

By Mr. Murphy of Springfield, petition of Dennis M. Murphy and other members of the House relative to the sale and warranty of motorized wheelchairs. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Four.

AN ACT RELATIVE TO THE SALE AND WARRANTY OF MOTORIZED WHEEL-CHAIRS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 93 of the General Laws is hereby amended by adding
2 the following section:—

3 Section 107.

4 1. As used in this section:

5 a. "Collateral costs" means expenses incurred by a consumer in
6 connection with the repair of a nonconformity, including the costs
7 of obtaining an alternative wheelchair or other assistive device for
8 mobility.

9 b. "Consumer" means any of the following:

10 (1) The purchaser of a motorized wheelchair, if the motorized
11 wheelchair was purchased from a motorized wheelchair dealer or
12 manufacturer for purposes other than resale.

13 (2) A person to whom the motorized wheelchair is transferred
14 for purposes other than resale, if the transfer occurs before the
15 expiration of an express warranty applicable to the motorized
16 wheelchair.

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

18 (4) A person who leases a motorized wheelchair from a motor-
19 ized wheelchair lessor under a written lease.

20 c. "Demonstrator" means a motorized wheelchair used primar-
21 ily for the purpose of demonstration to the public.

22 d. "Early termination cost" means any expense or obligation
23 that a motorized wheelchair lessor incurs as a result of both the

24 termination of a written lease before the termination date set forth
25 in that lease and the return of a motorized wheelchair to a manu-
26 facturer pursuant to subparagraph three of paragraph (b) of subdi-
27 vision three of this section. "Early termination cost" includes a
28 penalty for prepayment under a finance arrangement.

29 e. "Early termination savings" means any expense or obligation
30 that a motorized wheelchair lessor avoids as a result of both the
31 termination of a written lease before that termination date set forth
32 in that lease and the return of a motorized wheelchair to a manu-
33 facturer pursuant to subparagraph three of paragraph (b) of subdi-
34 vision three of this section. "Early termination savings" includes
35 an interest charge that the motorized wheelchair lessor would have
36 paid to finance the motorized wheelchair or, if the motorized
37 wheelchair lessor does not finance the motorized wheelchair, the
38 difference between the total amount for which the lease obligates
39 the consumer during the period of the lease term remaining after
40 the early termination and the present value of that amount at the
41 date of the early termination.

42 f. "Manufacturer" means a person who manufactures or assem-
43 bles motorized wheelchairs and agents of that person, including an
44 importer, a distributor, factory branch, distributor branch and any
45 warrantors of the manufacturer's motorized wheelchair, but does
46 not include a motorized wheelchair dealer.

47 g. "Motorized wheelchair" means any motor-driven wheelchair,
48 including a demonstrator, that a consumer purchases or accepts
49 transfer of in the commonwealth.

50 h. "Motorized wheelchair dealer" means a person who is in the
51 business of selling motorized wheelchairs.

52 i. "Motorized wheelchair lessor" means a person who leases a
53 motorized wheelchair to a consumer, or who holds the lessor's
54 rights, under a written lease.

55 j. "Nonconformity" means a condition or defect that substan-
56 tially impairs the use, value or safety of a motorized wheelchair,
57 and that is covered by an express warranty applicable to the
58 motorized wheelchair or to a component of the motorized wheel-
59 chair, but does not include a condition or defect that is the result
60 of abuse, neglect or unauthorized modification or alteration of the
61 motorized wheelchair by a consumer.

62 k. "Reasonable attempt to repair" means that, within the term
63 of an express warranty applicable to a new motorized wheelchair:

64 (1) any nonconformity within the warranty is either subject to
65 repair by the manufacturer, motorized wheelchair lessor or any of
66 the manufacturer's authorized motorized wheelchair dealers, for at
67 least four times and a nonconformity continues, and that the
68 motorized wheelchair is out of service for an aggregate of at least
69 thirty days because of warranty nonconformity; or

70 (2) the motorized wheelchair is out of service for an aggregate
71 of sixty days due to a warranty nonconformity, after having been
72 returned to the manufacturer, motorized wheelchair lessor or any
73 of the manufacturer's authorized motorized wheelchair dealers
74 for repair.

75 2. A manufacturer who sells a motorized wheelchair to a con-
76 sumer, either directly or through a motorized wheelchair dealer,
77 shall furnish the consumer with an express warranty for the
78 motorized wheelchair. The duration of the express warranty shall
79 be not less than one year after first delivery of the motorized
80 wheelchair to the consumer. In the absence of an express warranty
81 from the manufacturer, the manufacturer shall be deemed to have
82 expressly warranted to the consumer of a motorized wheelchair
83 that, for a period of one year from the date of first delivery to the
84 consumer, the motorized wheelchair will be free from any condi-
85 tion or defect which substantially impairs the value of the motor-
86 ized wheelchair to the consumer.

87 3. a. If a new motorized wheelchair does not conform to an
88 applicable express warranty and the consumer reports the noncon-
89 formity to the manufacturer, the motorized wheelchair lessor or
90 any of the manufacturer's authorized motorized wheelchair dealers
91 and makes the motorized wheelchair available for repair before
92 one year after first delivery of the motorized wheelchair to a con-
93 sumer, the nonconformity shall be repaired at no charge to the
94 consumer.

95 b. (1) If, after a reasonable attempt to repair, the nonconformity
96 is not repaired, the manufacturer shall carry out the requirement set
97 forth under either subparagraph two or three of this paragraph,
98 whichever is appropriate.

99 (2) At the direction of a consumer described under subpara-
100 graph one, two or three of paragraph (b) of subdivision one of this
101 section, do one of the following:

102 (a) Accept return of the motorized wheelchair and replace the
103 motorized wheelchair with a comparable new motorized wheel-
104 chair and refund any collateral costs.

105 (b) Accept return of the motorized wheelchair and refund to the
106 consumer and to any holder of a perfected security interest in the
107 consumer's motorized wheelchair, as their interest may appear,
108 the full purchase price plus any finance charge amount paid by the
109 consumer at the point of sale and collateral costs, less a reason-
110 able allowance for use. A reasonable allowance for use may not
111 exceed the amount obtained by multiplying the full purchase price
112 of the motorized wheelchair by a fraction, the denominator of
113 which is one thousand eight hundred twenty-five and the numera-
114 tor of which is the number of days that the motorized wheelchair
115 was driven before the consumer first reported the nonconformity
116 to the motorized wheelchair dealer.

117 (3) (a) With respect to a consumer described under subpara-
118 graph four of paragraph (b) of subdivision one of this section,
119 accept return of the motorized wheelchair, refund to the motorized
120 wheelchair lessor and to any holder of a perfected security interest
121 in the motorized wheelchair, as their interest may appear, the cur-
122 rent value of the written lease and refund to the consumer the
123 amount that the consumer paid under the written lease plus any
124 collateral costs, less a reasonable allowance for use.

125 (b) The current value of the written lease equals the total
126 amount for which that lease obligates the consumer during the
127 period of the lease remaining after its early termination, plus
128 the motorized wheelchair dealer's early termination costs and the
129 value of the motorized wheelchair at the lease expiration date if
130 the lease sets forth that value, less the motorized wheelchair
131 lessor's early termination savings.

132 (c) A reasonable allowance for use may not exceed the amount
133 obtained by multiplying the total amount for which the written
134 lease obligates the consumer by a fraction, the denominator of
135 which is one thousand eight hundred twenty-five and the numera-
136 tor of which is the number of days that the consumer drove the
137 motorized wheelchair before first reporting the nonconformity to
138 the manufacturer, motorized wheelchair lessor or motorized
139 wheelchair dealer.

140 c. To receive a comparable new motorized wheelchair or a
141 refund due under subparagraph one or two of paragraph (b) of this
142 subdivision, a consumer described under subparagraph one, two
143 or three of paragraph (b) of subdivision one of this section, shall
144 offer to the manufacturer of the motorized wheelchair having the
145 nonconformity to transfer possession of that motorized wheelchair
146 to that manufacturer. No later than thirty days after that offer, the
147 manufacturer shall provide the consumer with the comparable
148 new motorized wheelchair or refund. When the manufacturer pro-
149 vides the new motorized wheelchair or refund, the consumer shall
150 return the motorized wheelchair having the nonconformity to the
151 manufacturer, along with any endorsements necessary to transfer
152 real possession to the manufacturer.

153 d. (1) To receive a refund due under subparagraph three of
154 paragraph (b) of this subdivision, a consumer described under
155 subparagraph four of paragraph (b) of subdivision one of this
156 section shall offer to return the motorized wheelchair having the
157 nonconformity to its manufacturer. No later than thirty days after
158 that offer, the manufacturer shall provide the refund to the con-
159 sumer. When the manufacturer provides the refund, the consumer
160 shall return to the manufacturer the motorized wheelchair having
161 the nonconformity.

162 (2) To receive a refund due under subparagraph three of para-
163 graph (b) of this subdivision, a motorized wheelchair lessor shall
164 offer to transfer possession of the motorized wheelchair having
165 the nonconformity to its manufacturer. No later than thirty days
166 after that offer, the manufacturer shall provide the refund to the
167 motorized wheelchair lessor. When the manufacturer provides the
168 refund, the motorized wheelchair lessor shall provide to the manu-
169 facturer any endorsements necessary to transfer legal possession
170 to the manufacturer.

171 (3) No person may enforce the lease against the consumer after
172 the consumer receives a refund due under subparagraph three of
173 paragraph (b) of this subdivision.

174 e. No motorized wheelchair returned by a consumer or motor-
175 ized wheelchair lessor in the commonwealth pursuant to para-
176 graph (b) of the subdivision, or by a consumer or motorized
177 wheelchair lessor in another state under a similar law of that state,
178 may be sold or leased again in the commonwealth unless full dis-
179 closure of the reasons for return is made to any prospective buyer
180 or lessee.

181 4. a. Each consumer shall have the option of submitting any
182 dispute arising under this section upon the payment of a prescribed
183 filing fee to an alternate arbitration mechanism established pursuant
184 to regulations promulgated hereunder by the attorney general. Upon
185 application of the consumer and payment of the filing fee, all manu-
186 facturers shall submit to such alternate arbitration.

187 b. Such alternate arbitration shall be conducted by a professional
188 arbitrator or arbitration firm appointed by and under regulations
189 established by the attorney general. Such mechanism shall insure
190 the personal objectivity of its arbitrators and the right of each party
191 to present its case, to be in attendance during any presentation made
192 by the other party and to rebut or refute such presentation.

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

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

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

