

[Passed Both Houses]

ASSEMBLY, No. 2182

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

By Assemblymen AUGUSTINE, Moran, Senators Bassano,  
Singer, McNamara, Sacco and Baer

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

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

6  
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

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

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

27 d. A manufacturer or consumer may appeal a final decision to the  
28 Appellate Division of the Superior Court. An appeal by a  
29 manufacturer shall not be heard unless the petition for the appeal is  
30 accompanied by a bond in a principal sum equal to the money award  
31 made by the administrative law judge plus \$2,500 for anticipated  
32 attorney's fees and other costs, secured by cash or its equivalent,  
33 payable to the consumer. The liability of the surety of any bond filed  
34 pursuant to this section shall be limited to the indemnification of the  
35 consumer in the action. The bond shall not limit or impair any right of  
36 recovery otherwise available pursuant to law, nor shall the amount of  
37 the bond be relevant in determining the amount of recovery to which  
38 the consumer shall be entitled. If a final decision resulting in a refund  
39 to the consumer is upheld by the court, recovery by the consumer shall  
40 include attorney's fees, fees for expert witnesses and costs of suit, and  
41 reimbursement for actual expenses incurred by the consumer for the  
42 rental of a motorized wheelchair equivalent to the consumer's  
43 motorized wheelchair and limited to the period of time after which the  
44 consumer's motorized wheelchair was offered to the manufacturer for  
45 return under this act, except in those cases in which the manufacturer  
46 made a comparable motorized wheelchair available to the consumer

1 free of charge during that period. If the court finds that the  
2 manufacturer had no reasonable basis for its appeal or that the appeal  
3 was frivolous, the court shall award treble damages to the consumer.  
4 Failure of the Office of Administrative Law to render a written  
5 decision within 20 days of the conclusion of the summary hearing as  
6 required by subsection b. of this section shall not be a basis for appeal.

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

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

14

15 2. This act shall take effect immediately.

16

17

18

#### STATEMENT

19

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

31

32

33

34

35 \_\_\_\_\_  
36 Allows recovery of certain fees for successful claimants under  
"Wheelchair Lemon Law."