



**House  
Legislative  
Analysis  
Section**

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**INCLUDE OTHER DEVICES IN  
WHEELCHAIR LEMON LAW**

**House Bill 5261 (Substitute H-3)  
First Analysis (11-12-96)**

**Sponsor: Rep. Laura Baird  
Committee: Commerce**

***THE APPARENT PROBLEM:***

Public Act 54 of 1994, Michigan's "wheelchair lemon law", requires wheelchair manufacturers to provide express warranties for new and used wheelchairs they have sold or leased, and to repair or replace--or offer refunds for--wheelchairs that do not comply with their express warranties. The act is patterned after a similar Michigan law that applies to the purchase of defective motor vehicles. However, it has recently been pointed out that the act's provisions apply solely to wheelchairs, even though there exist a large array of other mechanical items, known as "assistive technology devices", which enable disabled persons to perform many tasks otherwise impossible for them, such as walking, seeing, hearing, or even breathing. Some people feel the provisions of the act should apply to these devices, too, and that language governing express warranties should be expanded both to include other ATDs and to ensure that the warranty period for a given device corresponds to its life expectancy. Also, amendments have been proposed that would make manufacturers or dealers of ATDs liable for the per day cost to replace a defective ATD, under certain conditions, after it has been returned for repair.

***THE CONTENT OF THE BILL:***

The bill would amend Public Act 54 of 1994 so that its provisions would cover "assistive technology devices" (ATDs)--which would be defined as any devices, including demonstrators, acquired commercially off the shelf, modified, or customized, that a customer purchased or accepted transfer of in Michigan, which were used for a "major life activity". The definition for ATDs would include, but not be limited to, wheelchairs. (A major life activity would be defined as functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, speaking, learning, and working.)

Currently, the act requires manufacturers who have sold or leased wheelchairs to consumers (either directly or through a dealer) to give consumers an express warranty effective for at least one year from the date of delivery for new wheelchairs and good for sixty days for used, refurbished, or reconditioned wheelchairs. Also, a

manufacturer is required to repair a "nonconforming" wheelchair if a consumer reports the nonconformity to the manufacturer or one of its dealers and makes the chair available for repair within one year after it was first delivered to the consumer. The bill would increase the duration of the express warranty of any new ATD as follows:

- \* For motorized scooters, manual and power wheelchairs, wheelchair lifts, and devices that were required "to maintain life-sustaining functions or prevent life-threatening harm" (i.e., supplemental oxygen devices, visual fire and burglar alarm systems, life-sustaining medication or feeding pumps, and emergency 24-hour personal response devices), the express warranty would be good for at least three years after the date a new device was first delivered to a consumer, or at least 60 days after the date a used, refurbished, or reconditioned device was first delivered.

- \* For a new ATD not described above, the express warranty would be good for at least one year after the date the device was first delivered to a consumer; and

- \* For a used, refurbished, or reconditioned ATD not described above, the express warranty would be good for at least 60 days after the date the device was first delivered.

In addition, the bill would require an ATD manufacturer to reimburse a consumer for the per day cost for the rental of a replacement ATD during the repair period if either of the following conditions was met after an ATD was made available for repair:

- \* The repair period exceeded ten days, including the day the device had been "tendered" to the ATD manufacturer or dealer for repair;

- \* The defect, malfunction, or nonconformity was the same as a defect, malfunction, or nonconformity for which the ATD had been tendered for repairs on at least two previous occasions.

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If a consumer had tendered an ATD to a dealer for repairs and the dealer failed to tender the device to its manufacturer in time for repairs to be made within ten days after the device had been tendered to the dealer, the dealer would have to pay to the manufacturer the amount the manufacturer would be obligated, by the bill, to reimburse the consumer for renting another ATD.

MCL 445.1081 et al.

### **FISCAL IMPLICATIONS:**

The House Fiscal Agency says the bill would not affect state or local budget expenditures. (10-8-96)

### **ARGUMENTS:**

#### **For:**

The bill would expand the so-called wheelchair lemon law, Public Act 54 of 1994, so that its provisions would apply to devices other than just manual and motorized wheelchairs. These other items, known as "assistive technology devices" or ATDs, increase the functional capabilities of disabled people in many ways. For example, some deaf persons utilize special telecommunications equipment that enables them to communicate with others in ways they would not otherwise be able to. Other aids improve disabled persons' mobility--i.e., a van with a wheelchair lift--or allow them to maintain or improve their functional activities. Some ATDs, in fact, are indispensable to a person's ability to even continue living and breathing--for instance, in cases where a congenital handicap or possibly a spinal injury make a person totally dependent on life-sustaining machines such as respirators. And because other types of ATDs can be quite costly, it is reasonable to include them in the act so that those who depend on them can be assured that when a recently purchased ATD is defective, the manufacturer will either repair or replace it in a timely fashion.

#### **For:**

The bill would establish warranty periods for ATDs anywhere from 60 days to three years that better reflect both the costs and expected life spans of different devices. Currently, manufacturers must provide wheelchairs only a one-year warranty even though most manufacturers provide warranties of up to three years on these and other "durable" ATDs. The bill would apply the three-year warranty not only to new wheelchairs, motorized scooters, and wheelchair lifts, but also to new devices that maintain life-sustaining functions or prevent life-threatening harm, such as respirators, feeding pumps, and emergency response service devices. For all other new ATDs, the warranty period would be one year. (Used, refurbished, or reconditioned ATDs would carry

a 60-day warranty.) The bill is fair both to consumers and manufacturers as its provisions only would apply to substantial defects. Manufacturers would not have to provide new equipment on minor or frivolous complaints and would have ample opportunity--four attempts or 30 days of service time--to correct any defects before an exchange or refund would be required. And for ATD users, the bill recognizes both the importance of such devices in helping them perform basic functions and the cost impact to them when an ATD is defective.

#### **Response:**

The warranty periods proposed in the bill, in fact, go beyond what many manufacturers currently provide for certain parts found on durable ATDs such as motorized scooters or wheelchairs. While it's true that a three-year warranty typically applies to a wheelchair frame, other wheelchair parts often carry a shorter warranty period. For example, seats usually are warranted for one year, while many electronic parts carry a three-year pro-rated warranty where full replacement is provided during the first year, the customer pays 50 percent of the cost to replace parts in the second year, and 75 percent in the third year. Other wheelchair parts often carry only a six-month warranty. The bill makes no distinction between such parts and, thus, would impose an undue burden on manufacturers to cover costs beyond what they normally do. In addition, the bill defines an ATD so broadly that it could be interpreted to encompass many devices not intended to be included under its provisions. And many ATDs that would have to carry a one-year warranty under the bill are considered disposable, with a normal useful life of six months depending on how they're used. Such provisions exceed what other states require for ATD warranties. The idea of establishing warranty periods for most ATDs is good, but should be in line with current industry standards and what other states require. Otherwise the bill could encourage ATD manufacturers located in Michigan to go elsewhere and those located elsewhere to avoid supplying Michigan with their products, or encourage those that do supply the state's dealers to raise ATD prices to cover their costs, which would ultimately do more harm than good for citizens here who depend on these devices for their livelihood.

#### **For:**

The bill would hold ATD manufacturers liable for the per day cost to replace a defective ATD that had been returned for repair with an equivalent ATD or service if, after the defective device was made available to the manufacturer or dealer, repair took more than ten business days. Likewise, an ATD user would have to be reimbursed for the per day cost to replace an ATD if repairs on a device were for problems for which the ATD had been submitted for repair work on two previous occasions. These provisions ensure that an ATD consumer would be reimbursed for his or her own costs

to replace an ATD when the time needed to repair a defective one, or the number of times required to do so, exceeded what most would consider reasonable. The bill also includes a provision that would make a dealer liable for these costs in cases where an ATD was tendered to him or her, but he or she failed to make it available to the manufacturer in time for it to make the repairs within the ten-day period.

### **Response:**

These provisions would be overly burdensome for ATD dealers and manufacturers and, again, could discourage them from doing business in the state for fear of the costs these requirements could impose on them. According to an industry spokesman, few problems have been reported regarding the timeliness and extent of such repairs to suggest an amendment of this sort is needed. But even assuming a problem exists, the ten-day repair period could be difficult to meet considering postal delivery times that vary widely depending on the time of year, the size of an item shipped, and other factors beyond a shipper's control. Moreover, standards developed by the industry already require a dealer to provide persons who use life-sustaining ATDs—at no cost to them—with a backup device or service in case of equipment failure. It seems reasonable to assume manufacturers also do their best to ensure that any devices they make to help disabled people lead more normal lives not only are well made but, when defective, repaired correctly the first time and as soon as possible.

### **Against:**

The bill represents unnecessary government intrusion into the marketplace, and goes beyond the original scope of the wheelchair lemon law. The act, of course, is a natural complement to Michigan's auto lemon law, which establishes a one-year warranty period that applies to the purchase of a new vehicle during which its buyer may return it to the dealer where it was purchased or to its manufacturer to have the problems fixed at no cost to him or her. Many of the provisions contained in this law were included in the wheelchair lemon law. The bill, however, not only expands the types of devices the act would cover, which seems reasonable, it also would triple the warranty period that applies to new wheelchairs (and would apply to other durable ATDs). No evidence exists to suggest the state needs to mandate such long warranty periods. Of course ATD consumers, due to their disabilities, certainly have more to lose when an ATD is defective and repaired poorly or slowly than does someone who buys a defective motor vehicle. However, the bill suggests ATD manufacturers either are not currently making quality products or are failing to repair defective ones within the current time frame established by the act.

### **POSITIONS:**

The Michigan Disability Rights Coalition supports the bill. (9-25-96)

The Michigan Association of Centers for Independent Living supports the bill. (9-25-96)

The Home Medical Equipment Association of Michigan has not yet taken a position on the bill. (9-25-96)

AT&T has not yet taken a position on the bill, but has concerns about provisions that would revise the scope of applicable warranties and impose on manufacturers per diem costs when repairs were not made according to the timetable set forth in the bill. (9-25-96)

Amigo Mobility International, Inc., a manufacturer of motorized scooters located in Bridgeport, opposes the bill. (10-21-96)

Analyst: T. Iversen

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.