



HOUSE BILL No. 5095

October 12, 1993, Introduced by Reps. Jondahl, Rivers, Byrum, Dalman, Joe Young, Jr., Brown, Baade, Willard, Gubow, Schroer, Jaye, Gire, Scott, Pitoniak, DeMars, Dobronski and Wallace and referred to the Committee on Consumers.

A bill to regulate the selling and leasing of wheelchairs; to require the manufacturer to provide an express warranty; and to provide for remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Collateral costs" means expenses incurred by a consumer
3 in connection with the repair of a nonconformity in a wheelchair,
4 including the costs of obtaining an alternative wheelchair or
5 other assistive device for mobility.

6 (b) "Consumer" means any of the following:

7 (i) The purchaser of a wheelchair, if the wheelchair was
8 purchased from a wheelchair dealer or manufacturer for purposes
9 other than resale.

1 (ii) A person to whom the wheelchair is transferred for
2 purposes other than resale, if the transfer occurs before the
3 expiration of an express warranty applicable to the wheelchair.

4 (iii) A person who may enforce the warranty.

5 (iv) A person who leases a wheelchair from a wheelchair
6 lessor under a written lease.

7 (c) "Demonstrator" means a wheelchair used primarily for the
8 purpose of demonstration to the public.

9 (d) "Early termination cost" means an expense or obligation
10 that a wheelchair lessor incurs as a result of both the termina-
11 tion of a written lease before the termination date of the lease
12 and the return of a wheelchair to a manufacturer under section
13 3. Early termination cost includes a penalty for prepayment
14 under a finance arrangement.

15 (e) "Early termination savings" means an expense or obliga-
16 tion that a wheelchair lessor avoids as a result of both the ter-
17 mination of a written lease before the termination date of the
18 lease and the return of a wheelchair to a manufacturer under sec-
19 tion 3. Early termination savings include an interest charge
20 that the wheelchair lessor would have paid to finance the wheel-
21 chair or, if the wheelchair lessor does not finance the wheel-
22 chair, the difference between the total amount for which the
23 lease obligates the consumer during the period of the lease term
24 remaining after the early termination and the present value of
25 that amount at the date of the early termination.

26 (f) "Manufacturer" means a person who manufactures or
27 assembles wheelchairs and agents of that person, including an

1 importer, a distributor, factory branch, distributor branch, and
2 any warrantors of the manufacturer's wheelchairs, but does not
3 include a wheelchair dealer.

4 (g) "Nonconformity" means a condition or defect that sub-
5 stantially impairs the use, value, or safety of a wheelchair and
6 that is covered by an express warranty applicable to the wheel-
7 chair or to a component of the wheelchair, but does not include a
8 condition or defect that is the result of abuse, neglect, or
9 unauthorized modification or alteration of the wheelchair by a
10 consumer.

11 (h) "Reasonable attempt to repair" means either or both of
12 the following occurring within the term of an express warranty
13 applicable to a new wheelchair or within 1 year after first
14 delivery of the wheelchair to a consumer, whichever is sooner:

15 (i) The same nonconformity is subject to repair at least 4
16 times by the manufacturer, wheelchair lessor, or any of the
17 manufacturer's authorized wheelchair dealers.

18 (ii) The wheelchair is out of service for an aggregate of at
19 least 30 days.

20 (i) "Wheelchair" means a chair mounted on wheels.

21 (j) "Wheelchair dealer" means a person who is in the busi-
22 ness of selling wheelchairs.

23 (k) "Wheelchair lessor" means a person who leases a wheel-
24 chair to a consumer, or who holds the lessor's rights under a
25 written lease.

26 Sec. 2. (1) A manufacturer who sells a wheelchair to a
27 consumer, either directly or through a wheelchair dealer, shall

1 furnish the consumer with an express warranty for the
2 wheelchair. The duration of the express warranty shall be not
3 less than 1 year after first delivery of the wheelchair to the
4 consumer.

5 (2) If a manufacturer fails to furnish an express warranty
6 as required by this section, the wheelchair shall be covered by
7 an express warranty as if the manufacturer had furnished an
8 express warranty to the consumer as required by this section.

9 Sec. 3. (1) If a new wheelchair does not conform to an
10 applicable express warranty and the consumer reports the noncon-
11 formity to the manufacturer, the wheelchair lessor, or any of the
12 manufacturer's authorized wheelchair dealers and makes the wheel-
13 chair available for repair before 1 year after first delivery of
14 the wheelchair to a consumer, the nonconformity shall be repaired
15 as required by this act.

16 (2) If after a reasonable attempt to repair the nonconform-
17 ity is not repaired, the manufacturer shall do 1 of the
18 following:

19 (a) If the wheelchair was purchased, at the direction of a
20 consumer do 1 of the following:

21 (i) Accept return of the wheelchair and replace the wheel-
22 chair with a comparable new wheelchair and refund any collateral
23 costs.

24 (ii) Accept return of the wheelchair and refund to the con-
25 sumer and to any holder of a perfected security interest in the
26 consumer's wheelchair the full purchase price plus any finance
27 charge, the amount paid by the consumer at the point of sale and

1 collateral costs, less a reasonable allowance for use. A
2 reasonable allowance for use shall not exceed the amount obtained
3 by multiplying the full purchase price of the wheelchair by a
4 fraction, the denominator of which is 1,825 and the numerator of
5 which is the number of days that the wheelchair was driven before
6 the consumer first reported the nonconformity to the wheelchair
7 dealer.

8 (b) If the wheelchair is leased, accept return of the wheel-
9 chair, refund to the wheelchair lessor and to any holder of a
10 perfected security interest in the wheelchair the current value
11 of the written lease and refund to the consumer the amount that
12 the consumer paid under the written lease plus any collateral
13 costs, less a reasonable allowance for use. The current value of
14 the written lease equals the total amount for which that lease
15 obligates the consumer during the period of the lease remaining
16 after its early termination, plus the wheelchair dealer's early
17 termination costs and the value of the wheelchair at the lease
18 expiration date if the lease sets forth that value, less the
19 wheelchair lessor's early termination savings. A reasonable
20 allowance for use shall not exceed the amount obtained by multi-
21 plying the total amount for which the written lease obligates the
22 consumer by a fraction, the denominator of which is 1,825 and the
23 numerator of which is the number of days that the consumer drove
24 the wheelchair before first reporting the nonconformity to the
25 manufacturer, wheelchair lessor, or wheelchair dealer.

26 Sec. 4. (1) To receive a comparable new wheelchair or a
27 refund, a consumer of a purchased wheelchair shall first offer to

1 the manufacturer of the wheelchair having the nonconformity the
2 transfer of that wheelchair to the manufacturer.

3 (2) Not later than 30 days after the offer described in
4 subsection (1), the manufacturer shall provide the consumer with
5 the comparable new wheelchair or refund.

6 (3) When the manufacturer provides the new wheelchair or
7 refund, the consumer shall return the wheelchair having the non-
8 conformity to the manufacturer, along with any endorsements nec-
9 essary to transfer possession to the manufacturer.

10 Sec. 5. (1) To receive a refund due on a leased wheelchair,
11 a consumer shall offer to return the wheelchair having the non-
12 conformity to its manufacturer.

13 (2) Not later than 30 days after the offer described in
14 subsection (1), the manufacturer shall provide the refund to the
15 consumer.

16 (3) When the manufacturer provides the refund, the consumer
17 shall return to the manufacturer the wheelchair having the
18 nonconformity.

19 (4) A wheelchair lessor shall offer to transfer possession
20 of the wheelchair having the nonconformity to its manufacturer.
21 Not later than 30 days after that offer, the manufacturer shall
22 provide the refund to the wheelchair lessor. When the manufac-
23 turer provides the refund, the wheelchair lessor shall provide to
24 the manufacturer any endorsements necessary to transfer posses-
25 sion to the manufacturer.

26 Sec. 6. A wheelchair returned by a consumer in this state
27 under this act, or by a consumer in another state under a similar

1 law of that state, shall not be sold or leased again in this
2 state unless full disclosure of the reasons for return is made to
3 the prospective buyer or lessee.

4 Sec. 7. (1) This act does not limit the rights or remedies
5 available to a consumer under any other statute of this state.

6 (2) A waiver by a consumer of rights under this act is
7 void.

8 (3) In addition to pursuing any other remedy, a consumer may
9 bring an action to recover for damages caused by a violation of
10 this section. The court shall award a consumer who prevails in
11 such an action twice the amount of any pecuniary loss, together
12 with costs and reasonable attorney fees.