

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1466

Chapter 104, Laws of 1994

53rd Legislature
1994 Regular Session

MOTORIZED WHEELCHAIR WARRANTIES

EFFECTIVE DATE: 6/9/94

Passed by the House January 26, 1994
Yeas 92 Nays 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Passed by the Senate March 8, 1994
Yeas 45 Nays 0

JOEL PRITCHARD

President of the Senate

Approved March 28, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1466** as passed by the House of Representatives and the Senate on the dates hereon set forth.

MARILYN SHOWALTER

Chief Clerk

FILED

March 28, 1994 - 11:10 a.m.

**Secretary of State
State of Washington**

HOUSE BILL 1466

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By Representatives Jacobsen, Wang, Ludwig, G. Cole and Romero

Read first time 01/29/93. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to motorized wheelchair warranties; and adding a
2 new chapter to Title 19 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** Unless the context clearly requires
5 otherwise, the definitions in this section apply throughout this
6 chapter.

7 (1) "Collateral costs" means expenses incurred by a consumer in
8 connection with the repair of a nonconformity, including the costs of
9 obtaining an alternative wheelchair or other device assisting mobility.

10 (2) "Consumer" means any of the following:

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

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

18 (c) A person who may enforce a warranty on a motorized wheelchair;
19 or

1 (d) A person who leases a motorized wheelchair from a motorized
2 wheelchair lessor under a written lease.

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

5 (4) "Early termination cost" means an expense or obligation that a
6 motorized wheelchair lessor incurs as a result of both the termination
7 of a written lease before the termination date set forth in the lease
8 and the return of a motorized wheelchair to a manufacturer under
9 section 3(2)(b) of this act. "Early termination cost" includes a
10 penalty for prepayment under a finance arrangement.

11 (5) "Early termination savings" means an expense or obligation that
12 a motorized wheelchair lessor avoids as a result of both the
13 termination of a written lease before the termination date set forth in
14 the lease and the return of a motorized wheelchair to a manufacturer
15 under section 3(2)(b) of this act. "Early termination savings"
16 includes an interest charge that the motorized wheelchair lessor would
17 have paid to finance the motorized wheelchair or, if the motorized
18 wheelchair lessor does not finance the motorized wheelchair, the
19 difference between the total amount for which the lease obligates the
20 consumer during the period of the lease term remaining after the early
21 termination and the present value of that amount at the date of the
22 early termination.

23 (6) "Manufacturer" means a person who manufactures or assembles
24 motorized wheelchairs and agents of the person, including an importer,
25 a distributor, factory branch, distributor branch, and a warrantor of
26 the manufacturer's motorized wheelchairs, but does not include a
27 motorized wheelchair dealer.

28 (7) "Motorized wheelchair" means a motor-driven wheelchair,
29 including a demonstrator, that a consumer purchases or accepts transfer
30 of in this state.

31 (8) "Motorized wheelchair dealer" means a person who is in the
32 business of selling motorized wheelchairs.

33 (9) "Motorized wheelchair lessor" means a person who leases a
34 motorized wheelchair to a consumer, or who holds the lessor's rights,
35 under a written lease.

36 (10) "Nonconformity" means a condition or defect that substantially
37 impairs the use, value, or safety of a motorized wheelchair, and that
38 is covered by an express warranty applicable to the motorized
39 wheelchair or to a component of the motorized wheelchair, but does not

1 include a condition or defect that is the result of abuse, neglect, or
2 unauthorized modification or alteration of the motorized wheelchair by
3 a consumer.

4 (11) "Reasonable attempt to repair" means any of the following
5 occurring within the term of an express warranty applicable to a new
6 motorized wheelchair or within one year after first delivery of a
7 motorized wheelchair to a consumer, whichever is sooner:

8 (a) An attempted repair by the manufacturer, motorized wheelchair
9 lessor, or the manufacturer's authorized motorized dealer is made to
10 the same warranty nonconformity at least four times and the
11 nonconformity continues; or

12 (b) The motorized wheelchair is out of service for an aggregate of
13 at least thirty days because of warranty nonconformity.

14 NEW SECTION. **Sec. 2.** A manufacturer who sells a motorized
15 wheelchair to a consumer, either directly or through a motorized
16 wheelchair dealer, shall furnish the consumer with an express warranty
17 for the motorized wheelchair. The duration of the express warranty
18 must be for at least one year after the first delivery of the motorized
19 wheelchair to the consumer. If the manufacturer fails to furnish an
20 express warranty as required under this section, the motorized
21 wheelchair is covered by an implied warranty as if the manufacturer had
22 furnished an express warranty to the consumer as required under this
23 section.

24 NEW SECTION. **Sec. 3.** (1) If a new motorized wheelchair does not
25 conform to an applicable express warranty and the consumer reports the
26 nonconformity to the manufacturer, the motorized wheelchair lessor, or
27 any of the manufacturer's authorized motorized wheelchair dealers and
28 makes the motorized wheelchair available for repair before one year
29 after first delivery of the motorized wheelchair to the consumer, the
30 nonconformity must be repaired.

31 (2) If, after a reasonable attempt to repair, the nonconformity is
32 not repaired, the manufacturer shall do one of the following, whichever
33 is appropriate:

34 (a) At the direction of a consumer described under section 1(2)(a),
35 (b), or (c) of this act, do one of the following:

1 (i) Accept return of the motorized wheelchair and replace the
2 motorized wheelchair with a comparable new motorized wheelchair and
3 refund any collateral costs; or

4 (ii) Accept return of the motorized wheelchair and refund to the
5 consumer and to a holder of a perfected security interest in the
6 consumer's motorized wheelchair, as their interest may appear, the full
7 purchase price plus any finance charge, amount paid by the consumer at
8 the point of sale, and collateral costs, less a reasonable allowance
9 for use. Under this subsection (2)(a)(ii), a reasonable allowance for
10 use may not exceed the amount obtained by multiplying the full purchase
11 price of the motorized wheelchair by a fraction, the denominator of
12 which is one thousand eight hundred twenty-five and the numerator of
13 which is the number of days that the motorized wheelchair was driven
14 before the consumer first reported the nonconformity to the motorized
15 wheelchair dealer; or

16 (b)(i) For a consumer described in section 1(2)(d) of this act,
17 accept return of the motorized wheelchair, refund to the motorized
18 wheelchair lessor and to a holder of a perfected security interest in
19 the motorized wheelchair, as their interest may appear, the current
20 value of the written lease and refund to the consumer the amount that
21 the consumer paid under the written lease plus any collateral costs,
22 less a reasonable allowance for use.

23 (ii) Under this subsection (2)(b), the current value of the written
24 lease equals the total amount for which the lease obligates the
25 consumer during the period of the lease remaining after its early
26 termination, plus the motorized wheelchair dealer's early termination
27 costs and the value of the motorized wheelchair at the lease expiration
28 date if the lease sets forth the value, less the motorized wheelchair
29 lessor's early termination savings.

30 (iii) Under this subsection (2)(b), a reasonable allowance for use
31 may not exceed the amount obtained by multiplying the total amount for
32 which the written lease obligates the consumer by a fraction, the
33 denominator of which is one thousand eight hundred twenty-five and the
34 numerator of which is the number of days that the consumer drove the
35 motorized wheelchair before first reporting the nonconformity to the
36 manufacturer, motorized wheelchair lessor, or motorized wheelchair
37 dealer.

38 (3) To receive a comparable new motorized wheelchair or a refund
39 due under subsection (2)(a) of this section, a consumer described under

1 section 1(2) (a), (b), or (c) of this act shall offer to the
2 manufacturer of the motorized wheelchair having the nonconformity to
3 transfer possession of the motorized wheelchair to the manufacturer.
4 Within thirty days after the offer, the manufacturer shall provide the
5 consumer with a comparable new motorized wheelchair or a refund. When
6 the manufacturer provides a new motorized wheelchair or refund under
7 this subsection, the consumer shall return to the manufacturer the
8 motorized wheelchair having the nonconformity.

9 (4)(a) To receive a refund due under subsection (2)(b) of this
10 section, a consumer described under section 1(2)(d) of this act shall
11 offer to return the motorized wheelchair having the nonconformity to
12 its manufacturer. Within thirty days after the offer, the manufacturer
13 shall provide the refund to the consumer. When the manufacturer
14 provides the refund, the consumer shall return to the manufacturer the
15 motorized wheelchair having the nonconformity.

16 (b) To receive a refund due under subsection (2)(b) of this
17 section, a motorized wheelchair lessor shall offer to transfer
18 possession of the motorized wheelchair having the nonconformity to the
19 manufacturer. Within thirty days after the offer, the manufacturer
20 shall provide a refund to the motorized wheelchair lessor. When the
21 manufacturer provides the refund, the motorized wheelchair lessor shall
22 provide to the manufacturer the endorsements necessary to transfer
23 legal possession to the manufacturer.

24 (c) A person may not enforce the lease against the consumer after
25 the consumer receives a refund due under subsection (2)(b) of this
26 section.

27 (5) A person may not sell or lease again in this state a motorized
28 wheelchair returned by a consumer or motorized wheelchair lessor in
29 this state under subsection (2) of this section or by a consumer or
30 motorized wheelchair lessor in another state under a similar law of
31 that state, unless full disclosure of the reasons for return is made to
32 a prospective buyer or lessee.

33 NEW SECTION. **Sec. 4.** This chapter does not limit rights or
34 remedies available under other law to a consumer.

35 NEW SECTION. **Sec. 5.** A waiver by a consumer of rights under this
36 section is void.

1 NEW SECTION. **Sec. 6.** In addition to pursuing another remedy, a
2 consumer may bring an action to recover damages caused by a violation
3 of this chapter. The court shall award a consumer who prevails in an
4 action under this section twice the amount of pecuniary loss, together
5 with costs, disbursements, reasonable attorneys' fees, and equitable
6 relief that the court determines is appropriate.

7 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act shall
8 constitute a new chapter in Title 19 RCW.

 Passed the House January 26, 1994.

 Passed the Senate March 8, 1994.

 Approved by the Governor March 28, 1994.

 Filed in Office of Secretary of State March 28, 1994.