broke down within weeks after the family bought it, and was in for repeated repairs from that time on. Even when medical supply distributors offer "loaners" while repairs are being made on the user's wheelchair the use of the loaner can significantly limit the activities the customer can perform while waiting for his or her wheelchair to be repaired. For, unlike automobiles, privately purchased wheelchairs are custom-fitted for the buyer's personal needs, taking into consideration the extent of his or her disability, posture, agility, and abilities. It also is essential that the wheelchair "fit" its occupant in order to avoid further physical problems such as scoliosis (curvature of the spine), pressure sores, and arthritis.

There should be more protection for people who buy wheelchairs than currently exists. The bill would provide such protection, and would go even beyond the scope of the Wisconsin law (on which it is patterned) by covering not only motorized wheelchairs but manually-propelled wheelchairs as well. Reportedly Wisconsin is the first state to pass such a law and other states are considering doing the same. Michigan should be next.

POSITIONS:

The Michigan Council for Independent Living strongly supports the bill. (12-1-93)

The Arc Michigan (a developmental disabilities advocacy group) supports the bill. (12-1-93)

The Michigan Chapter of the Paralyzed Veterans of America supports the bill. (11-30-93)