

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1519 Session of
1993

INTRODUCED BY LAUB, PESCI, BAKER, FARMER, MASLAND, FICHTER,
FARGO, KUKOVICH, KING, KASUNIC, DURHAM, STERN, TRELLO,
JAROLIN, RAYMOND, GEIST, BELARDI, TOMLINSON, OLASZ, BELFANTI,
SAURMAN AND E. Z. TAYLOR, MAY 5, 1993

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MAY 5, 1993

AN ACT

1 Providing for express warranties for motorized wheelchairs.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Motorized
6 Wheelchair Warranty Act.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Collateral costs." Expenses incurred by a consumer in
12 connection with the repair of a nonconformity, including the
13 costs of obtaining an alternative wheelchair or other assistive
14 device for mobility.

15 "Consumer." Any of the following:

16 (1) The purchaser of a motorized wheelchair, if the

1 motorized wheelchair was purchased from a motorized
2 wheelchair dealer or manufacturer for purposes other than
3 resale.

4 (2) A person to whom the motorized wheelchair is
5 transferred for purposes other than resale, if the transfer
6 occurs before the expiration of an express warranty
7 applicable to the motorized wheelchair.

8 (3) A person who may enforce the warranty.

9 (4) A person who leases a motorized wheelchair from a
10 motorized wheelchair lessor under a written lease.

11 "Demonstrator." A motorized wheelchair used primarily for
12 the purpose of demonstration to the public.

13 "Early termination cost." Any expense or obligation that a
14 motorized wheelchair lessor incurs as a result of both the
15 termination of a written lease before the termination date set
16 forth in that lease and the return of a motorized wheelchair to
17 a manufacturer under section 4(b)(2). The term includes a
18 penalty for prepayment under a finance arrangement.

19 "Early termination savings." Any expense or obligation that
20 a motorized wheelchair lessor avoids as a result of both the
21 termination of a written lease before the termination date set
22 forth in that lease and the return of a motorized wheelchair to
23 a manufacturer under section 4(b)(2). The term includes an
24 interest charge that the motorized wheelchair lessor would have
25 paid to finance the motorized wheelchair or, if the motorized
26 wheelchair lessor does not finance the motorized wheelchair, the
27 difference between the total amount for which the lease
28 obligates the consumer during the period of the lease term
29 remaining after the early termination and the present value of
30 that amount at the date of the early termination.

1 "Manufacturer." A person who manufactures or assembles
2 motorized wheelchairs and agents of that person, including an
3 importer, a distributor, factory branch, distributor branch and
4 any warrantors of the manufacturer's motorized wheelchairs, but
5 does not include a motorized wheelchair dealer.

6 "Motorized wheelchair." Any motor-driven wheelchair or cart,
7 including a demonstrator, that a consumer purchases or accepts
8 transfer of in this Commonwealth.

9 "Motorized wheelchair dealer." A person who is in the
10 business of selling motorized wheelchairs.

11 "Motorized wheelchair lessor." A person who leases a
12 motorized wheelchair to a consumer, or who holds the lessor's
13 rights, under a written lease.

14 "Nonconformity." A condition or defect that substantially
15 impairs the use, value or safety of a motorized wheelchair and
16 that is covered by an express warranty applicable to the
17 motorized wheelchair or to a component of the motorized
18 wheelchair, but does not include a condition or defect that is
19 the result of abuse, neglect or unauthorized modification or
20 alteration of the motorized wheelchair by a consumer.

21 "Reasonably attempt to repair." Any of the following
22 occurring within the term of an express warranty applicable to a
23 new motorized wheelchair or within one year after first delivery
24 of the motorized wheelchair to a consumer, whichever is sooner:

25 (1) The same nonconformity with the warranty is subject
26 to repair by the manufacturer, motorized wheelchair lessor or
27 any of the manufacturer's authorized motorized wheelchair
28 dealers at least four times and the nonconformity continues.

29 (2) The motorized wheelchair is out of service for an
30 aggregate of at least 30 days because of warranty

1 nonconformities.

2 Section 3. Express warranty provision.

3 A manufacturer who sells a motorized wheelchair to a
4 consumer, either directly or through a motorized wheelchair
5 dealer, shall furnish the consumer with an express warranty for
6 the motorized wheelchair. The duration of the express warranty
7 shall be not less than one year after first delivery of the
8 motorized wheelchair to the consumer. If a manufacturer fails to
9 furnish an express warranty as required by this act, the
10 motorized wheelchair shall be covered by an express warranty as
11 if the manufacturer had furnished an express warranty to the
12 consumer as required by this act.

13 Section 4. Nonconformities.

14 (a) General rule.--If a new motorized wheelchair does not
15 conform to an applicable express warranty and the consumer
16 reports the nonconformity to the manufacturer, the motorized
17 wheelchair lessor or any of the manufacturer's authorized
18 motorized wheelchair dealers and makes the motorized wheelchair
19 available for repair before one year after first delivery of the
20 motorized wheelchair to a consumer, the nonconformity shall be
21 repaired.

22 (b) Duties of manufacturer.--If, after a reasonable attempt
23 to repair, the nonconformity is not repaired, the manufacturer
24 shall carry out the requirements of one of the following:

25 (1) At the direction of a "consumer" as defined in
26 section 2(1), (2) or (3), do one of the following:

27 (i) Accept return of the motorized wheelchair and
28 replace the motorized wheelchair with a comparable new
29 motorized wheelchair and refund any collateral costs.

30 (ii) Accept return of the motorized wheelchair and

1 refund to the consumer and to any holder of a perfected
2 security interest in the consumer's motorized wheelchair,
3 as their interest may appear, the full purchase price
4 plus any finance charge, amount paid by the consumer at
5 the point of sale and collateral costs, less a reasonable
6 allowance for use. Under this subparagraph, a reasonable
7 allowance for use may not exceed the amount obtained by
8 multiplying the full purchase price of the motorized
9 wheelchair by a fraction, the denominator of which is
10 1,825 and the numerator of which is the number of days
11 that the motorized wheelchair was driven before the
12 consumer first reported the nonconformity to the
13 motorized wheelchair dealer.

14 (2) With respect to a "consumer" as defined in section
15 2(4), accept return of the motorized wheelchair, refund to
16 the motorized wheelchair lessor and to any holder of a
17 perfected security interest in the motorized wheelchair, as
18 their interest may appear, the current value of the written
19 lease and refund to the consumer the amount that the consumer
20 paid under the written lease plus any collateral costs, less
21 a reasonable allowance for use.

22 (c) Lease provisions.--

23 (1) The current value of the written lease equals the
24 total amount for which that lease obligates the consumer
25 during the period of the lease remaining after its early
26 termination, plus the motorized wheelchair dealer's early
27 termination costs and the value of the motorized wheelchair
28 at the lease expiration date if the lease sets forth that
29 value, less the motorized wheelchair lessor's early
30 termination savings.

1 (2) A reasonable allowance for use may not exceed the
2 amount obtained by multiplying the total amount for which the
3 written lease obligates the consumer by a fraction, the
4 denominator of which is 1,825 and the numerator of which is
5 the number of days that the consumer drove the motorized
6 wheelchair before first reporting the nonconformity to the
7 manufacturer, motorized wheelchair lessor or motorized
8 wheelchair dealer.

9 (d) Remedies.--

10 (1) To receive a comparable new motorized wheelchair or
11 a refund due under subsection (b)(1), a consumer shall offer
12 to the manufacturer of the motorized wheelchair having the
13 nonconformity to transfer possession of that motorized
14 wheelchair to that manufacturer. No later than 30 days after
15 that offer, the manufacturer shall provide the consumer with
16 the comparable new motorized wheelchair or refund. When the
17 manufacturer provides the new motorized wheelchair or refund,
18 the consumer shall return the motorized wheelchair having the
19 nonconformity to the manufacturer, along with any
20 endorsements necessary to transfer real possession to the
21 manufacturer.

22 (2) To receive a refund due under subsection (b)(2), a
23 consumer shall offer to return the motorized wheelchair
24 having the nonconformity to its manufacturer. No later than
25 30 days after that offer, the manufacturer shall provide the
26 refund to the consumer. When the manufacturer provides the
27 refund, the consumer shall return to the manufacturer the
28 motorized wheelchair having the nonconformity.

29 (3) To receive a refund due under subsection (b)(2), a
30 motorized wheelchair lessor shall offer to transfer

possession of the motorized wheelchair having the nonconformity to its manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the motorized wheelchair lessor. When the manufacturer provides the refund, the motorized wheelchair lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

(4) No person may enforce the lease against the consumer after the consumer receives a refund due under subsection (b)(2).

(e) Returned motorized wheelchair provision.--No motorized wheelchair returned by a consumer or motorized wheelchair lessor in this Commonwealth under subsection (b), or by a consumer or motorized wheelchair lessor in another state under a similar law of that state, may be sold or leased again in this Commonwealth unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

Section 5. Limitation.

This section does not limit rights or remedies available to a consumer under any other law.

Section 6. Waiver invalid.

Any waiver by a consumer of rights under this section is void.

Section 7. Damage action.

In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages cause by a violation of this section. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief that the court determines is

- 1 appropriate.
- 2 Section 8. Effective date.
- 3 This act shall take effect in 60 days.