

2 **HB 1466** - S COMM AMD
3 By Committee on Labor & Commerce

4 ADOPTED 2/26/94

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** Unless the context clearly requires
8 otherwise, the definitions in this section apply throughout this
9 chapter.

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

13 (2) "Consumer" means any of the following:

14 (a) The purchaser of a wheelchair, if the wheelchair was purchased
15 from a wheelchair dealer or manufacturer for purposes other than
16 resale;

17 (b) A person to whom a wheelchair is transferred for purposes other
18 than resale, if the transfer occurs before the expiration of an express
19 warranty applicable to the wheelchair;

20 (c) A person who may enforce a warranty on a wheelchair; or

21 (d) A person who leases a wheelchair from a wheelchair lessor under
22 a written lease.

23 (3) "Demonstrator" means a wheelchair used primarily for the
24 purpose of demonstration to the public.

25 (4) "Early termination cost" means an expense or obligation that a
26 wheelchair lessor incurs as a result of both the termination of a
27 written lease before the termination date set forth in the lease and
28 the return of a wheelchair to a manufacturer under section 3(2)(b) of
29 this act. "Early termination cost" includes a penalty for prepayment
30 under a finance arrangement.

31 (5) "Early termination savings" means an expense or obligation that
32 a wheelchair lessor avoids as a result of both the termination of a
33 written lease before the termination date set forth in the lease and
34 the return of a wheelchair to a manufacturer under section 3(2)(b) of
35 this act. "Early termination savings" includes an interest charge that
36 the wheelchair lessor would have paid to finance the wheelchair or, if

1 the wheelchair lessor does not finance the wheelchair, the difference
2 between the total amount for which the lease obligates the consumer
3 during the period of the lease term remaining after the early
4 termination and the present value of that amount at the date of the
5 early termination.

6 (6) "Manufacturer" means a person who manufactures or assembles
7 wheelchairs and agents of the person, including an importer, a
8 distributor, factory branch, distributor branch, and a warrantor of the
9 manufacturer's wheelchairs, but does not include a wheelchair dealer.

10 (7) "Nonconformity" means a condition or defect that substantially
11 impairs the use, value, or safety of a wheelchair, and that is covered
12 by an express warranty applicable to the wheelchair or to a component
13 of the wheelchair, but does not include a condition or defect that is
14 the result of abuse, neglect, or unauthorized modification or
15 alteration of the wheelchair by a consumer.

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

20 (a) An attempted repair by the manufacturer, wheelchair lessor, or
21 the manufacturer's authorized dealer is made to the same warranty
22 nonconformity at least four times and the nonconformity continues; or

23 (b) The wheelchair is out of service for an aggregate of at least
24 thirty days because of warranty nonconformity.

25 (9) "Wheelchair" means a wheelchair, including a demonstrator, that
26 a consumer purchases or accepts transfer of in this state.

27 (10) "Wheelchair dealer" means a person who is in the business of
28 selling wheelchairs.

29 (11) "Wheelchair lessor" means a person who leases a wheelchair to
30 a consumer, or who holds the lessor's rights, under a written lease.

31 NEW SECTION. **Sec. 2.** A manufacturer who sells a wheelchair to a
32 consumer, either directly or through a wheelchair dealer, shall furnish
33 the consumer with an express warranty for the wheelchair. The duration
34 of the express warranty must be for at least one year after the first
35 delivery of the wheelchair to the consumer. If the manufacturer fails
36 to furnish an express warranty as required under this section, the
37 wheelchair is covered by an implied warranty as if the manufacturer had

1 furnished an express warranty to the consumer as required under this
2 section.

3 NEW SECTION. **Sec. 3.** (1) If a new wheelchair does not conform to
4 an applicable express warranty and the consumer reports the
5 nonconformity to the manufacturer, the wheelchair lessor, or any of the
6 manufacturer's authorized wheelchair dealers and makes the wheelchair
7 available for repair before one year after first delivery of the
8 wheelchair to the consumer, the nonconformity must be repaired.

9 (2) If, after a reasonable attempt to repair, the nonconformity is
10 not repaired, the manufacturer shall do one of the following, whichever
11 is appropriate:

12 (a) At the direction of a consumer described under section 1(2)(a),
13 (b), or (c) of this act, do one of the following:

14 (i) Accept return of the wheelchair and replace the wheelchair with
15 a comparable new wheelchair and refund any collateral costs; or

16 (ii) Accept return of the wheelchair and refund to the consumer and
17 to a holder of a perfected security interest in the consumer's
18 wheelchair, as their interest may appear, the full purchase price plus
19 any finance charge, amount paid by the consumer at the point of sale,
20 and collateral costs, less a reasonable allowance for use. Under this
21 subsection (2)(a)(ii), a reasonable allowance for use may not exceed
22 the amount obtained by multiplying the full purchase price of the
23 wheelchair by a fraction, the denominator of which is one thousand
24 eight hundred twenty-five and the numerator of which is the number of
25 days that the wheelchair was driven before the consumer first reported
26 the nonconformity to the wheelchair dealer; or

27 (b)(i) For a consumer described in section 1(2)(d) of this act,
28 accept return of the wheelchair, refund to the wheelchair lessor and to
29 a holder of a perfected security interest in the wheelchair, as their
30 interest may appear, the current value of the written lease and refund
31 to the consumer the amount that the consumer paid under the written
32 lease plus any collateral costs, less a reasonable allowance for use.

33 (ii) Under this subsection (2)(b), the current value of the written
34 lease equals the total amount for which the lease obligates the
35 consumer during the period of the lease remaining after its early
36 termination, plus the wheelchair dealer's early termination costs and
37 the value of the wheelchair at the lease expiration date if the lease

1 sets forth the value, less the wheelchair lessor's early termination
2 savings.

3 (iii) Under this subsection (2)(b), a reasonable allowance for use
4 may not exceed the amount obtained by multiplying the total amount for
5 which the written lease obligates the consumer by a fraction, the
6 denominator of which is one thousand eight hundred twenty-five and the
7 numerator of which is the number of days that the consumer drove the
8 wheelchair before first reporting the nonconformity to the
9 manufacturer, wheelchair lessor, or wheelchair dealer.

10 (3) To receive a comparable new wheelchair or a refund due under
11 subsection (2)(a) of this section, a consumer described under section
12 1(2) (a), (b), or (c) of this act shall offer to the manufacturer of
13 the wheelchair having the nonconformity to transfer possession of the
14 wheelchair to the manufacturer. Within thirty days after the offer,
15 the manufacturer shall provide the consumer with a comparable new
16 wheelchair or a refund. When the manufacturer provides a new
17 wheelchair or refund under this subsection, the consumer shall return
18 to the manufacturer the wheelchair having the nonconformity.

19 (4)(a) To receive a refund due under subsection (2)(b) of this
20 section, a consumer described under section 1(2)(d) of this act shall
21 offer to return the wheelchair having the nonconformity to its
22 manufacturer. Within thirty days after the offer, the manufacturer
23 shall provide the refund to the consumer. When the manufacturer
24 provides the refund, the consumer shall return to the manufacturer the
25 wheelchair having the nonconformity.

26 (b) To receive a refund due under subsection (2)(b) of this
27 section, a wheelchair lessor shall offer to transfer possession of the
28 wheelchair having the nonconformity to the manufacturer. Within thirty
29 days after the offer, the manufacturer shall provide a refund to the
30 wheelchair lessor. When the manufacturer provides the refund, the
31 wheelchair lessor shall provide to the manufacturer the endorsements
32 necessary to transfer legal possession to the manufacturer.

33 (c) A person may not enforce the lease against the consumer after
34 the consumer receives a refund due under subsection (2)(b) of this
35 section.

36 (5) A person may not sell or lease again in this state a wheelchair
37 returned by a consumer or wheelchair lessor in this state under
38 subsection (2) of this section or by a consumer or wheelchair lessor in

1 another state under a similar law of that state, unless full disclosure
2 of the reasons for return is made to a prospective buyer or lessee.

3 NEW SECTION. **Sec. 4.** This chapter does not limit rights or
4 remedies available under other law to a consumer.

5 NEW SECTION. **Sec. 5.** A waiver by a consumer of rights under this
6 section is void.

7 NEW SECTION. **Sec. 6.** In addition to pursuing another remedy, a
8 consumer may bring an action to recover damages caused by a violation
9 of this chapter. The court shall award a consumer who prevails in an
10 action under this section twice the amount of pecuniary loss, together
11 with costs, disbursements, reasonable attorneys' fees, and equitable
12 relief that the court determines is appropriate.

13 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act shall
14 constitute a new chapter in Title 19 RCW."

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18 On page 1, line 1 of the title, after "Relating to" strike the
19 remainder of the title and insert "wheelchair warranties; and adding a
20 new chapter to Title 19 RCW."

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