

HOUSE No. 446

The Commonwealth of Massachusetts

PRESENTED BY:

James J. O'Day

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:	DATE ADDED:
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/16/2021</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>2/22/2021</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/26/2021</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>2/26/2021</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/26/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/26/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/22/2021</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>2/22/2021</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/23/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>2/23/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/22/2021</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/23/2021</i>
<i>Daniel R. Carey</i>	<i>2nd Hampshire</i>	<i>3/3/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>3/8/2021</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>3/15/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/18/2021</i>

HOUSE No. 446

By Mr. O'Day of West Boylston, a petition (accompanied by bill, House, No. 446) of James J. O'Day and others relative to wheelchair warranty protections for consumers. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

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

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

5 SECTION 2. Chapter 93 of the General Laws is hereby amended by striking out section
6 107 (A), and inserting in place thereof the following section:-

7 (A) As used in this section the following words shall have the following meanings unless
8 the context clearly indicates otherwise:—

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

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

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

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

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

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

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

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

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

53 "Reasonable attempt to repair", any of the following occurring to a wheelchair within the
54 applicable term of warranty period after delivery of the wheelchair to a consumer:

55 (1) a nonconformity within the warranty is subject to repair at least two times by the
56 manufacturer, wheelchair lessor, or any of the manufacturer's authorized wheelchair dealers and
57 the nonconformity continues, or

58 (2) the wheelchair is out of service for an aggregate of at least twenty-one days because
59 of a warranty nonconformity after the consumer has reported the nonconformity and made the
60 wheelchair available for repair.

61 "Replacement wheelchair", a properly working substitute wheelchair that is comparable
62 in most respects to the equipment to be repaired.

63 "Wheelchair", a wheelchair or scooter of any kind, or other aids that enhance the mobility
64 or positioning of an individual, such as motorization, motorized positioning features, and the
65 switches and controls for motorized features.

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

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

70 SECTION 3. Chapter 93 of the General Laws is hereby amended by striking out section
71 107 (B), and inserting in place thereof the following section:-

72 (B)(1) A manufacturer who sells a wheelchair to a consumer, either directly or through a
73 wheelchair dealer, shall furnish the consumer with an express warranty for the wheelchair. The

74 duration of the express warranty shall be not less than two years after first delivery of the
75 wheelchair to the consumer.

76 (2) At the time of purchase, the manufacturer must provide directly to the consumer a
77 statement, written in 12-point all capital bolded type on a separate piece of paper or in such other
78 form as the consumer can understand, in substantially the following form:

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

88 This statement must include the applicable warranty period of two years or greater from
89 the date of first delivery. If no statement is provided to the consumer as required under this
90 section, the manufacturer is in violation of this section, and the express warranty period shall be
91 set to a default of three years.

92 SECTION 4. Chapter 93 of the General Laws is hereby amended by striking out section
93 107 (C), and inserting in place thereof the following section:-

94 (C)(1)(a) If a new wheelchair does not conform to an applicable express warranty and the
95 consumer reports such nonconformity to the manufacturer, to a wheelchair lessor, or to an

96 authorized wheelchair dealer and such consumer makes the wheelchair available for repair prior
97 to the expiration of the applicable warranty period from the date of first delivery, the
98 nonconformity shall be repaired at no charge to the consumer. It shall be presumed that the
99 consumer has made the wheelchair available to the manufacturer or dealer for repair if he or she
100 allows the manufacturer or dealer to take it from the consumer's home or other location where
101 the user customarily uses the device. The consumer shall be required to deliver the device to
102 another location only upon a showing that it would be a substantially greater hardship for the
103 manufacturer and dealer to take the device from the consumer's home, or other location where
104 the user customarily uses the device, than for the consumer to deliver the device.

105 (b) Whenever a wheelchair covered by a manufacturer's warranty is nonconforming and
106 made available by a consumer to the manufacturer, assistive technology lessor, or authorized
107 assistive technology dealer from whom it was purchased or exchanged for the repair of a defect,
108 malfunction, or nonconformity to which the warranty is applicable, the manufacturer shall cover
109 all collateral costs, including providing directly to the consumer for the duration of the repair
110 period, as selected by the consumer: (i) a replacement wheelchair; or (ii) reimbursement for the
111 cost incurred by the consumer for renting a replacement wheelchair.

112 (c) Manufacturers shall be required to fill all repair and replacement orders for
113 wheelchairs under warranty in this section from their own inventory, or have a written
114 subcontract for the purchase of items necessary to fill orders in accordance with this section. A
115 subcontract must be in writing and must contain, at a minimum, the following: (i) names,
116 addresses, phone numbers, and contact names for both companies; (ii) the contract term (begin
117 and end dates); (iii) a description of the wheelchairs covered under the subcontract, including the
118 cost of each item; (iv) signatures of both parties, including signature dates and position titles; and

119 (v) an established credit limit that is reasonable, based on the value of the products and services
120 to be provided by the contractor.

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

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

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

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

137 (c) At the direction of a consumer who leases a wheelchair, the manufacturer shall accept
138 return of the wheelchair, refund to the wheelchair lessor and to any holder of a perfected security
139 interest, as their interest may appear, the current value of the written lease and refund to the
140 consumer the amount such consumer paid under the written lease and any collateral costs not

141 already covered under (C)(1)(b) of this section, less a reasonable allowance for use. A reasonable
142 allowance for use shall not exceed the amount obtained by multiplying the total amount for
143 which the written lease obligates the consumer by a fraction, the denominator of which shall be
144 one thousand eight hundred and twenty-five and the numerator of which shall be the number of
145 days that the consumer possessed the wheelchair before first reporting the nonconformity to the
146 manufacturer, wheelchair lessor or wheelchair dealer.

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

152 (3) In order to receive a comparable new wheelchair or a refund due under paragraph (b)
153 of subsection (2), a consumer described thereunder shall offer to the manufacturer of the
154 wheelchair having the nonconformity to transfer possession of that wheelchair to that
155 manufacturer. No later than thirty days after such offer, the manufacturer shall provide the
156 consumer with the comparable new wheelchair or refund. When the manufacturer provides the
157 wheelchair or refund, the consumer shall return the wheelchair having the nonconformity to the
158 manufacturer, along with any endorsements necessary to transfer legal possession to the
159 manufacturer.

160 (4)(a) In order to receive a refund due under paragraph (c) of subsection (2), a consumer
161 described thereunder shall offer to return the wheelchair having the nonconformity to its
162 manufacturer. Not later than thirty days after such offer, the manufacturer shall provide the

163 refund to the consumer. When the manufacturer provides the refund, the consumer shall return to
164 the manufacturer the wheelchair having the nonconformity.

165 (b) To receive a refund due under paragraph (c) of subsection (2), a wheelchair lessor
166 shall offer to transfer possession of the wheelchair having the nonconformity to its manufacturer.
167 No later than thirty days after such offer, the manufacturer shall provide the refund to the
168 wheelchair lessor. When the manufacturer provides the refund, the wheelchair lessor shall
169 provide to the manufacturer any endorsements necessary to transfer legal possession to the
170 manufacturer.

171 (c) No person may enforce the lease against the consumer after he receives a refund due
172 under paragraph (c) of subsection (2).

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

177 SECTION 5. Chapter 93 of the General Laws is hereby amended by striking out section
178 107 (E), and inserting in place thereof the following section:-

179 (E) The attorney general is hereby authorized to bring an action under section 4 of
180 chapter 93A to enforce this section and to obtain restitution, civil penalties, injunctive relief and
181 any other relief awarded pursuant to chapter 93A. Nothing contained in this section shall be
182 deemed to limit any rights or remedies available to a consumer under any other law. Any waiver
183 by a consumer of rights under this section shall be void.

184 SECTION 6. Chapter 93 of the General Laws is hereby amended by striking out section
185 107 (F), and inserting in place thereof the following section:-

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

193 SECTION 7. Chapter 93 of the General Laws is hereby amended by inserting the
194 following section:-

195 Section 107 (G) The Office of Consumer Affairs and Business Regulation shall make an
196 annual report to the House and Senate Clerks and the Joint Committee on Children, Families,
197 and Persons with Disabilities not later than January 1 of each year on the operational status of the
198 assistive technology alternate arbitration mechanism, including, but not limited to, data regarding
199 the number of complaints filed through the alternate arbitration mechanism and the aggregate
200 results of such arbitration procedures.

201 SECTION 8. Not later than ninety days after the effective date of this act, the Secretary
202 of the Executive Office of Consumer Affairs and Business Regulation shall promulgate
203 regulations as necessary pursuant to this act's amendments of Chapter 93, section 107.