



HOUSE BILL No. 5575

May 24 1994 Introduced by Reps Alley Middaugh Freeman Martinez DeMars
Agee Tesanovich Randall Mathieu and Byrum and referred to the Committee on Consumers

A bill to regulate the selling and leasing of motorized
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 motorized
4 wheelchair, including the costs of obtaining an alternative
5 wheelchair or other assistive device for mobility

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

7 (1) The purchaser of a motorized wheelchair if the motor-
8 ized wheelchair was purchased from a motorized wheelchair dealer
9 or manufacturer for purposes other than resale

10 (2) A person to whom the motorized wheelchair is
11 transferred for purposes other than resale, if the transfer

1 occurs before the expiration of an express warranty applicable to
2 the motorized wheelchair

3 (ii) A person who may enforce the warranty

4 (iv) A person who leases a motorized wheelchair from a
5 motorized wheelchair lessor under a written lease

6 (c) Demonstrator means a motorized wheelchair used primar-
7 ily for the purpose of demonstration to the public

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

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

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

1 including an importer a distributor factory branch distributor
 2 branch, and any warrantors of the manufacturer's motorized wheel-
 3 chairs, but does not include a motorized wheelchair dealer

4 (g) Motorized wheelchair' means any motor-driven wheel-
 5 chair, including a demonstrator

6 (h) "Motorized wheelchair dealer means a person who is in
 7 the business of selling motorized wheelchairs

8 (i) Motorized wheelchair lessor means a person who leases
 9 a motorized wheelchair to a consumer or who holds the lessor's
 10 rights under a written lease

11 (j) Nonconformity" means a condition or defect that sub-
 12 stantially impairs the use value, or safety of a motorized
 13 wheelchair and that is covered by an express warranty applicable
 14 to the motorized wheelchair or to a component of the motorized
 15 wheelchair, but does not include a condition or defect that is
 16 the result of abuse, neglect, or unauthorized modification or
 17 alteration of the motorized wheelchair by a consumer

18 (k) 'Reasonable attempt to repair means either or both of
 19 the following occurring within the term of an express warranty
 20 applicable to a new motorized wheelchair or within 1 year after
 21 first delivery of the motorized wheelchair to a consumer which-
 22 ever is sooner

23 (1) The same nonconformity is subject to repair at least 4
 24 times by the manufacturer, motorized wheelchair lessor, or any of
 25 the manufacturer's authorized motorized wheelchair dealers

26 (11) The motorized wheelchair is out of service for an
 27 aggregate of at least 30 days

1 Sec 2 (1) A manufacturer who sells a motorized wheelchair
2 to a consumer either directly or through a motorized wheelchair
3 dealer shall furnish the consumer with an express warranty for
4 the motorized wheelchair. The duration of the express warranty
5 shall be not less than 1 year after first delivery of the motor-
6 ized wheelchair to the consumer.

7 (2) If a manufacturer fails to furnish an express warranty
8 as required by this section, the motorized wheelchair shall be
9 covered by an express warranty as if the manufacturer had fur-
10 nished an express warranty to the consumer as required by this
11 section.

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

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

23 (a) If the motorized wheelchair was purchased, at the direc-
24 tion of a consumer do 1 of the following:

25 (1) Accept return of the motorized wheelchair and replace
26 the motorized wheelchair with a comparable new motorized
27 wheelchair and refund any collateral costs.

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

12 (b) If the motorized wheelchair is leased, accept return of
13 the motorized wheelchair, refund to the motorized wheelchair
14 lessor and to any holder of a perfected security interest in the
15 motorized wheelchair the current value of the written lease and
16 refund to the consumer the amount that the consumer paid under
17 the written lease plus any collateral costs less a reasonable
18 allowance for use. The current value of the written lease equals
19 the total amount for which that lease obligates the consumer
20 during the period of the lease remaining after its early termina-
21 tion, plus the motorized wheelchair dealer's early termination
22 costs and the value of the motorized wheelchair at the lease
23 expiration date if the lease sets forth that value, less the
24 motorized wheelchair lessor's early termination savings. A rea-
25 sonable allowance for use shall not exceed the amount obtained by
26 multiplying the total amount for which the written lease
27 obligates the consumer by a fraction, the denominator of which is

1 1 825 and the numerator of which is the number of days that the
2 consumer drove the motorized wheelchair before first reporting
3 the nonconformity to the manufacturer motorized wheelchair
4 lessor or motorized wheelchair dealer

5 Sec 4 (1) To receive a comparable new motorized wheel-
6 chair or a refund a consumer of a purchased motorized wheelchair
7 shall first offer to the manufacturer or the motorized wheelchair
8 having the nonconformity the transfer of that motorized wheel-
9 chair to the manufacturer

10 (2) Not later than 30 days after the offer described in
11 subsection (1) the manufacturer shall provide the consumer with
12 the comparable new motorized wheelchair or refund

13 (3) When the manufacturer provides the new motorized wheel-
14 chair or refund the consumer shall return the motorized wheel-
15 chair having the nonconformity to the manufacturer along with
16 any endorsements necessary to transfer possession to the
17 manufacturer

18 Sec 5 (1) To receive a refund due on a leased motorized
19 wheelchair a consumer shall offer to return the motorized wheel-
20 chair having the nonconformity to its manufacturer

21 (2) Not later than 30 days after the offer described in
22 subsection (1) the manufacturer shall provide the refund to the
23 consumer

24 (3) When the manufacturer provides the refund the consumer
25 shall return to the manufacturer the motorized wheelchair having
26 the nonconformity

1 (4) A motorized wheelchair lessor shall offer to transfer
2 possession of the motorized wheelchair having the nonconformity
3 to its manufacturer. Not later than 30 days after that offer
4 the manufacturer shall provide the refund to the motorized wheel-
5 chair lessor. When the manufacturer provides the refund, the
6 motorized wheelchair lessor shall provide to the manufacturer any
7 endorsements necessary to transfer possession to the
8 manufacturer.

9 Sec 6 A motorized wheelchair returned by a consumer in
10 this state under this act, or by a consumer in another state
11 under a similar law of that state, shall not be sold or leased
12 again in this state unless full disclosure of the reasons for
13 return is made to the prospective buyer or lessee.

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

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

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