

SENATE No. 152

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Cronin

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act expanding wheelchair warranty protections for consumers with disabilities.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|--------------------------------|---|------------------|
| <i>John J. Cronin</i> | <i>Worcester and Middlesex</i> | |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>2/6/2023</i> |
| <i>Kimberly N. Ferguson</i> | <i>1st Worcester</i> | <i>2/6/2023</i> |
| <i>Carmin Lawrence Gentile</i> | <i>13th Middlesex</i> | <i>2/8/2023</i> |
| <i>Mathew J. Muratore</i> | <i>1st Plymouth</i> | <i>2/10/2023</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>2/13/2023</i> |
| <i>Jacob R. Oliveira</i> | <i>Hampden, Hampshire and Worcester</i> | <i>2/20/2023</i> |
| <i>Cindy F. Friedman</i> | <i>Fourth Middlesex</i> | <i>3/3/2023</i> |
| <i>John C. Velis</i> | <i>Hampden and Hampshire</i> | <i>4/13/2023</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>5/22/2023</i> |

SENATE No. 152

By Mr. Cronin, a petition (accompanied by bill, Senate, No. 152) of John J. Cronin, Jack Patrick Lewis, Kimberly N. Ferguson, Carmine Lawrence Gentile and other members of the General Court for legislation to expand wheelchair warranty protections for consumers with disabilities. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 3136 OF 2021-2022.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninety-Third General Court
(2023-2024)**
—————

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. Chapter 93 of the General Laws is hereby amended by striking out section
2 107, as appearing in the 2020 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 107. (a) As used in this section, the following words shall have the following
5 meanings unless the context clearly indicates otherwise:-

6 “Authorized wheelchair dealer”, any seller of a wheelchair that: (i) has an exclusive
7 distribution arrangement within a specified geographic area with any person or entity that
8 manufacturers or assembles the type of wheelchair at issue; or (ii) is designated by the person or

9 entity that manufactures or assembles the type of wheelchair at issue to repair or accept for repair
10 such type of wheelchair.

11 “Collateral costs”, expenses incurred by a consumer in connection with the repair of a
12 nonconformity, including, but not limited to: (i) the cost to rent a wheelchair or other assistive
13 device for mobility during the time repairs are attempted and until the receipt of a replacement
14 wheelchair; (ii) the cost of shipping a wheelchair that has a nonconformity to a manufacturer,
15 lessor or authorized wheelchair dealer for repair or replacement; and (iii) out-of-pocket medical
16 expenses for the treatment of any physical injury caused by the nonconformity in the wheelchair.

17 “Consumer”, (i) the purchaser of a wheelchair, including purchases covered by private or
18 public insurance, if the wheelchair was purchased from a wheelchair dealer or manufacturer for
19 purposes other than resale; (ii) a person to whom the wheelchair is transferred for purposes other
20 than resale, if the transfer occurs before the expiration of an express warranty applicable to the
21 wheelchair; (iii) a person who may enforce the express warranty applicable to the wheelchair; or
22 (iv) A person who leases a wheelchair from a wheelchair lessor under a written lease; provided,
23 that “consumer” shall include those who have not paid all or some costs out of pocket for the
24 purchase or lease of a wheelchair.

25 “Defective”, having a condition of nonconformity.

26 “Early termination cost”, an expense or obligation incurred by a wheelchair lessor as a
27 result of both the termination of a written lease before the termination date set forth in such lease
28 and the return of a wheelchair to a manufacturer pursuant to subparagraph (i) of paragraph (2) of
29 subsection (c); provided, that “early termination cost” shall include a penalty for prepayment
30 under a finance arrangement.

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

39 “Express warranty”, a warranty that guarantees that the wheelchair shall be free from any
40 condition or defect which substantially impairs the use, value or safety of the wheelchair.

41 “Inoperable”, unable to function or function safely.

42 “Manufacturer”, a person or entity that manufactures or assembles wheelchairs and
43 agents of that person or entity, including an authorized wheelchair dealer, an importer, a
44 distributor, factory branch, distributor branch and any warrantors of the manufacturer's
45 wheelchair; provided, however, that “manufacturer” shall not include a professional who
46 fabricates, without charge, a device for use in the course of medical treatment.

47 “Nonconformity”, a condition or defect that substantially impairs the use, value or safety
48 of a wheelchair and which is covered by an express warranty applicable to the wheelchair or to a
49 component of the wheelchair; provided, however, that “nonconformity” shall not include a
50 condition or defect which results from abuse, neglect or the unreasonable and foreseeable misuse
51 of the wheelchair by consumer modification or alteration.

52 “Original wheelchair”, the nonconforming wheelchair to be repaired, should it have been
53 fully functional.

54 “Reasonable attempt to repair”, any of the following occurring to a wheelchair after the
55 consumer has reported the nonconformity and made the wheelchair available to the manufacturer
56 for repair within the applicable term of warranty period:(i) a nonconformity had been repaired
57 not less than 2 times by the manufacturer, wheelchair lessor or any of the manufacturer's
58 authorized wheelchair dealers and the nonconformity continues; or(ii) the wheelchair is out of
59 service for an aggregate of not less than 21 days because of a warranty nonconformity.

60 “Replacement wheelchair”, a properly working wheelchair that is identical to the
61 nonconforming wheelchair or that is comparable in all functional capabilities to the original
62 wheelchair provided by the manufacturer, wheelchair lessor or manufacturer’s authorized
63 wheelchair dealer to the consumer in place of the nonconforming wheelchair.

64 “Temporary loaner wheelchair”, a wheelchair provided to the consumer that: (i) is free
65 of charge; (ii) is in good working order; (iii) is able to perform the most essential functions of the
66 original device, in light of the disabilities of the user; and (iv) does not have any differences from
67 the original device that create a threat to health or safety; provided, however, that a “temporary
68 loaner wheelchair” need not be new or identical to or have functional capabilities equal to or
69 greater than those of the original wheelchair.

70 “Wheelchair”, a manual or motorized wheeled device that enhances the mobility or
71 positioning of an individual with a disability.

72 “Wheelchair dealer” an individual or entity that is in the business of selling wheelchairs,
73 including, but not limited to, a manufacturer who sells wheelchairs directly to consumers.

74 “Wheelchair lessor” an individual or entity that leases a wheelchair to a consumer, or
75 who holds the lessor’s rights, under a written lease.

76 (b)(1) A manufacturer who sells or leases a wheelchair to a consumer, either directly or
77 through a wheelchair dealer, shall furnish the consumer with an express warranty for the
78 wheelchair; provided, however, that the duration of the express warranty shall be not less than 2
79 years after first delivery of the wheelchair to the consumer.

80 (2) At the time of purchase or lease of a wheelchair, the manufacturer must provide
81 directly to the consumer a statement, written in not less than 14-point all capital boldfaced type
82 on a separate piece of paper, or in such other form as the consumer may access, including the
83 applicable warranty period of not less than 2 years from the date of first delivery, in substantially
84 the following form:

85 “IMPORTANT: IF THIS WHEELCHAIR IS DEFECTIVE WITHIN THE PERIOD OF
86 YOUR WARRANTY, [INSERT WARRANTY PERIOD, NOT LESS THAN 2 YEARS FROM
87 THE DATE OF FIRST DELIVERY], YOU MAY BE ENTITLED UNDER STATE LAW TO
88 REPLACEMENT OF THE WHEELCHAIR OR A REFUND OF ITS PURCHASE PRICE.
89 HOWEVER, TO BE ENTITLED TO A REFUND OR REPLACEMENT, YOU MUST FIRST
90 NOTIFY THE MANUFACTURER, THE WHEELCHAIR LESSOR OR THE WHEELCHAIR
91 DEALER OF THE NON-CONFORMITY AND GIVE THE MANUFACTURER OR
92 AUTHORIZED WHEELCHAIR DEALER AN OPPORTUNITY TO REPAIR THE
93 WHEELCHAIR IN ACCORDANCE WITH SECTION 107 OF CHAPTER 93 OF THE
94 MASSACHUSETTS GENERAL LAWS.

95 IF THIS WHEELCHAIR IS BOTH DEFECTIVE AND INOPERABLE WITHIN THE
96 PERIOD OF YOUR WARRANTY, THE MANUFACTURER OR AUTHORIZED
97 WHEELCHAIR DEALER MUST ASSESS THE WHEELCHAIR NOT LESS THAN 3
98 BUSINESS DAYS FOLLOWING NOTICE AND, IF NECESSARY, PROVIDE A
99 TEMPORARY LOANER WHEELCHAIR WITHIN 4 BUSINESS DAYS FOR THE
100 EXPECTED DURATION OF REPAIRS PROVIDED FOR UNDER THE WARRANTY.”

101 (3) If the manufacturer, lessor or wheelchair dealer fail to provide the statement of
102 warranty as required pursuant to this subsection, the manufacturer shall be in violation of this
103 subsection and the minimum express warranty period shall be extended to 3 years.

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

112 (ii) If a wheelchair covered by a manufacturer’s warranty has a nonconformity to which
113 the warranty is applicable and is made available by a consumer to the manufacturer or authorized
114 wheelchair dealer for the repair of the nonconformity, the manufacturer shall cover all collateral
115 costs and shall provide directly to the consumer, for the duration of the repair period and as
116 selected by the consumer: (A) a temporary loaner wheelchair; or (B) reimbursement for the cost

117 incurred by the consumer for renting a wheelchair while the original wheelchair is assessed and
118 repaired. If the original wheelchair within the period of the warranty is both defective and
119 inoperable, the manufacturer or authorized wheelchair dealer must assess the wheelchair not less
120 than 3 business days following notice from the consumer and, if necessary, provide a temporary
121 loaner wheelchair to the consumer not less than 4 business days following notice from the
122 consumer for the expected duration of repairs provided under the warranty. The manufacturer or
123 authorized dealer shall provide the consumer with an estimated timeframe for assessment and,
124 following assessment, any repairs.

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

135 (iv) The manufacturer shall keep written record of all repair attempts made, including,
136 but not limited to: (A) the date a repair was requested; (B) the type of repair requested; (C) the
137 date the repair attempt began; (D) the length of the repair attempt; (E) collateral costs covered;
138 (F) the results of the repair attempt; and (G) the total number of repair attempts made.

139 (2)(i) If, after a reasonable attempt to repair, the nonconformity is not repaired, the
140 manufacturer shall:

141 (A) at the direction of a consumer other than one who leases a wheelchair: (1) accept
142 return of the wheelchair, issue a replacement wheelchair and refund any collateral costs; or (2)
143 accept return of the wheelchair and refund to the consumer and to any holder of a perfected
144 security interest, as their interest may appear, the full purchase price and any finance charge
145 amount paid by the consumer at the point of sale and any collateral costs, less a reasonable
146 allowance for use; provided, however, that a reasonable allowance for use shall not exceed the
147 amount obtained by multiplying the full purchase price of the wheelchair by a fraction, the
148 denominator of which shall be 1,825 and the numerator of which shall be the number of days that
149 the wheelchair was in the consumer's possession before the consumer first reported the
150 nonconformity to the wheelchair dealer; or

151 (B) at the direction of a consumer who leases a wheelchair, accept return of the
152 wheelchair, refund to the wheelchair lessor and to any holder of a perfected security interest, as
153 their interest may appear, the current value of the written lease and refund to the consumer the
154 amount such consumer paid under the written lease and any collateral costs, less a reasonable
155 allowance for use; provided, however, that a reasonable allowance for use shall not exceed the
156 amount obtained by multiplying the total amount for which the written lease obligates the
157 consumer by a fraction, the denominator of which shall be 1,825, or the number of days of the
158 lease, whichever number is greater, and the numerator of which shall be half of the number of
159 days that the consumer possessed the wheelchair before first reporting the nonconformity to the
160 manufacturer, wheelchair lessor or wheelchair dealer.

161 (ii) The current value of the written lease shall be the total amount for which that lease
162 obligates the consumer during the period of the lease remaining after its early termination, plus
163 the wheelchair dealer's early termination costs and the value of the wheelchair at the lease
164 expiration date if the lease sets forth that value, less the wheelchair lessor's early termination
165 savings.

166 (3) In order to receive a replacement wheelchair or a refund due under clause (A) of
167 subparagraph (i) of paragraph (2), a consumer described thereunder shall offer to transfer
168 possession of the wheelchair having the nonconformity to its manufacturer. Not later than 30
169 days after such offer, the manufacturer shall provide the consumer with the replacement
170 wheelchair or refund. When the manufacturer provides the replacement wheelchair or refund, the
171 consumer shall make the wheelchair having the nonconformity available for return to the
172 manufacturer, along with any endorsements necessary to transfer legal possession to the
173 manufacturer.

174 (4)(i) In order to receive a refund due under clause (B) of subparagraph (i) of paragraph
175 (2), a consumer described thereunder shall offer to return the wheelchair having the
176 nonconformity to its manufacturer. Not later than 30 days after such offer, the manufacturer shall
177 provide the refund to the consumer. When the manufacturer provides the refund, the consumer
178 shall make the wheelchair having the nonconformity available for return to the manufacturer.

179 (ii) To receive a refund due under clause (B) of subparagraph (i) of paragraph (2), a
180 wheelchair lessor shall offer to transfer possession of the wheelchair having the nonconformity
181 to its manufacturer. No later than 30 days after such offer, the manufacturer shall provide the
182 refund to the wheelchair lessor. When the manufacturer provides the refund, the wheelchair

183 lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession
184 to the manufacturer.

185 (iii) No person may enforce the lease against the consumer after such consumer exercises
186 rights pursuant to clause (B) of subparagraph (i) of paragraph (2).

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

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

200 (e) The attorney general is hereby authorized to bring an action under section 4 of chapter
201 93A to enforce this section and to obtain restitution, civil penalties, injunctive relief and any
202 other relief awarded pursuant to said chapter 93A. Nothing contained in this section shall limit
203 any rights or remedies available to a consumer under any other law. Any waiver by a consumer
204 of rights under this section shall be void.

205 (f) A consumer may bring a private right of action under chapter 93A to enforce this
206 section. A violation of this section shall constitute an unfair or deceptive act under said chapter
207 93A. In addition to pursuing any other remedy, including relief under said chapter 93A, a
208 consumer may bring an action to recover for damages caused by a violation of this section. The
209 court shall award a consumer who prevails in such an action twice the amount of any pecuniary
210 loss, together with costs, disbursements and reasonable attorney fees and any equitable relief that
211 the court deems is appropriate.

212 (g) Annually, not later than January 1, the office of consumer affairs and business
213 regulation shall report to the joint committee on children, families and persons with disabilities
214 and the joint committee on consumer protection and professional licensure on the operational
215 status of the wheelchair alternate arbitration mechanism, including, but not limited to, data
216 regarding the number of complaints filed through the alternate arbitration mechanism and the
217 aggregate results of such arbitration procedures.

218 SECTION 2. Not later than 90 days after the effective date of this act, the secretary of
219 consumer affairs and business regulation shall promulgate regulations necessary to carry out this
220 act.