

ASSEMBLY, No. 2182

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

By Assemblyman AUGUSTINE

1 AN ACT concerning motorized wheelchairs and amending P.L.1995,
2 c.233.

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

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7 1. Section 9 of P.L.1995, c.233 (C.56:12-83) is amended to read as
8 follows:

9 9. a. After a reasonable attempt to repair, a consumer shall have
10 the option of submitting any dispute arising under section 4 of this act
11 to the director for resolution. The director may establish a filing fee,
12 to be paid by the consumer, fixed at a level not to exceed the cost for
13 the proper administration and enforcement of this act. Upon
14 application by the consumer and payment of any filing fee, the
15 manufacturer shall submit to the hearing procedure established in this
16 section.

17 b. The director shall review a consumer's application for dispute
18 resolution and accept eligible disputes for referral to the Office of
19 Administrative Law for a summary hearing to be conducted in
20 accordance with special rules adopted pursuant to the "Administrative
21 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), by the Office
22 of Administrative Law in consultation with the director. Immediately
23 upon acceptance of a consumer's application for dispute resolution, the
24 director shall contact the parties and arrange for a hearing date with
25 the Office of Administrative Law. The hearing date shall, to the
26 greatest extent possible, be convenient to all parties, but shall be no
27 later than 20 days from the date the consumer's application is
28 accepted, unless a later date is agreed upon by the consumer. The
29 Office of Administrative Law shall render a decision, in writing, to the
30 director within 20 days of the conclusion of the summary hearing. The
31 decision shall provide a brief summary of the findings of fact,
32 appropriate remedies pursuant to this act, and a specific date for
33 completion of all awarded remedies. The director, upon a review of
34 the proposed decision submitted by the administrative law judge, shall

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

Matter underlined thus is new matter.

1 adopt, reject, or modify the decision no later than 15 days after receipt
2 of the decision. Unless the director modifies or rejects the decision
3 within the 15-day period, the decision of the administrative law judge
4 shall be deemed adopted as the final decision of the director. If a final
5 decision from the Office of Administrative Law results in a refund to
6 the consumer, recovery by the consumer shall include attorney's fees,
7 fees for expert witnesses and costs of suit, and reimbursement for
8 actual expenses incurred by the consumer for the rental of a motorized
9 wheelchair equivalent to the consumer's motorized wheelchair and
10 limited to the period of time after which the consumer's motorized
11 wheelchair was offered to the manufacturer for return under P.L.
12 1995, c. 233 (C. 56:12-75 et seq.) except in those cases in which the
13 manufacturer made a comparable motorized wheelchair available to
14 the consumer free of charge during that period. If the manufacturer
15 unreasonably fails to comply with the decision within the specified
16 time period, the manufacturer shall be liable for penalties in the
17 amount of \$5,000 for each day the manufacturer unreasonably fails to
18 comply, commencing on the day after the specified date for completion
19 of all awarded remedies.

20 c. The Office of Administrative Law is authorized to issue
21 subpoenas to compel the attendance of witnesses and the production
22 of documents, papers and records relevant to the dispute.

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

1 decision within 20 days of the conclusion of the summary hearing as
2 required by subsection b. of this section shall not be a basis for appeal.

3 e. The Attorney General shall monitor the implementation and
4 effectiveness of this act and report to the Legislature after three years
5 of operation, at which time a recommendation shall be made either to
6 continue under the procedures set forth in this act or to make such
7 modifications as may be necessary to effectuate the purposes of this
8 act.

9 (cf: P.L.1995, c.233, s.9)

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11 2. This act shall take effect immediately.

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STATEMENT

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16 This bill amends section 9 of P.L.1995, c.233 (C.56:12-83),
17 commonly known as the "Wheelchair Lemon Law," to specify that
18 consumers who obtain a refund as a result of a final decision from the
19 Office of Administrative Law shall also obtain their attorney's fees,
20 fees for expert witnesses, costs of suit and reimbursement of the cost
21 of renting an equivalent motorized wheelchair for the period after the
22 consumer offered to return the faulty motorized wheelchair to the
23 manufacturer. The bill also amends this section of law to provide that
24 if a final decision resulting in a refund to a consumer is upheld on
25 appeal, the consumer will also be permitted to collect fees for expert
26 witnesses.

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32 Allows recovery of certain fees for successful claimants under
"Wheelchair Lemon Law."