



HOUSE BILL No. 5261

October 17, 1995, Introduced by Reps. Baird, Martinez, Dobronski, Brewer, DeHart, Brater, LaForge, Cherry, Anthony, Tesanovich, Freeman, Yokich, Schroer, Willard, Pitoniak, Hanley, DeMars and Weeks and referred to the Committee on Commerce.

A bill to amend the title and sections 1, 2, 3, 4, 5, 6, and 7 of Act No. 54 of the Public Acts of 1994, entitled

"An act to regulate the selling and leasing of wheelchairs; to require the manufacturer to provide an express warranty; and to provide for remedies,"

being sections 445.1081, 445.1082, 445.1083, 445.1084, 445.1085, 445.1086, and 445.1087 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1, 2, 3, 4, 5, 6, and 7
2 of Act No. 54 of the Public Acts of 1994, being sections
3 445.1081, 445.1082, 445.1083, 445.1084, 445.1085, 445.1086, and
4 445.1087 of the Michigan Compiled Laws, are amended to read as
5 follows:

1 TITLE

2 An act to regulate the selling and leasing of ~~wheelchairs~~
3 ASSISTIVE TECHNOLOGY DEVICES; to require the manufacturer OF
4 ASSISTIVE TECHNOLOGY DEVICES to provide an express warranty; and
5 to provide for remedies.

6 Sec. 1. As used in this act:

7 (A) "ASSISTIVE TECHNOLOGY DEVICE" MEANS ANY ITEM, PIECE OF
8 EQUIPMENT, OR PRODUCT SYSTEM, WHETHER ACQUIRED COMMERCIALY OFF
9 THE SHELF, MODIFIED, OR CUSTOMIZED, THAT IS USED OR INTENDED TO
10 BE USED TO INCREASE, MAINTAIN, OR IMPROVE FUNCTIONAL CAPABILITIES
11 OF INDIVIDUALS WITH DISABILITIES. EXCEPT FOR BATTERIES AND
12 ACCESSORIES THAT ARE NOT INTEGRAL TO AN INSTRUMENT'S DESIGN,
13 ASSISTIVE TECHNOLOGY DEVICE INCLUDES BUT IS NOT LIMITED TO ALL OF
14 THE FOLLOWING:

15 (i) AN AID THAT ENHANCES THE MOBILITY OF THE INDIVIDUAL,
16 INCLUDING A MANUAL WHEELCHAIR, MOTORIZED WHEELCHAIR, AND A MOTOR-
17 IZED SCOOTER.

18 (ii) AN AID THAT ADVANCES THE INDIVIDUAL'S ABILITY TO HEAR,
19 INCLUDING A HEARING AID, TELEPHONE COMMUNICATIONS DEVICE FOR THE
20 DEAF, AND ASSISTED LISTENING DEVICE.

21 (iii) AN AID THAT ENHANCES A SIGHT-IMPAIRED INDIVIDUAL'S
22 ABILITY TO COMMUNICATE, INCLUDING VOICE-SYNTHEZIZED COMPUTER MOD-
23 ULES, OPTICAL SCANNERS, TALKING SOFTWARE, AND BRAILLE PRINTERS.

24 (iv) AN AID THAT ENABLES A DISABLED PERSON TO LIVE MORE
25 INDEPENDENTLY THAN HE OR SHE WOULD WITHOUT THE AID.

26 (v) ANY INSTRUMENT OR GOOD THAT ENABLES A DISABLED PERSON TO
27 INCREASE, MAINTAIN, OR IMPROVE FUNCTIONAL CAPABILITIES.

1 (B) "ASSISTIVE TECHNOLOGY DEVICE DEALER" MEANS A PERSON WHO
2 IS IN THE BUSINESS OF SELLING ASSISTIVE TECHNOLOGY DEVICES.

3 (C) "ASSISTIVE TECHNOLOGY DEVICE LESSOR" MEANS A PERSON WHO
4 LEASES AN ASSISTIVE TECHNOLOGY DEVICE TO A CONSUMER, OR WHO POS-
5 SESSES A LESSOR'S RIGHTS UNDER A WRITTEN LEASE FOR AN ASSISTIVE
6 TECHNOLOGY DEVICE.

7 (D) ~~(a)~~ "Collateral costs" means expenses incurred by a
8 consumer in connection with the repair of a nonconformity in ~~a~~
9 ~~wheelchair~~ AN ASSISTIVE TECHNOLOGY DEVICE, including the cost of
10 an alternative ~~wheelchair or other~~ assistive technology device
11 or service. ~~for mobility.~~

12 (E) ~~(b)~~ "Consumer" means any of the following:

13 (i) The purchaser of ~~a wheelchair~~ AN ASSISTIVE TECHNOLOGY
14 DEVICE, if the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE was pur-
15 chased from ~~a wheelchair~~ AN ASSISTIVE TECHNOLOGY DEVICE dealer
16 or manufacturer for purposes other than resale.

17 (ii) A person to whom the ~~wheelchair~~ ASSISTIVE TECHNOLOGY
18 DEVICE is transferred for purposes other than resale, if the
19 transfer occurs before the expiration of an express warranty
20 applicable to the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE.

21 (iii) A person who may enforce the warranty CREATED UNDER
22 SECTION 2.

23 (iv) A person who leases ~~a wheelchair~~ AN ASSISTIVE TECH-
24 NOLOGY DEVICE from ~~a wheelchair~~ AN ASSISTIVE TECHNOLOGY DEVICE
25 lessor under a written lease.

1 (F) ~~(e)~~ "Demonstrator" means ~~a wheelchair~~ AN ASSISTIVE
2 TECHNOLOGY DEVICE used primarily for the purpose of demonstration
3 to the public.

4 (G) ~~(d)~~ "Early termination cost" means an expense or obli-
5 gation that ~~a wheelchair~~ AN ASSISTIVE TECHNOLOGY DEVICE lessor
6 incurs as a result of both the termination of a written lease
7 before the termination date of the lease and the return of ~~a~~
8 ~~wheelchair~~ AN ASSISTIVE TECHNOLOGY DEVICE to a manufacturer
9 under section 3. Early termination cost includes a penalty for
10 prepayment under a finance arrangement.

11 (H) ~~(e)~~ "Early termination savings" means an expense or
12 obligation that ~~a wheelchair~~ AN ASSISTIVE TECHNOLOGY DEVICE
13 lessor avoids as a result of both the termination of a written
14 lease before the termination date of the lease and the return of
15 ~~a wheelchair~~ AN ASSISTIVE TECHNOLOGY DEVICE to a manufacturer
16 under section 3. Early termination savings include an interest
17 charge that the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE lessor
18 would have paid to finance the ~~wheelchair~~ ASSISTIVE TECHNOLOGY
19 DEVICE or, if the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE lessor
20 does not finance the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE,
21 the difference between the total amount for which the lease obli-
22 gates the consumer during the period of the lease term remaining
23 after the early termination and the present value of that amount
24 at the date of the early termination.

25 (I) ~~(f)~~ "Express warranty" means an express warranty as
26 determined under the uniform commercial code, Act No. 174 of the
27 Public Acts of 1962, being sections 440.1101 to 440.11102 of the

1 Michigan Compiled Laws. ~~Express~~ AN EXPRESS warranty ~~shall~~
2 ~~cover everything~~ UNDER THIS ACT COVERS COMPONENTS OF AN ASSIS-
3 TIVE TECHNOLOGY DEVICE except ~~the~~ tires and batteries, IF ANY.

4 (J) ~~(g)~~ "Manufacturer" means a person who manufactures or
5 assembles ~~wheelchairs~~ ASSISTIVE TECHNOLOGY DEVICES and agents
6 of that person, including an importer, a distributor, factory
7 branch, distributor branch, and any warrantors of the
8 manufacturer's ~~wheelchairs~~ ASSISTIVE TECHNOLOGY DEVICES, but
9 does not include ~~a wheelchair~~ AN ASSISTIVE TECHNOLOGY DEVICE
10 dealer.

11 (K) ~~(h)~~ "Nonconformity" means a condition or defect that
12 substantially impairs the use, value, or safety of ~~a wheelchair~~
13 ~~and~~ AN ASSISTIVE TECHNOLOGY DEVICE OR that is covered by an
14 express warranty applicable to the ~~wheelchair~~ ASSISTIVE TECH-
15 NOLOGY DEVICE or to a component of the ~~wheelchair~~ ASSISTIVE
16 TECHNOLOGY DEVICE, but does not include a condition or defect
17 that is the result of abuse, neglect, or unauthorized modifica-
18 tion or alteration of the ~~wheelchair by a consumer~~ ASSISTIVE
19 TECHNOLOGY DEVICE.

20 (L) ~~(i)~~ "Reasonable attempt to repair" means either or
21 both of the following occurring within the term of an express
22 warranty applicable to a new ~~wheelchair~~ ASSISTIVE TECHNOLOGY
23 DEVICE or within ~~1 year~~ 3 YEARS after first delivery of the
24 ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE to a consumer, whichever
25 is sooner:

26 (i) The same nonconformity is subject to repair at least 4
27 times by the manufacturer, ~~wheelchair~~ ASSISTIVE TECHNOLOGY

1 DEVICE lessor, or any of the manufacturer's authorized
2 ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE dealers.

3 (ii) The ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE is out of
4 service for an aggregate of at least 30 business days.

5 (M) ~~(j)~~ "Wheelchair" means a chair mounted on wheels used
6 by a person with a disability to enhance mobility.

7 ~~(k) "Wheelchair dealer" means a person who is in the busi-~~
8 ~~ness of selling wheelchairs.~~

9 ~~(l) "Wheelchair lessor" means a person who leases a wheel-~~
10 ~~chair to a consumer, or who holds the lessor's rights under a~~
11 ~~written lease.~~

12 Sec. 2. (1) A manufacturer who sells or leases ~~a~~
13 ~~wheelchair~~ AN ASSISTIVE TECHNOLOGY DEVICE to a consumer, either
14 directly or through ~~a wheelchair~~ AN ASSISTIVE TECHNOLOGY DEVICE
15 dealer, shall furnish the consumer with an express warranty for
16 the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE. The duration of
17 the express warranty shall be not less than ~~1 year~~ 3 YEARS
18 after first delivery of a new ~~wheelchair~~ ASSISTIVE TECHNOLOGY
19 DEVICE to the consumer, or 60 days ~~in the case~~ AFTER FIRST
20 DELIVERY of a used, refurbished, or reconditioned ~~wheelchair~~
21 ASSISTIVE TECHNOLOGY DEVICE TO THE CONSUMER.

22 (2) ~~If a manufacturer fails to furnish an~~ AN express war-
23 ranty ~~as~~ required by this section ~~, the wheelchair shall be~~
24 ~~covered by a warranty from the manufacturer as if the manufac-~~
25 ~~turer had furnished an express warranty to the consumer as~~
26 ~~required by this section~~ EXISTS REGARDLESS OF WHETHER THE
27 MANUFACTURER EXPRESSLY FURNISHES THE WARRANTY.

1 Sec. 3. (1) If a new ~~wheelchair~~ ASSISTIVE TECHNOLOGY
2 DEVICE does not conform to an applicable express warranty and the
3 consumer reports the nonconformity to the manufacturer, the
4 ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE lessor, or any of the
5 manufacturer's authorized ~~wheelchair~~ ASSISTIVE TECHNOLOGY
6 DEVICE dealers and makes the ~~wheelchair~~ ASSISTIVE TECHNOLOGY
7 DEVICE available for repair before ~~1 year~~ 3 YEARS after first
8 delivery of the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE to ~~a~~
9 THE consumer, the MANUFACTURER SHALL REPAIR THE nonconformity
10 ~~shall be repaired by the manufacturer~~ as required by this act.
11 If the manufacturer has authorized the dealer to make the repair,
12 the MANUFACTURER SHALL REIMBURSE THE dealer ~~shall be reimbursed~~
13 ~~by the manufacturer~~ for the dealer's costs ~~for the~~ OF repair.
14 The manufacturer shall respond to a dealer's request for authori-
15 zation not later than the end of the business day following the
16 day the request was made.

17 (2) IF EITHER OF THE FOLLOWING CONDITIONS IS MET AFTER AN
18 ASSISTIVE TECHNOLOGY DEVICE IS MADE AVAILABLE FOR REPAIR IN
19 ACCORDANCE WITH SUBSECTION (1), THE ASSISTIVE TECHNOLOGY DEVICE
20 MANUFACTURER SHALL PROVIDE THE CONSUMER WITH REIMBURSEMENT OF UP
21 TO \$20.00 PER DAY FOR THE RENTAL OF A REPLACEMENT ASSISTIVE TECH-
22 NOLOGY DEVICE DURING THE REPAIR PERIOD:

23 (A) THE REPAIR PERIOD EXCEEDS 10 BUSINESS DAYS, INCLUDING
24 THE DAY THAT THE DEVICE IS TENDERED TO THE ASSISTIVE TECHNOLOGY
25 DEVICE MANUFACTURER OR ASSISTIVE TECHNOLOGY DEVICE DEALER FOR
26 REPAIR.

1 (B) THE DEFECT, MALFUNCTION, OR NONCONFORMITY IS THE SAME AS
2 A DEFECT, MALFUNCTION, OR NONCONFORMITY FOR WHICH THE ASSISTIVE
3 TECHNOLOGY DEVICE HAS BEEN TENDERED FOR REPAIRS ON AT LEAST 2
4 PREVIOUS OCCASIONS.

5 (3) IF AN ASSISTIVE TECHNOLOGY DEVICE IS TENDERED TO A
6 DEALER FOR REPAIRS AND THAT DEALER FAILS TO TENDER THE DEVICE TO
7 THE ASSISTIVE TECHNOLOGY DEVICE MANUFACTURER IN TIME FOR THE MAN-
8 UFACTURER TO MAKE THE REPAIRS WITHIN 10 DAYS AFTER THE DEVICE WAS
9 TENDERED TO THE DEALER, THE DEALER SHALL PAY TO THE MANUFACTURER
10 THE AMOUNT THE MANUFACTURER PAYS TO PROVIDE THE REIMBURSEMENT
11 DESCRIBED IN SUBSECTION (2).

12 (4) ~~(2)~~ If, after a reasonable attempt to repair, the non-
13 conformity is not repaired, the manufacturer shall do 1 of the
14 following:

15 (a) If the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE was pur-
16 chased, ~~at the direction of a consumer~~ do 1 of the following AS
17 DIRECTED BY THE CONSUMER:

18 (i) Accept return of the ~~wheelchair~~ ASSISTIVE TECHNOLOGY
19 DEVICE and replace the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE
20 with 1 of comparable quality, size, and function and refund any
21 collateral costs to the consumer, a holder of a security inter-
22 est, or a third party who purchased the ~~wheelchair~~ ASSISTIVE
23 TECHNOLOGY DEVICE.

24 (ii) Accept return of the ~~wheelchair~~ ASSISTIVE TECHNOLOGY
25 DEVICE and refund to the consumer and to any holder of a perfec-
26 ted security interest in the consumer's ~~wheelchair~~ ASSISTIVE
27 TECHNOLOGY DEVICE or third party who purchased the ~~wheelchair~~

1 ASSISTIVE TECHNOLOGY DEVICE not more than the full purchase price
2 plus any finance charge, sales tax, shipping costs, and collat-
3 eral costs paid by the consumer, the holder of a security inter-
4 est, or ~~the~~ third party who purchased the ~~wheelchair~~
5 ASSISTIVE TECHNOLOGY DEVICE, less a reasonable allowance for
6 use. A reasonable allowance for use shall not exceed the amount
7 obtained by multiplying the full purchase price of the
8 ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE by a fraction, the
9 denominator of which is 1,825 and the numerator of which is the
10 number of days that the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE
11 was used before the consumer first reported the nonconformity to
12 the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE MANUFACTURER OR
13 dealer.

14 (b) If the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE is
15 leased, accept return of the ~~wheelchair~~ ASSISTIVE TECHNOLOGY
16 DEVICE, refund to the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE
17 lessor and to any holder of a perfected security interest in the
18 ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE the current value of the
19 written lease and refund to the consumer or third party the
20 amount that the consumer or third party paid under the written
21 lease plus any collateral costs, less a reasonable allowance for
22 use. The current value of the written lease equals the total
23 amount for which that lease obligates the consumer during the
24 period of the lease remaining after its early termination, plus
25 the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE dealer's early ter-
26 mination costs and the value of the ~~wheelchair~~ ASSISTIVE
27 TECHNOLOGY DEVICE at the lease expiration date if the lease sets

1 forth that value, less the ~~wheelchair~~ ASSISTIVE TECHNOLOGY
 2 DEVICE lessor's early termination savings. A reasonable allow-
 3 ance for use shall not exceed the amount obtained by multiplying
 4 the total amount for which the written lease obligates the con-
 5 sumer by a fraction, the denominator of which is 1,825 and the
 6 numerator of which is the number of days that the ~~wheelchair~~
 7 ASSISTIVE TECHNOLOGY DEVICE was used before the consumer first
 8 reported the nonconformity to the manufacturer, ~~wheelchair~~
 9 ASSISTIVE TECHNOLOGY DEVICE lessor, or ~~wheelchair~~ ASSISTIVE
 10 TECHNOLOGY DEVICE dealer.

11 Sec. 4. (1) To receive a ~~wheelchair~~ REFUND OR AN ASSIS-
 12 TIVE TECHNOLOGY DEVICE of comparable quality, size, and function,
 13 ~~or a refund,~~ a consumer of a purchased ~~wheelchair~~ ASSISTIVE
 14 TECHNOLOGY DEVICE shall first offer to ~~the~~ TRANSFER THE PUR-
 15 CHASED ASSISTIVE TECHNOLOGY DEVICE TO ITS manufacturer. ~~of the~~
 16 ~~wheelchair having the nonconformity the transfer of that wheel-~~
 17 ~~chair to the manufacturer.~~

18 (2) Not later than 30 business days after the offer
 19 described in subsection (1), the manufacturer shall provide the
 20 consumer with a ~~wheelchair~~ REFUND OR AN ASSISTIVE TECHNOLOGY
 21 DEVICE of comparable quality, size, and function. ~~or a refund.~~

22 (3) When the manufacturer provides the ~~wheelchair~~
 23 ASSISTIVE TECHNOLOGY DEVICE or refund, the consumer shall return
 24 the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE having the noncon-
 25 formity to the manufacturer OR DEALER, along with any endorse-
 26 ments necessary to transfer possession to the manufacturer.

1 Sec. 5. (1) To receive a refund due on a leased
2 ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE THAT HAS A
3 NONCONFORMITY, a consumer shall offer to return the ~~wheelchair~~
4 ~~having the nonconformity~~ LEASED ASSISTIVE TECHNOLOGY DEVICE to
5 the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE lessor.

6 (2) Not later than 30 business days after the offer
7 described in subsection (1), the ~~wheelchair~~ ASSISTIVE TECHNOL-
8 OGY DEVICE lessor shall provide the refund to the consumer.

9 (3) When the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE lessor
10 provides the refund, the consumer shall return to the
11 ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE lessor the ~~wheelchair~~
12 ~~having the nonconformity~~ LEASED ASSISTIVE TECHNOLOGY DEVICE.

13 (4) ~~A wheelchair~~ AN ASSISTIVE TECHNOLOGY DEVICE lessor
14 shall offer to transfer possession of the ~~wheelchair~~ ASSISTIVE
15 TECHNOLOGY DEVICE returned pursuant to subsection (3) to the
16 manufacturer. Not later than 30 business days after that offer,
17 the manufacturer shall provide the refund to the ~~wheelchair~~
18 ASSISTIVE TECHNOLOGY DEVICE lessor. When the manufacturer pro-
19 vides the refund, the ~~wheelchair~~ ASSISTIVE TECHNOLOGY DEVICE
20 lessor shall provide to the manufacturer any endorsements neces-
21 sary to transfer possession to the manufacturer.

22 Sec. 6. ~~A wheelchair~~ AN ASSISTIVE TECHNOLOGY DEVICE
23 returned by a consumer in this state under this act, or by a con-
24 sumer in another state under a similar law of that state, shall
25 not be sold or leased again in this state unless full disclosure
26 of the reasons for return is made to the prospective buyer or
27 lessee.

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

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

5 (3) In addition to pursuing any other remedy, a consumer may
6 bring an action to recover ~~for~~ damages caused by a violation of
7 this act. If ~~the~~ A COURT DETERMINES THAT A manufacturer ~~is~~
8 ~~found to have~~ violated this act, the court shall award the con-
9 sumer the amount of actual damages caused by the violation and
10 may award the consumer costs and reasonable attorney fees.