

SENATE No. 2567

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

SENATE, November 8, 2021.

The committee on Consumer Protection and Professional Licensure, to whom was referred the petitions (accompanied by bill, Senate, No. 184) of John Cronin, Diana DiZoglio, Mathew J. Muratore, Jack Patrick Lewis and other members of the General Court for legislation to expand wheelchair warranty protections for consumers with disabilities; and (accompanied by bill, House, No. 446) of James J. O'Day and others relative to wheelchair warranty protections for consumers, reports the accompanying bill (Senate, No. 2567).

For the committee,
Susan L. Moran

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An Act expanding wheelchair warranty protections for consumers with disabilities.

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

1 SECTION 1. Section 107 of chapter 93 of the General Laws is hereby amended by
2 striking out the section title and inserting in place thereof the following title:-

3 Section 107. Wheelchair warranty protections for consumers with disabilities; rights and
4 remedies

5 SECTION 2. Chapter 93 of the General Laws, as appearing in the 2018 Official Edition,
6 is hereby amended by striking out section 107, and inserting in place thereof the following
7 section:-

8 Section 107. (A) As used in this section the following words shall have the following
9 meanings unless the context clearly indicates otherwise:-

10 “Authorized wheelchair dealer”, any seller of a wheelchair that: (1) has, within a
11 specified geographic area, an exclusive distribution arrangement with any person or entity that

12 manufacturers or assembles such wheelchair; or (2) is designated by the person or company that
13 manufactures or assembles such wheelchair to repair or accept for repair such wheelchair.

14 "Collateral costs", the following expenses incurred by a consumer: (1) The cost to rent a
15 substitute wheelchair during the time repairs are attempted for a wheelchair that has a
16 nonconformity and during the time preceding receipt of a replacement for such a wheelchair; (2)
17 The cost of shipping a wheelchair that has a nonconformity to a manufacturer, lessor, or
18 authorized wheelchair dealer for repair or replacement; (3) Lost wages and transportation
19 expenses resulting from a nonconformity in a wheelchair; and (4) Out-of-pocket medical
20 expenses for the treatment of a physical injury caused by a nonconformity in a wheelchair.

21 "Consumer", (1) The purchaser of a wheelchair, including purchases covered by private
22 or public insurance, if the wheelchair was purchased from a wheelchair dealer or manufacturer
23 for purposes other than resale; (2) A person to whom the wheelchair is transferred for purposes
24 other than resale, if the transfer occurs before the expiration of an express warranty applicable to
25 the wheelchair; (3) A person who may enforce the warranty; or (4) A person who leases a
26 wheelchair from a wheelchair lessor under a written lease. "Consumers" shall include those who
27 have not paid all or some costs out of pocket for the purchase or lease of a wheelchair.

28 "Defective", having a condition of nonconformity.

29 "Early termination cost", an expense or obligation incurred by a wheelchair lessor as a
30 result of both the termination of a written lease before the termination date set forth in such lease
31 and the return of a wheelchair to a manufacturer pursuant to paragraph (c) of subsection (2) of
32 subdivision (C). Early termination cost shall include a penalty for prepayment under a finance
33 arrangement.

34 "Early termination savings", an expense or obligation avoided by a wheelchair lessor as a
35 result of both the termination of a written lease before the termination date set forth in such lease
36 and the return of a wheelchair to a manufacturer pursuant to said paragraph (c) of said subsection
37 (2) of said subdivision (C). Early termination saving shall include interest charges that a
38 wheelchair lessor would have paid to finance the wheelchair or, if the wheelchair was not
39 financed, the difference between the total amount for which the lease obligates the consumer
40 during the period of the lease term remaining after the early termination and the present value of
41 such amount at the date of the early termination.

42 "Express warranty", a warranty provided as set forth in this section, which requires that
43 the wheelchair shall be free from any condition or defect which substantially impairs the use,
44 value, or safety of the wheelchair.

45 "Manufacturer", a person or company that manufactures or assembles wheelchairs and
46 agents of that person or company, including an authorized wheelchair dealer, an importer, a
47 distributor, factory branch, distributor branch and any warrantors of the manufacturer's
48 wheelchair, but does not include a professional who fabricates, without charge, a device for use
49 in the course of treatment.

50 "Nonconformity", a condition or defect that substantially impairs the use, value or safety
51 of a wheelchair and which is covered by an express warranty applicable to the wheelchair or to a
52 component of the wheelchair; "nonconformity" shall not include a condition or defect which
53 results from abuse, neglect, or the unreasonable and unforeseeable misuse of the wheelchair by
54 consumer modification or alteration.

55 "Reasonable attempt to repair", any of the following occurring to a wheelchair after the
56 consumer has reported the nonconformity and made the wheelchair available to the manufacturer
57 for repair within the applicable term of warranty period:

58 (1) a nonconformity is subject to repair at least two times by the manufacturer,
59 wheelchair lessor, or any of the manufacturer's authorized wheelchair dealers and the
60 nonconformity continues, or

61 (2) the wheelchair is out of service for an aggregate of at least twenty-one days because
62 of a warranty nonconformity.

63 "Replacement wheelchair", a properly working substitute wheelchair that is comparable
64 to the equipment to be repaired.

65 "Wheelchair", a wheelchair, scooter, or other aid that enhances the mobility or
66 positioning of an individual with a disability, such as motorization, motorized positioning
67 features, and the switches and controls for motorized features.

68 "Wheelchair dealer" means an individual or entity that is in the business of selling
69 wheelchairs, including a manufacturer who sells wheelchairs directly to consumers.

70 "Wheelchair lessor" means an individual or entity that leases a wheelchair to a consumer,
71 or who holds the lessor's rights, under a written lease.

72 (B)(1) A manufacturer who sells or leases a wheelchair to a consumer, either directly or
73 through a wheelchair dealer, shall furnish the consumer with an express warranty for the
74 wheelchair. The duration of the express warranty shall be not less than two years after first
75 delivery of the wheelchair to the consumer.

76 (2) At the time of purchase or lease, the manufacturer must provide directly to the
77 consumer a statement, written in not less than 14-point all capital bolded type on a separate piece
78 of paper or in such other form as the consumer can understand, in substantially the following
79 form:

80 “IMPORTANT: IF THIS WHEELCHAIR IS DEFECTIVE WITHIN THE PERIOD OF
81 YOUR WARRANTY, [INSERT WARRANTY PERIOD, MINIMUM TWO (2) YEARS]
82 FROM THE DATE OF FIRST DELIVERY, YOU MAY BE ENTITLED UNDER STATE
83 LAW TO REPLACEMENT OF IT OR A REFUND OF ITS PURCHASE PRICE. HOWEVER,
84 TO BE ENTITLED TO REFUND OR REPLACEMENT, YOU MUST FIRST NOTIFY THE
85 MANUFACTURER, THE WHEELCHAIR LESSOR, OR THE WHEELCHAIR DEALER OF
86 THE PROBLEM AND GIVE THE MANUFACTURER OR AN AUTHORIZED
87 WHEELCHAIR DEALER AN OPPORTUNITY TO REPAIR THE WHEELCHAIR IN
88 ACCORDANCE WITH MASSACHUSETTS GENERAL LAWS CHAPTER 93, SECTION
89 107.”

90 “IMPORTANT: IF THIS WHEELCHAIR IS BOTH DEFECTIVE AND INOPERABLE
91 WITHIN THE PERIOD OF YOUR WARRANTY, THE MANUFACTURER OR AN
92 AUTHORIZED WHEELCHAIR DEALER MUST ASSESS THE WHEELCHAIR WITHIN
93 THREE (3) BUSINESS DAYS FOLLOWING NOTICE AND, IF NECESSARY, PROVIDE A
94 REPLACEMENT WHEELCHAIR WITHIN FOUR (4) BUSINESS DAYS FOR THE
95 EXPECTED DURATION OF REPAIRS PROVIDED UNDER THE WARRANTY. THE
96 MANUFACTURER OR AUTHORIZED WHEELCHAIR DEALER MUST GIVE NO
97 GREATER THAN A FIVE (5) HOUR WINDOW FOR THE STARTING TIME OF THE
98 ASSESSMENT, IF FEASIBLE.”

99 This statement must include the applicable warranty period of two years or greater from
100 the date of first delivery. If no statement is provided to the consumer as required under this
101 section, the manufacturer is in violation of this section, and the express warranty period shall be
102 three years.

103 (C)(1)(a) If a new wheelchair does not conform to an applicable express warranty and the
104 consumer reports such nonconformity to the manufacturer, to a wheelchair lessor, or to a
105 wheelchair dealer and such consumer makes the wheelchair available for repair prior to the
106 expiration of the applicable warranty period from the date of first delivery, the nonconformity
107 shall be repaired at no charge to the consumer. It shall be presumed that the consumer has made
108 the wheelchair available to the manufacturer or authorized wheelchair dealer for repair if such
109 consumer allows the manufacturer or dealer to take it from the consumer's home or other
110 location where the user customarily uses the wheelchair.

111 (b) Whenever a wheelchair covered by a manufacturer's warranty is nonconforming and
112 made available by a consumer to the manufacturer or an authorized wheelchair dealer for the
113 repair of a nonconformity to which the warranty is applicable, the manufacturer shall cover all
114 collateral costs, including providing directly to the consumer for the duration of the repair period,
115 as selected by the consumer: (i) a replacement wheelchair; or (ii) reimbursement for the cost
116 incurred by the consumer for renting a replacement wheelchair. If a wheelchair within the period
117 of warranty is both defective and inoperable the manufacturer or an authorized wheelchair dealer
118 must assess the wheelchair within 3 business days following notice from the consumer and, if
119 necessary, provide a replacement wheelchair to the consumer within 4 business days following
120 notice from the consumer for the expected duration of repairs provided under the warranty. The

121 manufacturer or authorized wheelchair dealer must give the consumer no greater than a 5-hour
122 window for the starting time of the assessment, if feasible.

123 (c) Manufacturers shall be required to fill all repair and replacement orders for
124 wheelchairs under warranty in this section from their own inventory, or have a written
125 subcontract for the purchase of items necessary to fill orders in accordance with this section. A
126 subcontract must be in writing and must contain, at a minimum, the following: (i) names,
127 addresses, phone numbers, and contact names for both companies; (ii) the contract term start and
128 end dates; (iii) a description of the wheelchairs covered under the subcontract, including the cost
129 of each item; (iv) signatures of both parties, including signature dates and position titles; (v) an
130 established credit limit that is reasonable, based on the value of the products and services to be
131 provided by the contractor; and (vi) a provision requiring shipping of parts, whenever feasible,
132 by overnight mail.

133 (d) The manufacturer must keep written record of all repair attempts made, including: (i)
134 the date a repair was requested; (ii) the type of repair requested; (iii) the date the repair attempt
135 began; (iv) the length of the repair attempt; (v) the results of the repair attempt; and (vi) the total
136 number of repair attempts made. The manufacturer must give the consumer no greater than a 5-
137 hour window for the starting time of the appointment, if feasible.

138 (2)(a) If, after a reasonable attempt to repair, the nonconformity is not repaired, the
139 manufacturer shall carry out the requirements set forth in paragraph (b) or (c), whichever is
140 appropriate.

141 (b) At the direction of a consumer other than one who leases a wheelchair, the
142 manufacturer shall:

143 (i) accept return of the wheelchair and replace it with a comparable new wheelchair and
144 refund any collateral costs not already covered under (C)(1)(b) of this section; or

145 (ii) accept return of the wheelchair and refund to the consumer and to any holder of a
146 perfected security interest, as their interest may appear, the full purchase price and any finance
147 charge amount paid by the consumer at the point of sale and any collateral costs not already
148 covered under (C)(1)(b) of this section, less a reasonable allowance for use. A reasonable
149 allowance for use shall not exceed the amount obtained by multiplying the full purchase price of
150 the wheelchair by a fraction, the denominator of which shall be one thousand eight hundred and
151 twenty-five and the numerator of which shall be the number of days that the wheelchair was in
152 the consumer's possession before the consumer first reported the nonconformity to the
153 wheelchair dealer.

154 (c) At the direction of a consumer who leases a wheelchair, the manufacturer shall accept
155 return of the wheelchair, refund to the wheelchair lessor and to any holder of a perfected security
156 interest, as their interest may appear, the current value of the written lease and refund to the
157 consumer the amount such consumer paid under the written lease and any collateral costs not
158 already covered under (C)(1)(b) of this section, less a reasonable allowance for use. A reasonable
159 allowance for use shall not exceed the amount obtained by multiplying the total amount for
160 which the written lease obligates the consumer by a fraction, the denominator of which shall be
161 one thousand eight hundred and twenty-five, or the number of days of the lease, whichever
162 number is greater, and the numerator of which shall be half of the number of days that the
163 consumer possessed the wheelchair before first reporting the nonconformity to the manufacturer,
164 wheelchair lessor or wheelchair dealer.

165 The current value of the written lease shall be the total amount for which that lease
166 obligates the consumer during the period of the lease remaining after its early termination, plus
167 the wheelchair dealer's early termination costs and the value of the wheelchair at the lease
168 expiration date if the lease sets forth that value, less the wheelchair lessor's early termination
169 savings.

170 (3) In order to receive a comparable new wheelchair or a refund due under paragraph (b)
171 of subsection (2), a consumer described thereunder shall offer to the manufacturer of the
172 wheelchair having the nonconformity to transfer possession of that wheelchair to that
173 manufacturer. No later than thirty days after such offer, the manufacturer shall provide the
174 consumer with the comparable new wheelchair or refund. When the manufacturer provides the
175 wheelchair or refund, the consumer shall make the wheelchair having the nonconformity
176 available for return to the manufacturer, along with any endorsements necessary to transfer legal
177 possession to the manufacturer.

178 (4)(a) In order to receive a refund due under paragraph (c) of subsection (2), a consumer
179 described thereunder shall offer to return the wheelchair having the nonconformity to its
180 manufacturer. Not later than thirty days after such offer, the manufacturer shall provide the
181 refund to the consumer. When the manufacturer provides the refund, the consumer shall make
182 the wheelchair having the nonconformity available for return to the manufacturer.

183 (b) To receive a refund due under paragraph (c) of subsection (2), a wheelchair lessor
184 shall offer to transfer possession of the wheelchair having the nonconformity to its manufacturer.
185 No later than thirty days after such offer, the manufacturer shall provide the refund to the
186 wheelchair lessor. When the manufacturer provides the refund, the wheelchair lessor shall

187 provide to the manufacturer any endorsements necessary to transfer legal possession to the
188 manufacturer.

189 (c) No person may enforce the lease against the consumer after such consumer exercises
190 rights under paragraph (c) of subsection (2).

191 (d) No wheelchair returned by a consumer or wheelchair lessor in the commonwealth or
192 by a consumer or wheelchair lessor in another state under a similar law of that state, may be
193 resold or leased in the commonwealth unless full disclosure of the reasons for such return has
194 been made to a prospective buyer or lessee.

195 (D) Each consumer shall have the option of submitting any dispute arising under this
196 section, upon the payment of a prescribed filing fee, to an alternate arbitration mechanism
197 established pursuant to regulations promulgated hereunder by the secretary of the executive
198 office of consumer affairs and business regulation. Upon application of the consumer and
199 payment of the appropriate filing fee, all manufacturers shall submit to such alternative
200 arbitration. Such alternate arbitration shall be conducted by a professional arbitrator or
201 arbitration firm appointed by and under regulations established by the attorney general. Such
202 mechanism shall ensure the personal objectivity of its arbitrators and the right of each party to
203 present its case, to be in attendance during any presentation made by the other party and to rebut
204 or refute such presentation.

205 (E) The attorney general is hereby authorized to bring an action under section 4 of
206 chapter 93A to enforce this section and to obtain restitution, civil penalties, injunctive relief and
207 any other relief awarded pursuant to chapter 93A. Nothing contained in this section shall be

208 deemed to limit any rights or remedies available to a consumer under any other law. Any waiver
209 by a consumer of rights under this section shall be void.

210 (F) A consumer may bring a private right of action under chapter 93A to enforce this
211 section. A violation of this section shall per se constitute an unfair or deceptive act under the
212 provisions of chapter 93A. In addition to pursuing any other remedy, including relief under
213 chapter 93A, a consumer may bring an action to recover for damages caused by a violation of
214 this section. The court shall award a consumer who prevails in such an action twice the amount
215 of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any
216 equitable relief that the court deems is appropriate.

217 (G) The office of consumer affairs and business regulation shall make an annual report to
218 the joint committee on children, families, and persons with disabilities and the joint committee
219 on consumer protection and professional licensure not later than January 1 of each year on the
220 operational status of the wheelchair alternate arbitration mechanism, including, but not limited
221 to, data regarding the number of complaints filed through the alternate arbitration mechanism
222 and the aggregate results of such arbitration procedures.

223 SECTION 3. Not later than 90 days after the effective date of this act, the Secretary of
224 the Executive Office of Consumer Affairs and Business Regulation shall promulgate regulations
225 as necessary pursuant to this act's amendments to section 107 of chapter 93.