



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1202

Introduced 02/08/11, by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

815 ILCS 380/Act title	
815 ILCS 380/2	from Ch. 121 1/2, par. 1202
815 ILCS 380/3	from Ch. 121 1/2, par. 1203
815 ILCS 380/4	from Ch. 121 1/2, par. 1204
815 ILCS 380/6	from Ch. 121 1/2, par. 1206
815 ILCS 380/7	from Ch. 121 1/2, par. 1207
815 ILCS 380/8	from Ch. 121 1/2, par. 1208

Amends the New Vehicle Buyer Protection Act. Makes the protections that are available to buyers of new vehicles also available to buyers of new motorized wheelchairs, including replacement or return of a new motorized wheelchair that the seller, after a reasonable number of attempts, is unable to conform to any of its applicable express warranties. Provides that lien holders to whom a refund may be paid under the Act include the administrator of the medical assistance program under the Illinois Public Aid Code, the administrator of the federal Medicare program, and a private insurer. Effective immediately.

LRB097 06216 AEK 46291 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The New Vehicle Buyer Protection Act is amended
5 by changing the title of the Act and Sections 2, 3, 4, 6, 7, and
6 8 as follows:

7 (815 ILCS 380/Act title)

8 An Act regarding automobile and motorized wheelchair
9 warranties.

10 (815 ILCS 380/2) (from Ch. 121 1/2, par. 1202)

11 Sec. 2. Definitions. For the purposes of this Act, the
12 following words have the meanings ascribed to them in this
13 Section.

14 (a) "Consumer" means (i) an individual who purchases or
15 leases for a period of at least one year a new vehicle from the
16 seller for the purposes of transporting himself and others, as
17 well as their personal property, for primarily personal,
18 household or family purposes or a fire department, fire
19 protection district, or township fire department that
20 purchases or leases for a period of at least one year a new
21 vehicle from the seller, or (ii) an individual who purchases or
22 leases for a period of at least one year a new motorized

1 wheelchair.

2 (b) "Express warranty" has the same meaning, for the
3 purposes of this Act, as it has for the purposes of the Uniform
4 Commercial Code.

5 (c) "New vehicle" means a passenger car, as defined in
6 Section 1-157 of the Illinois Vehicle Code, a motor vehicle of
7 the Second Division having a weight of under 8,000 pounds, as
8 defined in Section 1-146 of that Code, a vehicle purchased by a
9 fire department, a fire protection district, or a township fire
10 department, and a recreational vehicle, except for a camping
11 trailer or travel trailer that does not qualify under the
12 definition of a used motor vehicle, as set forth in Section
13 1-216 of that Code.

14 (c-5) "New motorized wheelchair" means a motorized
15 wheelchair, as defined in Section 1-148.3 of the Illinois
16 Vehicle Code, except for a motorized wheelchair that has been
17 sold, bargained, exchanged, given away, or title transferred
18 from the person who first acquired it from the manufacturer or
19 importer, dealer, or agent of the manufacturer or importer and
20 so used as to have become what is commonly known as "second
21 hand" within the ordinary meaning of that term.

22 (d) "Nonconformity" refers to a new vehicle's or new
23 motorized wheelchair's failure to conform to all express
24 warranties applicable to such vehicle or wheelchair, which
25 failure substantially impairs the use, market value or safety
26 of that vehicle or wheelchair.

1 (e) "Seller" means the manufacturer of a new vehicle or new
2 motorized wheelchair, that manufacturer's agent or distributor
3 or that manufacturer's authorized dealer. "Seller" also means,
4 with respect to a new vehicle which is also a modified vehicle,
5 as defined in Section 1-144.1 of the Illinois Vehicle Code, as
6 now or hereafter amended, the person who modified the vehicle
7 and that person's agent or distributor or that person's
8 authorized dealer. "Seller" also means, with respect to leased
9 new vehicles or leased new motorized wheelchairs, the
10 manufacturer, that manufacturer's agent or distributor or that
11 manufacturer's dealer, who transfers the right to possession
12 and use of goods under a lease.

13 (f) "Statutory warranty period" means (i) the period of one
14 year or 12,000 miles, whichever occurs first after the date of
15 the delivery of a new vehicle to the consumer who purchased or
16 leased it or (ii) the period of the lease or 12,000 miles,
17 whichever occurs first after the date of delivery of a new
18 motorized wheelchair to the consumer who leased or purchased
19 it.

20 (g) "Lease cost" includes deposits, fees, taxes, down
21 payments, periodic payments, and any other amount paid to a
22 seller by a consumer in connection with the lease of a new
23 vehicle or new motorized wheelchair.

24 (Source: P.A. 95-802, eff. 1-1-09.)

25 (815 ILCS 380/3) (from Ch. 121 1/2, par. 1203)

1 Sec. 3. Failure of vehicle or wheelchair to conform;
2 remedies; presumptions.

3 (a) If after a reasonable number of attempts the seller is
4 unable to conform the new vehicle or new motorized wheelchair
5 to any of its applicable express warranties, the manufacturer
6 shall either provide the consumer with a new vehicle or new
7 motorized wheelchair of like model line, if available, or
8 otherwise a comparable motor vehicle or wheelchair as a
9 replacement, or accept the return of the vehicle or wheelchair
10 from the consumer and refund to the consumer the full purchase
11 price or lease cost of the new vehicle or new motorized
12 wheelchair, including all collateral charges, less a
13 reasonable allowance for consumer use of the vehicle or
14 wheelchair. For purposes of this Section, "collateral charges"
15 does not include taxes paid by the purchaser on the initial
16 purchase of the new vehicle or new motorized wheelchair. The
17 retailer who initially sold the vehicle or wheelchair may file
18 a claim for credit for taxes paid pursuant to the terms of
19 Sections 6, 6a, 6b, and 6c of the Retailers' Occupation Tax
20 Act. Should the vehicle or wheelchair be converted, modified or
21 altered in a way other than the manufacturer's original design,
22 the party which performed the conversion or modification shall
23 be liable under the provisions of this Act, provided the part
24 or parts causing the vehicle or wheelchair not to perform
25 according to its warranty were altered or modified.

26 (b) A presumption that a reasonable number of attempts have

1 been undertaken to conform a new vehicle or new motorized
2 wheelchair to its express warranties shall arise where, within
3 the statutory warranty period,

4 (1) the same nonconformity has been subject to repair
5 by the seller, its agents or authorized dealers during the
6 statutory warranty period, 4 or more times, and such
7 nonconformity continues to exist; or

8 (2) the vehicle or wheelchair has been out of service
9 by reason of repair of nonconformities for a total of 30 or
10 more business days during the statutory warranty period.

11 (c) A reasonable allowance for consumer use of a vehicle or
12 wheelchair is that amount directly attributable to the wear and
13 tear incurred by the new vehicle or new motorized wheelchair as
14 a result of its having been used prior to the first report of a
15 nonconformity to the seller, and during any subsequent period
16 in which it is not out of service by reason of repair.

17 (d) The fact that a new vehicle's or new motorized
18 wheelchair's failure to conform to an express warranty is the
19 result of abuse, neglect or unauthorized modifications or
20 alterations is an affirmative defense to claims brought under
21 this Act.

22 (e) The statutory warranty period of a new vehicle or new
23 motorized wheelchair shall be suspended for any period of time
24 during which repair services are not available to the consumer
25 because of a war, invasion or strike, or a fire, flood or other
26 natural disaster.

1 (f) Refunds made pursuant to this Act shall be made to the
2 consumer, and to the administrator of the medical assistance
3 program under Article V of the Illinois Public Aid Code, the
4 administrator of the federal Medicare program, a private
5 insurer, or other lien holder if any exists, as their
6 respective interests appear.

7 (g) For the purposes of this Act, a manufacturer sells a
8 new vehicle or new motorized wheelchair to a consumer when he
9 provides that consumer with a replacement vehicle or wheelchair
10 pursuant to subsection (a).

11 (h) In no event shall the presumption herein provided apply
12 against a manufacturer, his agent, distributor or dealer unless
13 the manufacturer has received prior direct written
14 notification from or on behalf of the consumer, and has an
15 opportunity to correct the alleged defect.

16 (Source: P.A. 89-359, eff. 8-17-95; 89-375, eff. 8-18-95;
17 89-626, eff. 8-9-96.)

18 (815 ILCS 380/4) (from Ch. 121 1/2, par. 1204)

19 Sec. 4. (a) The provisions of subsection (a) of Section 3
20 shall not apply unless the consumer has first resorted to an
21 informal settlement procedure applicable to disputes to which
22 that subsection would apply where

23 (1) The manufacturer of the new vehicle or new motorized
24 wheelchair has established such a procedure;

25 (2) The procedure conforms:

1 (i) substantially with the provisions of Title 16, Code of
2 Federal Regulation, Part 703, as from time to time amended, and

3 (ii) to the requirements of subsection (c); and

4 (3) The consumer has received from the seller adequate
5 written notice of the existence of the procedure.

6 Adequate written notice includes but is not limited to the
7 incorporation of the informal dispute settlement procedure
8 into the terms of the written warranty to which the vehicle or
9 wheelchair does not conform.

10 (b) If the consumer is dissatisfied with the decision
11 reached in an informal dispute settlement procedure or the
12 results of such a decision, he may bring a civil action to
13 enforce his rights under subsection (a) of Section 3. The
14 decision reached in the informal dispute settlement procedure
15 is admissible in such a civil action. The period of limitations
16 for a civil action to enforce a consumer's rights or remedies
17 under subsection (a) of Section 3 shall be extended for a
18 period equal to the number of days the subject matter of the
19 civil action was pending in the informal dispute settlement
20 procedure.

21 (c) A disclosure of the decision in an informal dispute
22 settlement procedure shall include notice to the consumer of
23 the provisions of subsection (b).

24 (Source: P.A. 85-1350.)

25 (815 ILCS 380/6) (from Ch. 121 1/2, par. 1206)

1 Sec. 6. Any action brought under this Act shall be
2 commenced within eighteen months following the date of original
3 delivery of the motor vehicle or wheelchair to the consumer.
4 (Source: P.A. 83-768.)

5 (815 ILCS 380/7) (from Ch. 121 1/2, par. 1207)

6 Sec. 7. The seller who sells a new vehicle or new motorized
7 wheelchair to a consumer, shall, upon delivery of that vehicle
8 or wheelchair to the consumer, provide the consumer with a
9 written statement clearly and conspicuously setting forth in
10 full detail the consumer's rights under subsection (a) of
11 Section 3, and the presumptions created by subsection (b) of
12 that Section.
13 (Source: P.A. 85-1350.)

14 (815 ILCS 380/8) (from Ch. 121 1/2, par. 1208)

15 Sec. 8. This Act shall apply to motor vehicles beginning
16 with the model year following the effective date of this Act,
17 and to motorized wheelchairs with the model year 2012 and
18 thereafter.
19 (Source: P.A. 83-768.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.