

## WHEELCHAIRS Act 54 of 1994

AN ACT to regulate the selling and leasing of wheelchairs; to require the manufacturer to provide an express warranty; and to provide for remedies.

**History:** 1994, Act 54, Imd. Eff. Mar. 31, 1994.

*The People of the State of Michigan enact:*

### 445.1081 Definitions.

Sec. 1. As used in this act:

(a) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity in a wheelchair, including the cost of an alternative wheelchair or other assistive device or service for mobility.

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

(i) The purchaser of a wheelchair, if the wheelchair was purchased from a wheelchair dealer or manufacturer for purposes other than resale.

(ii) A person to whom the wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the wheelchair.

(iii) A person who may enforce the warranty.

(iv) A person who leases a wheelchair from a wheelchair lessor under a written lease.

(c) "Demonstrator" means a wheelchair used primarily for the purpose of demonstration to the public.

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

(e) "Early termination savings" means an expense or obligation that a wheelchair lessor avoids as a result of both the termination of a written lease before the termination date of the lease and the return of a wheelchair to a manufacturer under section 3. Early termination savings include an interest charge that the wheelchair lessor would have paid to finance the wheelchair or, if the wheelchair lessor does not finance the wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(f) "Express warranty" means an express warranty as determined under the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.1101 to 440.1102 of the Michigan Compiled Laws. Express warranty shall cover everything except the tires and batteries.

(g) "Manufacturer" means a person who manufactures or assembles wheelchairs and agents of that person, including an importer, a distributor, factory branch, distributor branch, and any warrantors of the manufacturer's wheelchairs, but does not include a wheelchair dealer.

(h) "Nonconformity" means a condition or defect that substantially impairs the use, value, or safety of a wheelchair and that is covered by an express warranty applicable to the wheelchair or to a component of the wheelchair, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the wheelchair by a consumer.

(i) "Reasonable attempt to repair" means either or both of the following occurring within the term of an express warranty applicable to a new wheelchair or within 1 year after first delivery of the wheelchair to a consumer, whichever is sooner:

(i) The same nonconformity is subject to repair at least 4 times by the manufacturer, wheelchair lessor, or any of the manufacturer's authorized wheelchair dealers.

(ii) The wheelchair is out of service for an aggregate of at least 30 business days.

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

(k) "Wheelchair dealer" means a person who is in the business of selling wheelchairs.

(l) "Wheelchair lessor" means a person who leases a wheelchair to a consumer, or who holds the lessor's rights under a written lease.

**History:** 1994, Act 54, Imd. Eff. Mar. 31, 1994.

### 445.1082 Sale or lease of wheelchair; express warranty; duration; failure to furnish.

Sec. 2. (1) A manufacturer who sells or leases a wheelchair to a consumer, either directly or through a wheelchair dealer, shall furnish the consumer with an express warranty for the wheelchair. The duration of the

express warranty shall be not less than 1 year after first delivery of a new wheelchair to the consumer or 60 days in the case of a used, refurbished or reconditioned wheelchair.

(2) If a manufacturer fails to furnish an express warranty as required by this section, the wheelchair shall be covered by a warranty from the manufacturer as if the manufacturer had furnished an express warranty to the consumer as required by this section.

**History:** 1994, Act 54, Imd. Eff. Mar. 31, 1994.

#### **445.1083 Nonconformity; repair by manufacturer; reimbursement to authorized dealer; duty of manufacturer.**

Sec. 3. (1) If a new wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the wheelchair lessor, or any of the manufacturer's authorized wheelchair dealers and makes the wheelchair available for repair before 1 year after first delivery of the wheelchair to a consumer, the nonconformity shall be repaired by the manufacturer as required by this act. If the manufacturer has authorized the dealer to make the repair, the dealer shall be reimbursed by the manufacturer for the dealer's costs for the repair. The manufacturer shall respond to a dealer's request for authorization not later than the end of the business day following the day the request was made.

(2) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall do 1 of the following:

(a) If the wheelchair was purchased, at the direction of a consumer do 1 of the following:

(i) Accept return of the wheelchair and replace the wheelchair with 1 of comparable quality, size, and function and refund any collateral costs to the consumer, a holder of a security interest, or a third party who purchased the wheelchair.

(ii) Accept return of the wheelchair and refund to the consumer and to any holder of a perfected security interest in the consumer's wheelchair or third party who purchased the wheelchair not more than the full purchase price plus any finance charge, sales tax, shipping costs, and collateral costs paid by the consumer, the holder of a security interest, or the third party who purchased the wheelchair less a reasonable allowance for use. A reasonable allowance for use shall not exceed the amount obtained by multiplying the full purchase price of the wheelchair by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the wheelchair was used before the consumer first reported the nonconformity to the wheelchair dealer.

(b) If the wheelchair is leased, accept return of the wheelchair, refund to the wheelchair lessor and to any holder of a perfected security interest in the wheelchair the current value of the written lease and refund to the consumer or third party the amount that the consumer or third party paid under the written lease plus any collateral costs, less a reasonable allowance for use. The current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the wheelchair dealer's early termination costs and the value of the wheelchair at the lease expiration date if the lease sets forth that value, less the wheelchair lessor's early termination savings. A reasonable allowance for use shall not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the wheelchair was used before the consumer first reported the nonconformity to the manufacturer, wheelchair lessor, or wheelchair dealer.

**History:** 1994, Act 54, Imd. Eff. Mar. 31, 1994.

#### **445.1084 Receipt by consumer of comparable wheelchair or refund; transfer of wheelchair to manufacturer.**

Sec. 4. (1) To receive a wheelchair of comparable quality, size, and function or a refund, a consumer of a purchased wheelchair shall first offer to the manufacturer of the wheelchair having the nonconformity the transfer of that wheelchair to the manufacturer.

(2) Not later than 30 business days after the offer described in subsection (1), the manufacturer shall provide the consumer with a wheelchair of comparable quality, size, and function or a refund.

(3) When the manufacturer provides the wheelchair or refund, the consumer shall return the wheelchair having the nonconformity to the manufacturer, along with any endorsements necessary to transfer possession to the manufacturer.

**History:** 1994, Act 54, Imd. Eff. Mar. 31, 1994.

#### **445.1085 Leased wheelchair; refund.**

Sec. 5. (1) To receive a refund due on a leased wheelchair, a consumer shall offer to return the wheelchair having the nonconformity to the wheelchair lessor.

(2) Not later than 30 business days after the offer described in subsection (1), the wheelchair lessor shall provide the refund to the consumer.

(3) When the wheelchair lessor provides the refund, the consumer shall return to the wheelchair lessor the wheelchair having the nonconformity.

(4) A wheelchair lessor shall offer to transfer possession of the wheelchair returned pursuant to subsection (3) to the manufacturer. Not later than 30 business days after that offer, the manufacturer shall provide the refund to the wheelchair lessor. When the manufacturer provides the refund, the wheelchair lessor shall provide to the manufacturer any endorsements necessary to transfer possession to the manufacturer.

**History:** 1994, Act 54, Imd. Eff. Mar. 31, 1994.

#### **445.1086 Sale or lease of returned wheelchair.**

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

**History:** 1994, Act 54, Imd. Eff. Mar. 31, 1994.

#### **445.1087 Rights and remedies of consumer.**

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

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

(3) In addition to pursuing any other remedy, a consumer may bring an action to recover for damages caused by a violation of this act. If the manufacturer is found to have violated this act, the court shall award the consumer the amount of actual damages caused by the violation and may award the consumer costs and reasonable attorney fees.

**History:** 1994, Act 54, Imd. Eff. Mar. 31, 1994.

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