

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 715
Economic Matters

(Delegate Walker, *et al.*)

Finance

Consumer Protection - Home Appliances - Warranty Enforcement

This bill establishes the Home Appliance Warranty Enforcement Act. Under the bill, a home appliance manufacturer or its agent must repair or correct a nonconformity in a home appliance at no cost to the consumer if it does not conform to the manufacturer's express warranties.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

The bill applies prospectively to home appliances sold on or after October 1, 2011.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's imposition of existing penalty provisions. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's imposition of existing penalty provisions.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: A "home appliance" covered under the bill means a refrigerator, washer, dryer, or dishwasher used or sold for use in a private residence.

A manufacturer is obligated to repair or correct a nonconforming home appliance if the consumer reports the problem to the manufacturer or its agent and the consumer makes the home appliance available for repair.

If the manufacturer or its agent is unable to fix any nonconformity after a reasonable number of attempts, the manufacturer, at the consumer's option, must:

- replace the home appliance with a comparable model; or
- accept return of the home appliance at the manufacturer's expense and refund the consumer the full purchase price with tax, less a reasonable allowance for the consumer's use and ordinary wear and tear.

There is a presumption that a reasonable number of attempts to repair have been undertaken if the same nonconformity has been subject to repair three or more times and the nonconformity continues to exist or the home appliance is out of service due to repair of one or more nonconformities for a cumulative total of 30 or more days.

Any refund given by the manufacturer must be made to the consumer and the holder of any perfected security interest in accordance with the priority of interests. The manufacturer may raise affirmative defenses to any claim under the bill, including that the nonconformity does not substantially impair the use and market value of the home appliance or that the nonconformity resulted from abuse or neglect.

A manufacturer that fails to comply with the bill is liable to the consumer for:

- actual damages sustained by the consumer as a result of the manufacturer's noncompliance; and
- if the manufacturer acted in bad faith, an additional amount of up to two times the actual damages sustained by the consumer.

A court may award reasonable attorney's fees to a prevailing plaintiff, or to the defendant if an action is brought in bad faith or is of a frivolous nature. The bill creates a one-year statute of limitations from the date of original delivery of the home appliance.

Although violation of the bill is an unfair or deceptive trade practice under MCPA, a consumer may not recover damages under both MCPA and the bill for the same violation.

Current Law: An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or

misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

In addition to any action by the Consumer Protection Division, any individual may bring an action to recover for injury or loss sustained by the individual as the result of a violation of the MCPA. Any individual awarded damages by the court may also seek reasonable attorney's fees.

Background: Under Maryland's Uniform Commercial Code, there are four types of warranties: (1) the warranty of title and against infringement; (2) the implied warranty of merchantability; (3) the implied warranty of fitness for a particular purpose; and (4) express warranties by affirmation, promise, description, or sample.

Any affirmation of fact or promise made by the seller to the buyer, including any sample or model, creates an express warranty if the statement, description of the goods, sample, or model is part of the basis of the bargain – *i.e.*, did the buyer rely upon it when entering into the contract. The seller does not have to use formal words such as “warrant” or “guarantee” or even specifically intend to create an express warranty. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods conform to the seller's description.

In 1975, the U.S. Congress passed the Magnuson-Moss Warranty Act that requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage. The Act only governs written warranties on consumer products sold at retail. Under the Act, a warrantor or seller must:

- designate or title the written warranty as “full” or “limited;”
- state certain specified information about the warranty coverage in a single, concise document; and
- ensure that the warranties are available where warranted consumer products are sold.

The federal government may seek an injunction against a manufacturer or seller in violation of the Act. Consumers may also bring an action to recover damages and reasonable attorney's fees.

The bill is similar to the State's automobile "lemon law" which requires a manufacturer to repurchase or replace a vehicle registered in the State, driven less than 15,000 miles, and owned for less than 15 months if a defect or problem with the vehicle cannot be repaired within 30 days. At the purchaser's option, the automobile manufacturer may replace the vehicle with a comparable one, or repurchase the vehicle from the consumer. The repurchase price must include the full purchase price, including all fees and government charges, less an allowance up to 15% for the purchaser's use and ordinary wear and tear.

Additional Information

Prior Introductions: A similar bill, HB 185 of 2009, received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Department of Legislative Services

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