

1991 Assembly Bill 958

Date of enactment: **April 22, 1992**

Date of publication\*: **May 6, 1992**

# 1991 WISCONSIN ACT 222

AN ACT to create 134.87 of the statutes, relating to: motorized wheelchair warranties.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 134.87 of the statutes is created to read:

**134.87 Repair, replacement and refund under new motorized wheelchair warranties.** (1) In this section:

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

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

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

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

3. A person who may enforce the warranty.

4. A person who leases a motorized wheelchair from a motorized wheelchair lessor under a written lease.

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

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

(e) "Early termination savings" means any expense or obligation that a motorized wheelchair lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motorized wheelchair to a manufacturer under sub. (3) (b) 3. "Early termination savings" includes an interest charge that the motorized wheelchair lessor would have paid to finance the motorized wheelchair or, if the motorized wheelchair lessor does not finance the motorized 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) "Manufacturer" means a person who manufactures or assembles motorized wheelchairs and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's motorized wheelchairs, but does not include a motorized wheelchair dealer.

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

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

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

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

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

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

1. The same nonconformity with the warranty is subject to repair by the manufacturer, motorized wheelchair lessor or any of the manufacturer's authorized motorized wheelchair dealers at least 4 times and the nonconformity continues.

2. The motorized wheelchair is out of service for an aggregate of at least 30 days because of warranty nonconformities.

(2) A manufacturer who sells a motorized wheelchair to a consumer, either directly or through a motorized wheelchair dealer, shall furnish the consumer with an express warranty for the motorized wheelchair. The duration of the express warranty shall be not less than one year after first delivery of the motorized wheelchair to the consumer. If a manufacturer fails to furnish an express warranty as required by this subsection, the motorized wheelchair shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this subsection.

(3) (a) If a new motorized wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the motorized wheelchair lessor or any of the manufacturer's authorized motorized wheelchair dealers and makes the motorized wheelchair available for repair before one year after first delivery of the motorized wheelchair to a consumer, the nonconformity shall be repaired.

(b) 1. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement under subd. 2 or 3, whichever is appropriate.

2. At the direction of a consumer described under sub. (1) (b) 1., 2. or 3., do one of the following:

a. Accept return of the motorized wheelchair and replace the motorized wheelchair with a comparable new motorized wheelchair and refund any collateral costs.

b. Accept return of the motorized wheelchair and refund to the consumer and to any holder of a perfected security interest in the consumer's motorized wheelchair, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. Under this subd. 2. b., a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the motorized wheelchair by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the motorized wheelchair was driven before the con-

sumer first reported the nonconformity to the motorized wheelchair dealer.

3. a. With respect to a consumer described in sub. (1) (b) 4., accept return of the motorized wheelchair, refund to the motorized wheelchair lessor and to any holder of a perfected security interest in the motorized wheelchair, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

b. Under this subdivision, 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 motorized wheelchair dealer's early termination costs and the value of the motorized wheelchair at the lease expiration date if the lease sets forth that value, less the motorized wheelchair lessor's early termination savings.

c. Under this subdivision, a reasonable allowance for use may 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 consumer drove the motorized wheelchair before first reporting the nonconformity to the manufacturer, motorized wheelchair lessor or motorized wheelchair dealer.

(c) To receive a comparable new motorized wheelchair or a refund due under par. (b) 1. or 2, a consumer described under sub. (1) (b) 1., 2. or 3. shall offer to the manufacturer of the motorized wheelchair having the nonconformity to transfer possession of that motorized wheelchair to that manufacturer. No later than 30 days after that offer, the manufacturer shall provide the consumer with the comparable new motorized wheelchair or refund. When the manufacturer provides the new motorized wheelchair or refund, the consumer shall return the motorized wheelchair having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

(d) 1. To receive a refund due under par. (b) 3., a consumer described under sub. (1) (b) 4. shall offer to return the motorized wheelchair having the nonconformity to its manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the motorized wheelchair having the nonconformity.

2. To receive a refund due under par. (b) 3., a motorized wheelchair lessor shall offer to transfer possession of the motorized wheelchair having the nonconformity to its manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the motorized wheelchair lessor. When the manufacturer provides the refund, the motorized wheelchair lessor shall provide

## 1991 Assembly Bill 958

– 3 –

to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

3. No person may enforce the lease against the consumer after the consumer receives a refund due under par. (b) 3.

(e) No motorized wheelchair returned by a consumer or motorized wheelchair lessor in this state under par. (b), or by a consumer or motorized wheelchair lessor in another state under a similar law of that state, may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

(4) This section does not limit rights or remedies available to a consumer under any other law.

(5) Any waiver by a consumer of rights under this section is void.

(6) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this section. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief that the court determines is appropriate.

**SECTION 2. Initial applicability.** This act first applies to sales of new motorized wheelchairs that occur on the effective date of this SECTION.

**SECTION 3. Effective date.** This act takes effect on the first day of the 6th month beginning after publication.