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House BILL NO. 335
J. Smith *Beaufort*
J. Smith *Beaufort*

INTRODUCED BY *J. Smith*
J. Smith
A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA WHEELCHAIR WARRANTY ACT;
PROVIDING FOR WHEELCHAIR WARRANTIES; PROVIDING PROCEDURES TO CORRECT
NONCONFORMITIES TO WARRANTIES; AND PROVIDING FOR CONSUMERS' RIGHTS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 7] may be known as the "Montana
Wheelchair Warranty Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 7], the following definitions
apply:

(1) "Collateral costs" mean the expenses incurred by a consumer for the repair of a nonconformity,
including the costs of obtaining an alternative wheelchair.

- (2) "Consumer" means a person:
 - (a) who purchases a wheelchair from a wheelchair dealer or manufacturer for purposes other than
resale;
 - (b) to whom the wheelchair is transferred for purposes other than resale if the transfer occurred
before the expiration of an express warranty applicable to the wheelchair;
 - (c) who may enforce the warranty; or
 - (d) who leases a wheelchair from a wheelchair lessor under a written lease.

(3) "Manufacturer" means a person or an agent of a person who manufactures or assembles
wheelchairs. The term includes an importer, distributor, factory branch, distributor branch, and any
warrantor of the manufacturer's wheelchairs. The term does not include a wheelchair dealer.

(4) "Nonconformity" means a condition or defect that substantially impairs the use, value, or safety
of a wheelchair or that is covered by an express warranty applicable to the wheelchair or to components
of a wheelchair. The term does not include a condition or defect that is the result of abuse, neglect, or
unauthorized modification or alteration of the wheelchair by the consumer.

1 (5) "Wheelchair" means a manually powered or motor-driven wheelchair, scooter, or other
2 motorized device that is used for mobility assistance, that costs \$500 or more, and that a consumer
3 purchases or accepts by transfer.

4 (6) "Wheelchair dealer" means a person who is in the retail business of selling wheelchairs.
5

6 **NEW SECTION. Section 3. Express written warranty for wheelchairs -- failure to furnish -- implied**
7 **warranty.** (1) A manufacturer who sells a wheelchair to a consumer, either directly or through a
8 wheelchair dealer, shall furnish the consumer with an express written warranty for the parts and
9 performance and conditions of nonconformity that substantially impair the use, value, or safety of the
10 wheelchair.

11 (2) The duration of the express written warranty may not be less than 1 year after the date of
12 delivery of the wheelchair to the consumer.

13 (3) If a manufacturer fails to furnish an express written warranty, the wheelchair is covered by a
14 warranty as if the manufacturer had furnished an express written warranty to the consumer. This implied
15 warranty must cover parts and performance and conditions of nonconformity that substantially impair the
16 use, value, or safety of a wheelchair. The implied warranty is for a period of 4 years following the date
17 of delivery of the wheelchair to the consumer.
18

19 **NEW SECTION. Section 4. Replacement for nonconformity to warranty.** (1) If, after a reasonable
20 number of attempts to repair the nonconformity during the warranty period, the manufacturer or the
21 wheelchair dealer is unable to conform the wheelchair to the warranty by repairing or correcting a defect
22 or condition that substantially impairs the use, value, or safety of the wheelchair, the manufacturer shall,
23 at the direction of the consumer either:

24 (a) replace the wheelchair with a new wheelchair of the same model and style and of comparable
25 value, unless the replacement is impossible because of lack of availability, in which case the manufacturer
26 shall replace it with a wheelchair of similar functional benefit and comparable value. Additionally, the
27 manufacturer shall refund any finance charges and collateral costs to the consumer.

28 (b) accept return of the wheelchair from the consumer and refund the full purchase price or the
29 total of all lease payments, plus any finance charges, collateral costs, and incidental damages, less a
30 reasonable allowance for the consumer's use of the wheelchair. A reasonable allowance for use may not

1 exceed an amount obtained by multiplying the purchase price by a fraction with a denominator of 1,825
2 and a numerator of the number of days the wheelchair was useable before the consumer first reported the
3 nonconformity to the wheelchair dealer. A person may not enforce a lease against the consumer after the
4 consumer returns a wheelchair under this subsection.

5 (2) A wheelchair returned by a consumer in this state pursuant to this section or by a consumer
6 in another state under a similar law of the other state may not be sold or leased again in this state unless
7 a full disclosure is made to a prospective consumer of the reasons for the return.

8

9 **NEW SECTION. Section 5. Reasonable number of attempts to conform -- presumption.** A
10 reasonable number of attempts to conform a new wheelchair to the applicable warranty is presumed to
11 have been made for the purposes of [section 4] if:

12 (1) the same nonconformity has been subject to repair two or more times by the manufacturer or
13 the wheelchair dealer during the warranty period and the nonconformity continues to exist; or

14 (2) the wheelchair is out of service because of the nonconformity for a cumulative total of 30 or
15 more business days during the warranty period after notification of the manufacturer or wheelchair dealer.

16

17 **NEW SECTION. Section 6. Liability to manufacturer -- wheelchair dealer exemption.** A wheelchair
18 dealer is not liable to a manufacturer for a refund or wheelchair replacement in the absence of evidence that
19 indicates that the repairs made by the dealer were carried out in a manner inconsistent with the
20 manufacturer's instructions.

21

22 **NEW SECTION. Section 7. Consumer's rights.** (1) [Sections 1 through 7] may not be considered
23 to limit the rights or remedies available to a consumer under any other law or contract.

24 (2) A waiver of rights under [sections 1 through 7] by a consumer is void.

25 (3) A consumer's rights and remedies under [sections 1 through 7] are in addition to the rights and
26 remedies provided in chapter 2A.

27 (4) In addition to pursuing any other remedy, a consumer may bring an action to recover for
28 damages caused by a violation of [sections 1 through 7]. The court may award a consumer who prevails
29 in an action triple the amount of any pecuniary loss. A court may also award costs, disbursements,
30 reasonable attorney fees, and any equitable relief that the court determines is appropriate.

1 **NEW SECTION.** **Section 8. Codification instruction.** [Sections 1 through 7] are intended to be
2 codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 7].

3

4 **NEW SECTION.** **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are
5 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
6 applications, the part remains in effect in all valid applications that are severable from the invalid
7 applications.

8

-END-

1 HOUSE BILL NO. 335

2 INTRODUCED BY SQUIRES, L. SMITH, BENEDICT, BARNHART, ESTRADA

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA WHEELCHAIR WARRANTY ACT;
5 PROVIDING FOR WHEELCHAIR WARRANTIES; PROVIDING PROCEDURES TO CORRECT
6 NONCONFORMITIES TO WARRANTIES; AND PROVIDING FOR CONSUMERS' RIGHTS; AND PROVIDING
7 AN APPLICABILITY DATE."

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15 apply:

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18 (2) "Consumer" means a person:

19 (a) who purchases a wheelchair from a wheelchair dealer or manufacturer for purposes other than
20 resale;

21 (b) to whom the wheelchair is transferred for purposes other than resale if the transfer occurred
22 before the expiration of an express warranty applicable to the wheelchair;

23 (c) who may enforce the warranty; or

24 (d) who leases a wheelchair from a wheelchair lessor under a written lease.

25 (3) "Manufacturer" means a person or an agent of a person who manufactures or assembles
26 wheelchairs. The term includes an importer, ~~distributor~~, factory branch, ~~distributor branch~~, and any
27 warrantor of the manufacturer's wheelchairs. The term does not include a wheelchair dealer.

28 (4) "Nonconformity" means a ~~condition or defect~~ condition or defect that substantially impairs the use, value, or safety
29 of a wheelchair or that is covered by an express warranty applicable to the wheelchair or to components
30 of a wheelchair. The term does not include a condition ~~or defect~~ that is the result of abuse, neglect, or

1 unauthorized modification or alteration of the wheelchair by the consumer.

2 (5) "Wheelchair" means a manually powered or motor-driven wheelchair, scooter, or other
3 motorized device that is used for mobility assistance, that costs \$500 or more, and that a consumer
4 purchases or accepts by transfer.

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7 **NEW SECTION. Section 3. Express written warranty for wheelchairs -- failure to furnish -- implied**
8 **warranty.** (1) A manufacturer who sells a wheelchair to a consumer, either directly or through a
9 wheelchair dealer, shall furnish the consumer with an express written warranty ~~for the parts and~~
10 ~~performance and conditions of nonconformity that substantially impair the use, value, or safety of the~~
11 ~~wheelchair~~ **AGAINST NONCONFORMITY.**

12 (2) The duration of the express written warranty may not be less than 1 year after the date of
13 delivery of the wheelchair to the consumer.

14 (3) If a manufacturer fails to furnish an express written warranty, the wheelchair is covered by a
15 warranty as if the manufacturer had furnished an express written warranty to the consumer **UNDER**
16 **SUBSECTION (1).** ~~This implied warranty must cover parts and performance and conditions of~~
17 ~~nonconformity that substantially impair the use, value, or safety of a wheelchair.~~ The implied warranty is
18 for a period of 4 2 years following the date of delivery of the wheelchair to the consumer.
19

20 **NEW SECTION. Section 4. Replacement for nonconformity to warranty.** (1) If, after a reasonable
21 number of attempts to repair the nonconformity during the warranty period, the manufacturer or the
22 wheelchair dealer is unable to conform the wheelchair to the warranty by repairing or correcting a ~~defect~~
23 ~~or condition that substantially impairs the use, value, or safety of the wheelchair~~ **THE NONCONFORMITY,**
24 the manufacturer shall, at the direction of the consumer either:

25 (a) replace the wheelchair with a new wheelchair of the same model and style and of comparable
26 value, unless the replacement is impossible because of lack of availability, in which case the manufacturer
27 shall replace it with a wheelchair of similar functional benefit and comparable value. Additionally, the
28 manufacturer shall refund any finance charges and collateral costs to the consumer.

29 (b) accept return of the wheelchair from the consumer and refund the full purchase price or the
30 total of all lease payments, plus any finance charges, collateral costs, and incidental damages, less a

1 reasonable allowance for the consumer's use of the wheelchair. A reasonable allowance for use may not
 2 exceed an amount obtained by multiplying the purchase price by a fraction with a denominator of 1,825
 3 and a numerator of the number of days the wheelchair was useable before the consumer first reported the
 4 nonconformity to the wheelchair dealer. A person may not enforce a lease against the consumer after the
 5 consumer returns a wheelchair under this subsection.

6 (2) A MANUFACTURER WHO REPLACES A WHEELCHAIR IN ACCORDANCE WITH SUBSECTION
 7 (1)(A) OR REFUNDS THE PURCHASE PRICE OF A WHEELCHAIR IN ACCORDANCE WITH SUBSECTION
 8 (1)(B) SHALL ALSO REFUND TO THE DEALER THE DEALER'S REASONABLE COSTS OF THE EXCHANGE
 9 OR REFUND.

10 ~~(2)(3)~~ A wheelchair returned by a consumer in this state pursuant to this section or by a consumer
 11 in another state under a similar law of the other state may not be sold or leased again in this state unless
 12 a full disclosure is made to a prospective consumer of the reasons for the return.

13

14 NEW SECTION. Section 5. Reasonable number of attempts to conform -- presumption. A
 15 reasonable number of attempts to conform a new wheelchair to the applicable warranty is presumed to
 16 have been made for the purposes of [section 4] if:

17 (1) the same nonconformity has been subject to repair two or more times by the manufacturer or
 18 the wheelchair dealer during the warranty period and the nonconformity continues to exist; or

19 (2) the wheelchair is out of service because of ~~the~~ A nonconformity for a cumulative total of ~~30~~
 20 ~~or more business~~ 45 days during the warranty period after notification of the manufacturer or wheelchair
 21 dealer.

22

23 NEW SECTION. Section 6. Liability to manufacturer -- wheelchair dealer exemption. A wheelchair
 24 dealer is not liable to a manufacturer for a refund or wheelchair replacement in the absence of evidence that
 25 indicates that the repairs made by the dealer were carried out in a manner inconsistent with the
 26 manufacturer's instructions.

27

28 NEW SECTION. Section 7. Consumer's rights. (1) [Sections 1 through 7] may not be considered
 29 to limit the rights or remedies available to a consumer under any other law or contract.

30 (2) A waiver of rights under [sections 1 through 7] by a consumer is void.

1 (3) A consumer's rights and remedies under [sections 1 through 7] are in addition to the rights and
2 remedies provided in chapter 2A.

3 (4) ~~In addition to pursuing any other remedy~~ IF THE MANUFACTURER FAILS TO COMPLY WITH
4 [SECTION 4(1)(A) OR (1)(B)], a consumer may bring an action to recover for damages caused by a violation
5 of [sections 1 through 7]. The court may award a consumer who prevails in an action triple the amount
6 of any pecuniary loss. A court may also award costs, disbursements, reasonable attorney fees, and any
7 equitable relief that the court determines is appropriate.

8
9 NEW SECTION. Section 8. Codification instruction. [Sections 1 through 7] are intended to be
10 codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 7].

11
12 NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
14 applications, the part remains in effect in all valid applications that are severable from the invalid
15 applications.

16
17 NEW SECTION. SECTION 10. APPLICABILITY. [THIS ACT] DOES NOT APPLY TO A WHEELCHAIR
18 AS DEFINED BY [SECTION 2] SOLD TO A CONSUMER AS DEFINED BY [SECTION 2] BEFORE OCTOBER
19 1, 1995.

20 -END-

1 HOUSE BILL NO. 335

2 INTRODUCED BY SQUIRES, L. SMITH, BENEDICT, BARNHART, ESTRADA

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA WHEELCHAIR WARRANTY ACT;
5 PROVIDING FOR WHEELCHAIR WARRANTIES; PROVIDING PROCEDURES TO CORRECT
6 NONCONFORMITIES TO WARRANTIES; AND PROVIDING FOR CONSUMERS' RIGHTS; AND PROVIDING
7 AN APPLICABILITY DATE."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 NEW SECTION. Section 1. Short title. [Sections 1 through 7] may be known as the "Montana
12 Wheelchair Warranty Act".

13
14 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 7], the following definitions
15 apply:

16 (1) "Collateral costs" mean the expenses incurred by a consumer for the repair of a nonconformity,
17 including the costs of obtaining an alternative wheelchair.

18 (2) "Consumer" means a person:

19 (a) who purchases a wheelchair from a wheelchair dealer or manufacturer for purposes other than
20 resale;

21 (b) to whom the wheelchair is transferred for purposes other than resale if the transfer occurred
22 before the expiration of an express warranty applicable to the wheelchair;

23 (c) who may enforce the warranty; or

24 (d) who leases a wheelchair from a wheelchair lessor under a written lease.

25 (3) "Manufacturer" means a person or an agent of a person who manufactures or assembles
26 wheelchairs. The term includes an importer, ~~distributor~~, factory branch, ~~distributor-branch~~, and any
27 warrantor of the manufacturer's wheelchairs. The term does not include a wheelchair dealer.

28 (4) "Nonconformity" means a ~~condition or~~ defect that substantially impairs the use, value, or safety
29 of a wheelchair or that is covered by an express warranty applicable to the wheelchair or to components
30 of a wheelchair. The term does not include a condition ~~or defect~~ that is the result of abuse, neglect, or

1 unauthorized modification or alteration of the wheelchair by the consumer.

2 (5) "Wheelchair" means a manually powered or motor-driven wheelchair, scooter, or other
3 motorized device that is used for mobility assistance, that costs \$500 or more, and that a consumer
4 purchases or accepts by transfer.

5 (6) "Wheelchair dealer" means a person who is in the retail business of selling wheelchairs.
6

7 **NEW SECTION. Section 3. Express written warranty for wheelchairs -- failure to furnish -- implied**
8 **warranty.** (1) A manufacturer who sells a wheelchair to a consumer, either directly or through a
9 wheelchair dealer, shall furnish the consumer with an express written warranty ~~for the parts and~~
10 ~~performance and conditions of nonconformity that substantially impair the use, value, or safety of the~~
11 ~~wheelchair~~ **AGAINST NONCONFORMITY.**

12 (2) The duration of the express written warranty may not be less than 1 year after the date of
13 delivery of the wheelchair to the consumer.

14 (3) If a manufacturer fails to furnish an express written warranty, the wheelchair is covered by a
15 warranty as if the manufacturer had furnished an express written warranty to the consumer **UNDER**
16 **SUBSECTION (1).** ~~This implied warranty must cover parts and performance and conditions of~~
17 ~~nonconformity that substantially impair the use, value, or safety of a wheelchair.~~ The implied warranty is
18 for a period of 4 2 years following the date of delivery of the wheelchair to the consumer.
19

20 **NEW SECTION. Section 4. Replacement for nonconformity to warranty.** (1) If, after a reasonable
21 number of attempts to repair the nonconformity during the warranty period, the manufacturer or the
22 wheelchair dealer is unable to conform the wheelchair to the warranty by repairing or correcting ~~a defect~~
23 ~~or condition that substantially impairs the use, value, or safety of the wheelchair~~ **THE NONCONFORMITY,**
24 the manufacturer shall, at the direction of the consumer either:

25 (a) replace the wheelchair with a new wheelchair of the same model and style and of comparable
26 value, unless the replacement is impossible because of lack of availability, in which case the manufacturer
27 shall replace it with a wheelchair of similar functional benefit and comparable value. Additionally, the
28 manufacturer shall refund any finance charges and collateral costs to the consumer.

29 (b) accept return of the wheelchair from the consumer and refund the full purchase price or the
30 total of all lease payments, plus any finance charges, collateral costs, and incidental damages, less a

1 reasonable allowance for the consumer's use of the wheelchair. A reasonable allowance for use may not
 2 exceed an amount obtained by multiplying the purchase price by a fraction with a denominator of 1,825
 3 and a numerator of the number of days the wheelchair was useable before the consumer first reported the
 4 nonconformity to the wheelchair dealer. A person may not enforce a lease against the consumer after the
 5 consumer returns a wheelchair under this subsection.

6 (2) A MANUFACTURER WHO REPLACES A WHEELCHAIR IN ACCORDANCE WITH SUBSECTION
 7 (1)(A) OR REFUNDS THE PURCHASE PRICE OF A WHEELCHAIR IN ACCORDANCE WITH SUBSECTION
 8 (1)(B) SHALL ALSO REFUND TO THE DEALER THE DEALER'S REASONABLE COSTS OF THE EXCHANGE
 9 OR REFUND.

10 ~~(2)(3)~~ A wheelchair returned by a consumer in this state pursuant to this section or by a consumer
 11 in another state under a similar law of the other state may not be sold or leased again in this state unless
 12 a full disclosure is made to a prospective consumer of the reasons for the return.

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 15 reasonable number of attempts to conform a new wheelchair to the applicable warranty is presumed to
 16 have been made for the purposes of [section 4] if:

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 18 the wheelchair dealer during the warranty period and the nonconformity continues to exist; or

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 24 dealer is not liable to a manufacturer for a refund or wheelchair replacement in the absence of evidence that
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 26 manufacturer's instructions.

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 29 to limit the rights or remedies available to a consumer under any other law or contract.

30 (2) A waiver of rights under [sections 1 through 7] by a consumer is void.

1 (3) A consumer's rights and remedies under [sections 1 through 7] are in addition to the rights and
2 remedies provided in chapter 2A.

3 (4) ~~In addition to pursuing any other remedy~~ IF THE MANUFACTURER FAILS TO COMPLY WITH
4 [SECTION 4(1)(A) OR (1)(B)], a consumer may bring an action to recover for damages caused by a violation
5 of [sections 1 through 7]. The court may award a consumer who prevails in an action triple the amount
6 of any pecuniary loss. A court may also award costs, disbursements, reasonable attorney fees, and any
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18 AS DEFINED BY [SECTION 2] SOLD TO A CONSUMER AS DEFINED BY [SECTION 2] BEFORE OCTOBER
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2 INTRODUCED BY SQUIRES, L. SMITH, BENEDICT, BARNHART, ESTRADA, WENNEMAR, MCCANN

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11 ~~wheelchair~~ **AGAINST NONCONFORMITY.**

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14 (3) If a manufacturer fails to furnish an express written warranty, the wheelchair is covered by a
15 warranty as if the manufacturer had furnished an express written warranty to the consumer **UNDER**
16 **SUBSECTION (1).** ~~This implied warranty must cover parts and performance and conditions of~~
17 ~~nonconformity that substantially impair the use, value, or safety of a wheelchair.~~ The implied warranty is
18 for a period of **4 2** years following the date of delivery of the wheelchair to the consumer.
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20 **NEW SECTION. Section 4. Replacement for nonconformity to warranty.** (1) If, after a reasonable
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24 the manufacturer shall, at the direction of the consumer either:

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26 value, unless the replacement is impossible because of lack of availability, in which case the manufacturer
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28 manufacturer shall refund any finance charges and collateral costs to the consumer.

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 9 OR REFUND.

10 ~~(2)(3)~~ A wheelchair returned by a consumer in this state pursuant to this section or by a consumer
 11 in another state under a similar law of the other state may not be sold or leased again in this state unless
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19 (2) the wheelchair is out of service because of ~~the~~ A nonconformity for a cumulative total of ~~30~~
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2 remedies provided in chapter 2A.

3 (4) ~~In addition to pursuing any other remedy~~ IF THE MANUFACTURER FAILS TO COMPLY WITH
4 [SECTION 4(1)(A) OR (1)(B)], a consumer may bring an action to recover for damages caused by a violation
5 of [sections 1 through 7]. The court may award a consumer who prevails in an action triple the amount
6 of any pecuniary loss. A court may also award costs, disbursements, reasonable attorney fees, and any
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11

12 NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
14 applications, the part remains in effect in all valid applications that are severable from the invalid
15 applications.

16

17 NEW SECTION. SECTION 10. APPLICABILITY. [THIS ACT] DOES NOT APPLY TO A WHEELCHAIR
18 AS DEFINED BY [SECTION 2] SOLD TO A CONSUMER AS DEFINED BY [SECTION 2] BEFORE OCTOBER
19 1, 1995.

20

-END-