

HOUSE BILL 1215

I3, I4

(3lr2715)

ENROLLED BILL

— Economic Matters/Finance —

Introduced by **Delegate Walker**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Consumer Protection – Home ~~Appliances~~ *Appliances and Warranty***
3 **Enforcement – *Study***

4 FOR the purpose of ~~requiring a manufacturer of home appliances or its agent to repair~~
5 ~~or correct a nonconformity in a home appliance at no cost to the consumer if the~~
6 ~~home appliance does not conform to the manufacturer's express warranties;~~
7 ~~providing that a manufacturer's obligation to repair or correct a nonconformity~~
8 ~~under this Act applies only if the consumer satisfies certain conditions;~~
9 ~~requiring a manufacturer, under certain circumstances and at the option of the~~
10 ~~consumer, to replace a home appliance with a comparable home appliance or~~
11 ~~accept return of a home appliance and refund the purchase price less certain~~
12 ~~reasonable allowances; requiring that a refund of the purchase price be made to~~
13 ~~the consumer and any holder of a perfected security interest in the home~~
14 ~~appliance in a certain manner; providing that the manufacturer is responsible~~
15 ~~for the cost of returning a home appliance to the manufacturer; providing for~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



~~1 certain affirmative defenses; establishing a certain presumption; providing for
 2 the extension of the term of a manufacturer's express warranty by any time
 3 during which a home appliance is out of service for repair of a nonconformity;
 4 providing for the extension of the term of a manufacturer's express warranty
 5 and a certain out of service period if repair services are not available for
 6 certain reasons; providing that this Act does not limit the rights and remedies
 7 that otherwise are available to a consumer under any other law; providing that
 8 a consumer is not required to resort to a certain informal dispute settlement
 9 procedure before certain provisions of this Act apply; providing that a consumer
 10 who resorts to an informal dispute resolution procedure may not be precluded
 11 from seeking other available remedies; providing that an agreement for the
 12 purchase of a home appliance is void to the extent that it attempts to waive,
 13 limit, or disclaim certain rights of a consumer; providing that a manufacturer
 14 that fails to comply with certain provisions of this Act is liable to the consumer
 15 for certain damages; authorizing a court to award reasonable attorney's fees to a
 16 prevailing plaintiff in an action brought under this Act; authorizing a court to
 17 order a party to pay to the other party reasonable attorney's fees if it appears
 18 that an action is brought in bad faith or is frivolous in nature; requiring that an
 19 action brought under this Act be brought within a certain time; providing that a
 20 violation of certain provisions of this Act is an unfair or deceptive trade practice
 21 within the meaning of the Maryland Consumer Protection Act; prohibiting a
 22 consumer who recovers damages under certain provisions of this Act from
 23 recovering damages for the same violation under a certain provision of the
 24 Maryland Consumer Protection Act; providing for the application of this Act;
 25 defining certain terms requiring the Consumer Protection Division of the Office
 26 of the Attorney General to conduct a study of the consumer protections available
 27 to purchasers of home appliances who seek enforcement of certain warranties;
 28 requiring the study to analyze certain complaints, evaluate whether certain
 29 requirements and remedies under State and federal law provide adequate
 30 protection to certain purchasers of home appliances, and make a certain
 31 determination; requiring the Consumer Protection Division to consult with
 32 certain persons in conducting its study; requiring the Consumer Protection
 33 Division to report certain findings and recommendations to certain committees of
 34 the General Assembly on or before a certain date; and generally relating to home
 35 appliances and the enforcement of manufacturers' express warranties on home
 36 appliances.~~

37 ~~BY adding to~~

38 ~~Article — Commercial Law~~

39 ~~Section 14-15A-01 through 14-15A-08 to be under the new subtitle "Subtitle~~
 40 ~~15A- Home Appliance Warranty Enforcement Act"~~

41 ~~Annotated Code of Maryland~~

42 ~~(2005 Replacement Volume and 2012 Supplement)~~

43 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 44 MARYLAND, That ~~the Laws of Maryland read as follows:~~

~~Article Commercial Law~~~~SUBTITLE 15A. HOME APPLIANCE WARRANTY ENFORCEMENT ACT.~~~~14-15A-01.~~

~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(B) "CONSUMER" MEANS:~~

~~(1) THE PURCHASER, OTHER THAN FOR PURPOSES OF RESALE, OF A HOME APPLIANCE; OR~~

~~(2) ANY OTHER PERSON WHO IS ENTITLED TO ENFORCE THE OBLIGATIONS OF A MANUFACTURER'S EXPRESS WARRANTY ON A HOME APPLIANCE.~~

~~(C) "HOME APPLIANCE" MEANS A REFRIGERATOR, A WASHER, A DRYER, OR A DISHWASHER THAT IS USED OR SOLD FOR USE IN A PRIVATE RESIDENCE.~~

~~(D) (1) "MANUFACTURER" MEANS A PERSON ENGAGED IN THE BUSINESS OF MANUFACTURING, ASSEMBLING, IMPORTING, OR DISTRIBUTING HOME APPLIANCES.~~

~~(2) "MANUFACTURER" DOES NOT INCLUDE A HOME APPLIANCE DEALER.~~

~~14-15A-02.~~

~~(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, IF A HOME APPLIANCE DOES NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTIES, THE MANUFACTURER OR ITS AGENT SHALL REPAIR OR CORRECT THE NONCONFORMITY AT NO COST TO THE CONSUMER.~~

~~(B) THE MANUFACTURER'S OBLIGATION TO REPAIR OR CORRECT A NONCONFORMITY UNDER SUBSECTION (A) OF THIS SECTION APPLIES ONLY IF THE CONSUMER:~~

~~(1) REPORTS THE NONCONFORMITY TO THE MANUFACTURER OR ITS AGENT; AND~~

~~(2) MAKES THE HOME APPLIANCE AVAILABLE FOR REPAIR.~~

1 ~~14-15A-03.~~

2 ~~(A) IF THE MANUFACTURER OR ITS AGENT IS UNABLE TO CONFORM THE~~
3 ~~HOME APPLIANCE TO THE MANUFACTURER'S EXPRESS WARRANTIES AFTER A~~
4 ~~REASONABLE NUMBER OF ATTEMPTS AND THE NONCONFORMITY~~
5 ~~SUBSTANTIALLY IMPAIRS THE USE AND MARKET VALUE OF THE HOME~~
6 ~~APPLIANCE TO THE CONSUMER, THE MANUFACTURER, AT THE OPTION OF THE~~
7 ~~CONSUMER, SHALL:~~

8 ~~(1) REPLACE THE HOME APPLIANCE WITH A COMPARABLE HOME~~
9 ~~APPLIANCE ACCEPTABLE TO THE CONSUMER; OR~~

10 ~~(2) ACCEPT RETURN OF THE HOME APPLIANCE FROM THE~~
11 ~~CONSUMER AND REFUND TO THE CONSUMER THE FULL PURCHASE PRICE,~~
12 ~~INCLUDING ALL SALES TAXES PAID IN CONNECTION WITH THE PURCHASE OF~~
13 ~~THE HOME APPLIANCE, LESS:~~

14 ~~(I) A REASONABLE ALLOWANCE FOR THE CONSUMER'S USE~~
15 ~~OF THE HOME APPLIANCE NOT TO EXCEED 15% OF THE PURCHASE PRICE; AND~~

16 ~~(II) A REASONABLE ALLOWANCE FOR DAMAGE NOT~~
17 ~~ATTRIBUTABLE TO NORMAL WEAR, BUT NOT INCLUDING DAMAGE RESULTING~~
18 ~~FROM A NONCONFORMITY.~~

19 ~~(B) ANY REFUNDS MADE UNDER SUBSECTION (A) OF THIS SECTION~~
20 ~~SHALL BE MADE TO THE CONSUMER AND ANY HOLDER OF A PERFECTED~~
21 ~~SECURITY INTEREST IN THE HOME APPLIANCE IN ACCORDANCE WITH THEIR~~
22 ~~RESPECTIVE INTERESTS.~~

23 ~~(C) THE MANUFACTURER IS RESPONSIBLE FOR THE COST OF~~
24 ~~RETURNING THE HOME APPLIANCE TO THE MANUFACTURER.~~

25 ~~(D) IT IS AN AFFIRMATIVE DEFENSE TO ANY CLAIM UNDER THIS~~
26 ~~SECTION THAT THE NONCONFORMITY:~~

27 ~~(1) DOES NOT SUBSTANTIALLY IMPAIR THE USE AND MARKET~~
28 ~~VALUE OF THE HOME APPLIANCE; OR~~

29 ~~(2) IS THE RESULT OF ABUSE OR NEGLIGENCE OF THE HOME~~
30 ~~APPLIANCE.~~

31 ~~(E) IT IS PRESUMED THAT A REASONABLE NUMBER OF ATTEMPTS HAVE~~
32 ~~BEEN UNDERTAKEN TO CONFORM A HOME APPLIANCE TO THE~~
33 ~~MANUFACTURER'S EXPRESS WARRANTIES IF:~~

1 ~~(1) THE SAME NONCONFORMITY HAS BEEN SUBJECT TO REPAIR~~
2 ~~THREE OR MORE TIMES BY THE MANUFACTURER OR ITS AGENT BUT THE SAME~~
3 ~~NONCONFORMITY CONTINUES TO EXIST; OR~~

4 ~~(2) THE HOME APPLIANCE IS OUT OF SERVICE BY REASON OF~~
5 ~~REPAIR OF ONE OR MORE NONCONFORMITIES FOR A CUMULATIVE TOTAL OF 30~~
6 ~~OR MORE DAYS.~~

7 ~~14-15A-04.~~

8 ~~(A) THE TERM OF A MANUFACTURER'S EXPRESS WARRANTY SHALL BE~~
9 ~~EXTENDED BY ANY TIME DURING WHICH THE HOME APPLIANCE UNDER~~
10 ~~WARRANTY IS OUT OF SERVICE BY REASON OF REPAIR OF ONE OR MORE~~
11 ~~NONCONFORMITIES.~~

12 ~~(B) THE TERM OF A MANUFACTURER'S EXPRESS WARRANTY AND THE~~
13 ~~30-DAY OUT-OF-SERVICE PERIOD UNDER § 14-15A-03(E)(2) OF THIS SUBTITLE~~
14 ~~SHALL BE EXTENDED BY ANY TIME DURING WHICH REPAIR SERVICES ARE NOT~~
15 ~~AVAILABLE TO THE CONSUMER BY REASON OF:~~

16 ~~(1) WAR;~~

17 ~~(2) INVASION;~~

18 ~~(3) STRIKE; OR~~

19 ~~(4) FIRE, FLOOD, OR OTHER NATURAL DISASTER.~~

20 ~~14-15A-05.~~

21 ~~THIS SUBTITLE DOES NOT LIMIT THE RIGHTS OR REMEDIES THAT~~
22 ~~OTHERWISE ARE AVAILABLE TO A CONSUMER UNDER ANY OTHER LAW,~~
23 ~~INCLUDING THE MARYLAND UNIFORM COMMERCIAL CODE AND TITLE 15,~~
24 ~~CHAPTER 50 OF THE U.S. CODE (MAGNUSON-MOSS ACT).~~

25 ~~14-15A-06.~~

26 ~~(A) IF A MANUFACTURER HAS ESTABLISHED AN INFORMAL DISPUTE~~
27 ~~SETTLEMENT PROCEDURE THAT COMPLIES IN ALL RESPECTS WITH 16 C.F.R.~~
28 ~~PART 703, A CONSUMER IS NOT REQUIRED TO RESORT TO THAT PROCEDURE~~
29 ~~BEFORE § 14-15A-03 OF THIS SUBTITLE APPLIES.~~

1 ~~(B) A CONSUMER WHO HAS RESORTED TO AN INFORMAL DISPUTE~~
2 ~~SETTLEMENT PROCEDURE MAY NOT BE PRECLUDED FROM SEEKING OTHER~~
3 ~~REMEDIES PROVIDED BY LAW.~~

4 ~~14-15A-07.~~

5 ~~AN AGREEMENT ENTERED INTO BY A CONSUMER FOR THE PURCHASE OF A~~
6 ~~HOME APPLIANCE IS VOID TO THE EXTENT THAT THE AGREEMENT ATTEMPTS TO~~
7 ~~WAIVE, LIMIT, OR DISCLAIM THE CONSUMER'S RIGHTS UNDER THIS SUBTITLE.~~

8 ~~14-15A-08.~~

9 ~~(A) A MANUFACTURER THAT FAILS TO COMPLY WITH § 14-15A-02 OR §~~
10 ~~14-15A-03 OF THIS SUBTITLE IS LIABLE TO THE CONSUMER FOR:~~

11 ~~(1) ACTUAL DAMAGES SUSTAINED BY THE CONSUMER AS A~~
12 ~~RESULT OF THE MANUFACTURER'S FAILURE TO COMPLY; AND~~

13 ~~(2) IF THE MANUFACTURER ACTED IN BAD FAITH, AN~~
14 ~~ADDITIONAL AMOUNT OF UP TO TWO TIMES THE ACTUAL DAMAGES SUSTAINED~~
15 ~~BY THE CONSUMER.~~

16 ~~(B) (1) A COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A~~
17 ~~PREVAILING PLAINTIFF UNDER THIS SUBTITLE.~~

18 ~~(2) IF IT APPEARS TO THE SATISFACTION OF THE COURT THAT AN~~
19 ~~ACTION IS BROUGHT IN BAD FAITH OR IS OF A FRIVOLOUS NATURE, THE COURT~~
20 ~~MAY ORDER THE OFFENDING PARTY TO PAY TO THE OTHER PARTY REASONABLE~~
21 ~~ATTORNEY'S FEES.~~

22 ~~(C) AN ACTION BROUGHT UNDER THIS SUBTITLE MUST BE BROUGHT~~
23 ~~WITHIN 1 YEAR AFTER THE MANUFACTURER'S VIOLATION OF THIS SUBTITLE.~~

24 ~~(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A~~
25 ~~VIOLATION OF § 14-15A-02 OR § 14-15A-03 OF THIS SUBTITLE IS AN UNFAIR~~
26 ~~OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THIS~~
27 ~~ARTICLE.~~

28 ~~(2) A CONSUMER WHO RECOVERS DAMAGES UNDER THIS~~
29 ~~SECTION FOR A VIOLATION OF § 14-15A-02 OR § 14-15A-03 OF THIS SUBTITLE~~
30 ~~MAY NOT RECOVER DAMAGES FOR THE SAME VIOLATION UNDER § 13-408 OF~~
31 ~~THIS ARTICLE.~~

1 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be~~
2 ~~construed to apply only prospectively to home appliances that are sold on or after the~~
3 ~~effective date of this Act.~~

4 (a) (1) The Consumer Protection Division of the Office of the Attorney
5 General shall conduct a study of the consumer protections available to purchasers of
6 home appliances who seek enforcement of manufacturers' express warranties on home
7 appliances.

8 (2) The study shall:

9 (i) analyze complaints received by the Consumer Protection
10 Division relating to home appliances;

11 (ii) evaluate whether existing requirements and remedies under
12 State and federal law provide adequate protection to purchasers of home appliances
13 who seek enforcement of manufacturers' express warranties on home appliances; and

14 (iii) determine what, if any, changes to State law are needed to
15 protect consumers who purchase home appliances that do not conform to the
16 manufacturers' express warranties.

17 (b) In conducting its study, the Consumer Protection Division shall consult
18 with:

19 (1) consumers and representatives of consumer advocacy organizations;

20 (2) manufacturers and retailers of home appliances;

21 (3) the Association of Home Appliance Manufacturers; and

22 (4) any other person that the Consumer Protection Division considers
23 appropriate.

24 (c) On or before December 31, 2013, the Consumer Protection Division shall
25 report, in accordance with § 2-1246 of the State Government Article, its findings and
26 recommendations, including draft legislation, if any, to the Senate Finance Committee
27 and the House Economic Matters Committee.

28 SECTION ~~2~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
29 effect ~~October~~ July 1, 2013.