

56:12-75

LEGISLATIVE HISTORY CHECKLIST  
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(Motorized wheelchairs)

NJSA: 56:12-75

AWS OF: 1995 CHAPTER: 233

BILL NO: S1601

SPONSOR(S): Bassano

DATE INTRODUCED: November 21, 1994

COMMITTEE: ASSEMBLY ---

SENATE: Commerce

AMENDED DURING PASSAGE: Yes Amendments during passage  
First reprint enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: June 19, 1995

SENATE: May 25, 1995

DATE OF APPROVAL: August 21, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No


HEARINGS: No

See newspaper clippings--attached:

"Whitman signs wheelchair 'lemon law,'" 8-22-95, Asbury Park Press,  
"Wheelchairs get lemon law help," 8-22-95, Courier News.

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P.L.1995, CHAPTER 233, approved August 21, 1995  
1994 Senate No. 1601 (Final  eprint)

1 AN ACT providing certain protections to consumers who purchase  
2 or lease motorized wheelchairs.

3  
4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. As used in this act:

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

11 "Consumer" means any of the following:

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

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

19 (3) A person who may enforce the warranty.

20 (4) A person who leases a motorized wheelchair from a  
21 motorized wheelchair lessor under a written lease.

22 "Demonstrator" means a motorized wheelchair used primarily  
23 for the purpose of demonstration to the public.

24 "Director" means the Director of the Division of Consumer  
25 Affairs in the Department of Law and Public Safety.

26 "Early termination cost" means any expense or obligation that  
27 a motorized wheelchair lessor incurs as a result of both the  
28 termination of a written lease before the termination date set  
29 forth in that lease and the return of a motorized wheelchair to a  
30 manufacturer pursuant to section 4 of this act. "Early  
31 termination cost" includes a penalty for prepayment under a  
32 finance arrangement.

33 "Early termination savings" means any expense or obligation  
34 that a motorized wheelchair lessor avoids as a result of both the  
35 termination of a written lease before the termination date set  
36 forth in that lease and the return of a motorized wheelchair to a  
37 manufacturer pursuant to section 4 of this act. "Early  
38 termination savings" includes an interest charge that the  
39 motorized wheelchair lessor would have paid to finance the  
40 purchase of the motorized wheelchair or, if the motorized  
41 wheelchair lessor does not finance the purchase of the motorized  
42 wheelchair, the difference between the total amount for which

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
Senate SCM committee amendments adopted February 6, 1995.

1 the lease obligates the consumer during the period of the lease  
2 term remaining after the early termination and the present value  
3 of that amount at the date of the early termination.

4 "Manufacturer" means a person who manufactures or  
5 assembles motorized wheelchairs and agents of that person,  
6 including an importer, a distributor, factory branch, distributor  
7 branch and any warrantors of the manufacturer's motorized  
8 wheelchairs, but does not include a motorized wheelchair dealer.

9 "Motorized wheelchair" means any motor-driven wheelchair,  
10 including a demonstrator, <sup>1</sup>and all accompanying power  
11 accessories utilized to operate the wheelchair,<sup>1</sup> that a consumer  
12 purchases or accepts transfer of in this State <sup>1</sup>for the purpose of  
13 increasing independent mobility, in the activities of daily living,  
14 of an individual who has limited or no ambulation abilities, and  
15 includes motorized power scooters designed primarily for indoor  
16 use and retrofit power units designed to motorize power  
17 wheelchairs<sup>1</sup>.

18 "Motorized wheelchair dealer" or "dealer" means a person who  
19 is in the business of selling motorized wheelchairs.

20 "Motorized wheelchair lessor" or "lessor" means a person who  
21 leases a motorized wheelchair to a consumer, or who holds the  
22 lessor's rights, under a written lease.

23 "Nonconformity" means a condition or defect that  
24 substantially impairs the use, value or safety of a motorized  
25 wheelchair, and that is covered by an express warranty applicable  
26 to the motorized wheelchair or to a component of the motorized  
27 wheelchair, but does not include a condition or defect that is the  
28 result of abuse, neglect or unauthorized modification or  
29 alteration of the motorized wheelchair by a consumer.

30 "Reasonable attempt to repair" means, within the term of an  
31 express warranty applicable to a new motorized wheelchair, or  
32 within one year after first delivery of the motorized wheelchair  
33 to a consumer, whichever is sooner, that:

34 (1) A nonconformity within the warranty has been subject to  
35 repair by the manufacturer, lessor or any of the manufacturer's  
36 authorized dealers at least <sup>1</sup>[four] three<sup>1</sup> times and the  
37 nonconformity continues <sup>1</sup>[, and the motorized wheelchair is out  
38 of service for an aggregate of at least 30 days because of that  
39 nonconformity]<sup>1</sup>; or

40 (2) The motorized wheelchair is out of service for an  
41 aggregate of at least <sup>1</sup>[60] 20<sup>1</sup> days due to a nonconformity, after  
42 having been returned to the manufacturer, motorized wheelchair  
43 lessor or any of the manufacturer's authorized dealers for repair.

44 2. A manufacturer who sells a motorized wheelchair to a  
45 consumer, either directly or through a motorized wheelchair  
46 dealer, shall furnish the consumer with an express warranty for  
47 the motorized wheelchair. The duration of the express warranty  
48 shall be not less than one year after first delivery of the  
49 motorized wheelchair to the consumer. In the absence of an  
50 express warranty from the manufacturer, the manufacturer shall  
51 be deemed to have expressly warranted to the consumer of a  
52 motorized wheelchair that, for a period of one year from the date  
53 of the first delivery to the consumer, the motorized wheelchair  
54 will be free from any condition or defect which substantially

1 impairs the value of the wheelchair to the consumer.  
2 3. If a new motorized wheelchair does not conform to an  
3 applicable express warranty and the consumer reports the  
4 nonconformity to the manufacturer, the motorized wheelchair  
5 lessor or any of the manufacturer's authorized motorized  
6 wheelchair dealers and makes the motorized wheelchair available  
7 for repair before one year after first delivery of the motorized  
8 wheelchair to a consumer, the nonconformity shall be repaired at  
9 no charge to the consumer by the manufacturer.

10 4. If, after a reasonable attempt to repair, the nonconformity  
11 is not repaired, the manufacturer shall:

12 a. At the direction of a consumer, other than a consumer who  
13 leases a motorized wheelchair from a motorized wheelchair  
14 dealer, do either of the following:

15 (1) Accept return of the motorized wheelchair and replace the  
16 motorized wheelchair with a comparable new motorized  
17 wheelchair and refund any collateral costs; or

18 (2) Accept return of the motorized wheelchair and refund to  
19 the consumer and to any holder of a perfected security interest in  
20 the consumer's motorized wheelchair, as their interest may  
21 appear, the full purchase price plus any finance charge amount  
22 paid by the consumer at the point of sale and collateral costs,  
23 less a reasonable allowance for use.

24 b. With respect only to a consumer who has leased a motorized  
25 wheelchair from a wheelchair lessor, accept return of the  
26 motorized wheelchair, refund to the motorized wheelchair lessor  
27 and to any holder of a perfected security interest in the  
28 motorized wheelchair, as their interest may appear, the current  
29 value of the written lease and refund to the consumer the amount  
30 that the consumer paid under the written lease plus any collateral  
31 costs, less a reasonable allowance for use.

32 c. As used in this section, the current value of the written  
33 lease equals the total amount for which that lease obligates the  
34 consumer during the period of the lease remaining after its early  
35 termination, plus the motorized wheelchair dealer's early  
36 termination costs and the value of the motorized wheelchair at  
37 the lease expiration date, if the lease sets forth that value, less  
38 the motorized wheelchair lessor's early termination savings.

39 d. Pursuant to this section, a reasonable allowance for use may  
40 not exceed the amount obtained by multiplying the total amount  
41 for which the written lease obligates the consumer by a fraction,  
42 the denominator of which is 1,825 and the numerator of which is  
43 the number of days that the consumer drove the motorized  
44 wheelchair before first reporting the nonconformity to the  
45 manufacturer, motorized wheelchair lessor or motorized  
46 wheelchair dealer.

47 5. In order to receive a comparable new motorized wheelchair  
48 or a refund pursuant to subsection a. of section 4 of this act, a  
49 consumer shall offer to transfer possession of the motorized  
50 wheelchair having the nonconformity to the manufacturer of that  
51 wheelchair. No later than 30 days after that offer, the  
52 manufacturer shall provide the consumer with the comparable  
53 new motorized wheelchair or refund. When the manufacturer  
54 provides the new motorized wheelchair or refund, the consumer

1 shall return the motorized wheelchair having the nonconformity  
2 to the manufacturer, along with any endorsements necessary to  
3 transfer legal possession to the manufacturer.

4 6. In order to receive a refund pursuant to subsection b. of  
5 section 4 of this act, a consumer shall:

6 a. Offer to return the motorized wheelchair having the  
7 nonconformity to its manufacturer. No later than 30 days after  
8 that offer, the manufacturer shall provide the refund to the  
9 consumer. When the manufacturer provides the refund, the  
10 consumer shall return to the manufacturer the motorized  
11 wheelchair having the nonconformity; and

12 b. Offer to transfer possession of the motorized wheelchair  
13 having the nonconformity to its manufacturer. No later than 30  
14 days after that offer, the manufacturer shall provide the refund  
15 to the motorized wheelchair lessor. When the manufacturer  
16 provides the refund, the motorized wheelchair lessor shall provide  
17 to the manufacturer any endorsements necessary to transfer legal  
18 possession to the manufacturer.

19 7. The lease of a motorized wheelchair shall not be enforced  
20 against a consumer after the consumer receives a refund for the  
21 leased motorized wheelchair pursuant to subsection b. of section  
22 4 of this act.

23 8. No motorized wheelchair returned by a consumer or  
24 motorized wheelchair lessor in this State pursuant to section 4 of  
25 this act, or by a consumer or motorized wheelchair lessor in  
26 another state under a similar law of that state, shall be sold or  
27 leased again in this State unless full disclosure of the reasons for  
28 return is made to any prospective buyer or lessee.

29 9. a. After a reasonable attempt to repair, a consumer shall  
30 have the option of submitting any dispute arising under section 4  
31 of this act to the <sup>1</sup>[division] director<sup>1</sup> for resolution. The director  
32 may establish a filing fee, to be paid by the consumer, fixed at a  
33 level not to exceed the cost for the proper administration and  
34 enforcement of this act. Upon application by the consumer and  
35 payment of any filing fee, the manufacturer shall submit to the  
36 hearing procedure established in this section.

37 b. The director shall review a consumer's application for  
38 dispute resolution and accept eligible disputes for referral to the  
39 Office of Administrative Law for a summary hearing to be  
40 conducted in accordance with special rules adopted pursuant to  
41 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
42 et seq.), by the Office of Administrative Law in consultation with  
43 the director. Immediately upon acceptance of a consumer's  
44 application for dispute resolution, the director shall contact the  
45 parties and arrange for a hearing date with the Office of  
46 Administrative Law. The hearing date shall, to the greatest  
47 extent possible, be convenient to all parties, but shall be no later  
48 than 20 days from the date the consumer's application is  
49 accepted, unless a later date is agreed upon by the consumer.  
50 The Office of Administrative Law shall render a decision, in  
51 writing, to the director within 20 days of the conclusion of the  
52 summary hearing. The decision shall provide a brief summary of  
53 the findings of fact, appropriate remedies pursuant to this act,  
54 and a specific date for completion of all awarded remedies. The

1 director, upon a review of the proposed decision submitted by the  
2 administrative law judge, shall adopt, reject, or modify the  
3 decision no later than 15 days after receipt of the decision.  
4 Unless the director modifies or rejects the decision within the  
5 15-day period, the decision of the administrative law judge shall  
6 be deemed adopted as the final decision of the director. If the  
7 manufacturer unreasonably fails to comply with the decision  
8 within the specified time period, the manufacturer shall be liable  
9 for penalties in the amount of \$5,000 for each day the  
10 manufacturer unreasonably fails to comply, commencing on the  
11 day after the specified date for completion of all awarded  
12 remedies.

13 c. The Office of Administrative Law is authorized to issue  
14 subpoenas to compel the attendance of witnesses and the  
15 production of documents, papers and records relevant to the  
16 dispute.

17 d. A manufacturer or consumer may appeal a final decision to  
18 the Appellate Division of the Superior Court. An appeal by a  
19 manufacturer shall not be heard unless the petition for the appeal  
20 is accompanied by a bond in a principal sum equal to the money  
21 award made by the administrative law judge plus \$2,500 for  
22 anticipated attorney's fees and other costs, secured by cash or  
23 its equivalent, payable to the consumer. The liability of the  
24 surety of any bond filed pursuant to this section shall be limited  
25 to the indemnification of the consumer in the action. The bond  
26 shall not limit or impair any right of recovery otherwise available  
27 pursuant to law, nor shall the amount of the bond be relevant in  
28 determining the amount of recovery to which the consumer shall  
29 be entitled. If a final decision resulting in a refund to the  
30 consumer is upheld by the court, recovery by the consumer shall  
31 include attorney's fees and costs of suit, and reimbursement for  
32 actual expenses incurred by the consumer for the rental of a  
33 motorized wheelchair equivalent to the consumer's motorized  
34 wheelchair and limited to the period of time after which the  
35 consumer's motorized wheelchair was offered to the  
36 manufacturer for return under this act, except in those cases in  
37 which the manufacturer made a comparable motorized  
38 wheelchair available to the consumer free of charge during that  
39 period. If the court finds that the manufacturer had no  
40 reasonable basis for its appeal or that the appeal was frivolous,  
41 the court shall award treble damages to the consumer. Failure of  
42 the Office of Administrative Law to render a written decision  
43 within 20 days of the conclusion of the summary hearing as  
44 required by subsection b. of this section shall not be a basis for  
45 appeal.

46 e. The Attorney General shall monitor the implementation and  
47 effectiveness of this act and report to the Legislature after three  
48 years of operation, at which time a recommendation shall be  
49 made either to continue under the procedures set forth in this act  
50 or to make such modifications as may be necessary to effectuate  
51 the purposes of this act.

52 10. a. This act <sup>1</sup>[does] shall<sup>1</sup> not limit rights or remedies  
53 available to a consumer under any other law.

54 b. Any waiver by a consumer of rights under this act shall be  
55 void and unenforceable.

1       11. In addition to pursuing any other remedy, a consumer may  
2 bring an action to recover for any damages caused by a violation  
3 of this act. The court shall award to a consumer who prevails in  
4 an action brought pursuant to this section twice the amount of  
5 any pecuniary loss, together with costs, disbursements and  
6 reasonable attorney fees, and any equitable relief that the court  
7 determines is appropriate.

8       12. The director of the Division of Consumer Affairs shall  
9 promulgate rules and regulations pursuant to the "Administrative  
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as may be  
11 needed to effectuate the purposes of this act.

12       13. This act shall take effect on the 180th day after  
13 enactment except that section 12 shall take effect immediately.

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18       \_\_\_\_\_  
19 Provides certain protections to consumers who purchase or lease  
motorized wheelchairs.

1 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as may be  
2 needed to effectuate the purposes of this act.

3 13. This act shall take effect on the 180th day after  
4 enactment except that section 12 shall take effect immediately.  
5  
6

#### 7 STATEMENT

8  
9 This bill requires manufacturers who sell motorized  
10 wheelchairs to consumers, either directly or indirectly through a  
11 dealer, to provide express warranties for the motorized  
12 wheelchairs. The duration of the express warranty shall not be  
13 less than one year after the first delivery of the motorized  
14 wheelchair to the consumer. If the manufacturer fails to provide  
15 an express warranty, the motorized wheelchair shall be covered  
16 by an express warranty as if the manufacturer had furnished an  
17 express warranty to the consumer as required by this bill.

18 If a new motorized wheelchair does not conform to an  
19 applicable express warranty and the consumer reports the  
20 nonconformity to the manufacturer, the lessor of the motorized  
21 wheelchair or any of the manufacturer's authorized dealers and  
22 makes the motorized wheelchair available for repair before one  
23 year after first delivery of the motorized wheelchair to the  
24 consumer, the nonconformity shall be repaired. If the  
25 manufacturer, after a reasonable attempt to repair, is unable to  
26 correct the nonconformity, the consumer may elect to accept a  
27 replacement motorized wheelchair or a full cash refund from the  
28 manufacturer, which would include finance charges incurred by  
29 the consumer.

30 The bill prohibits manufacturers from reselling or re-leasing  
31 motorized wheelchairs that have been returned because of a  
32 nonconformity unless full disclosure of the reasons for return is  
33 made to any prospective buyer or lessee.

34 This bill provides an optional informal dispute resolution  
35 process through the Division of Consumer Affairs and the Office  
36 of Administrative Law similar to that provided pursuant to  
37 P.L.1988, c.123 (C.56:12-29 et seq.), which is commonly known as  
38 the "new car lemon law."

39 The bill also provides that a consumer may bring an action to  
40 recover any damages caused by a violation of any of the bill's  
41 provisions. In a private action brought by a consumer, the court  
42 shall award to a prevailing consumer twice the amount of any  
43 pecuniary loss, together with costs, disbursements and reasonable  
44 attorney fees, and any equitable relief that the court determines  
45 is appropriate.

46 Presently a motorized wheelchair costs between \$3,000 and  
47 \$13,000, which is a significant expenditure of consumer monies.  
48 This bill gives some legal redress to the consumer and eases the  
49 burden of additional cost, delay and gross disadvantage to those  
50 who rely on wheelchairs for mobility.  
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53  
54  
55 Provides certain protections to consumers who purchase or lease  
56 motorized wheelchairs.



SENATE COMMERCE COMMITTEE

STATEMENT TO

**SENATE, No. 1601**

with committee amendments

**STATE OF NEW JERSEY**

DATED: FEBRUARY 6, 1995

The Senate Commerce Committee reports favorably and with committee amendments Senate, No. 1601.

This bill, as amended by the committee, requires manufacturers who sell motorized wheelchairs, including motorized power scooters used indoors, to consumers, either directly or indirectly through a dealer, to provide express warranties for the motorized wheelchairs. The duration of the express warranty shall not be less than one year after the first delivery of the motorized wheelchair to the consumer. If the manufacturer fails to provide an express warranty, 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 bill.

If a new motorized wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the lessor of the motorized wheelchair or any of the manufacturer's authorized 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 at no charge to the consumer by the manufacturer. If the manufacturer, after a reasonable attempt to repair, is unable to correct the nonconformity, the consumer, other than a lessee, may elect to accept a comparable new replacement motorized wheelchair or a full cash refund from the manufacturer, which would include finance charges and collateral costs incurred by the consumer and which would be reduced by a reasonable allowance for use thereof. With regard to a consumer who leased a motorized wheelchair in this circumstance, the manufacturer shall refund to the lessor the current value of the written lease and refund to the consumer the amount the consumer paid under the lease, plus any collateral cost, less a reasonable allowance for use.

Under the bill, a "nonconformity" is a condition or defect that substantially impairs the use, value or safety of a motorized wheelchair and 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; and a "reasonable attempt to repair" means that a nonconformity within the warranty has been subject to repair by the manufacturer, lessor or any of the manufacturer's authorized dealers at least three times or that the motorized wheelchair is out of service for at least 20 days due to a nonconformity after the motorized wheelchair was returned for repair.

Manufacturers are prohibited from reselling or re-leasing motorized wheelchairs that have been returned because of a nonconformity unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

This bill provides an optional informal dispute resolution process through the Division of Consumer Affairs and the Office of

Administrative Law similar to that provided pursuant to P.L.1988, c.123 (C.56:12-29 et seq.), which is commonly known as the "new car lemon law." After a reasonable attempt to repair a motorized wheelchair, a consumer may choose to use the informal dispute resolution process.

The bill also provides that a consumer may bring an action to recover any damages caused by a violation of any of the bill's provisions. In a private action brought by a consumer, the court shall award to a prevailing consumer 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.

As released by the committee, this bill is identical to Assembly No. 460 (1R).



S1601

## OFFICE OF THE GOVERNOR NEWS RELEASE

**CN-001**  
**Contact:** JAYNE REBOVICH  
609-777-2600

**TRENTON, N.J. 08625**  
MONDAY  
**Release:** AUG. 21, 1995

Gov. Christie Whitman today signed legislation to give motorized wheelchair users the same consumer protection given to car buyers in the state.

"For many people with disabilities, wheelchairs are a costly but necessary means of getting from place to place, just as for many of us, a car is essential," said Gov. Whitman. "Any of us who have been sold a defective car know how frustrating and inconveniencing it can be. For wheelchair users, the problem is much worse."

The bill, S-1601/A-460, sponsored by Senators Louis Bassano (R-Union) and Nicholas Sacco (D-Bergen) and Assemblymen Alan Augustine (R-Middlesex) and Anthony Impreveduto (D-Hudson), requires manufacturers of motorized wheelchairs to provide an express warranty that the wheelchair will be free of defects that would impair its value to the consumer.

A new motorized wheelchair that does not conform to the warranty must be repaired by the manufacturer at no charge to the consumer, provided the consumer reported the nonconformity to the manufacturer or the dealer or lessor of the wheelchair and made it available for repair within the warranty period. If reasonable attempts to repair the wheelchair are unsuccessful, the consumer may elect to accept a comparable replacement or a full cash refund from the manufacturer.

Consumers are further protected by a provision that prohibits manufacturers from reselling or releasing a motorized wheelchair that has been returned because of a defect unless disclosure is made to the prospective buyer.

The bill establishes an optional informal dispute resolution process through the Division of Consumer Affairs and the Office of Administrative Law similar to that provided under the "new car lemon law" and allows consumers to bring actions to recover any damages caused by a violation of this bill.