

Department of Legislative Services
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1215
Economic Matters

(Delegate Walker)

Finance

Consumer Protection - Home Appliances and Warranty Enforcement - Study

This bill requires the Consumer Protection Division of the Office of the Attorney General (OAG) to conduct a study of the consumer protections available to purchasers of home appliances who seek enforcement of manufacturers' express warranties on home appliances. The bill requires the division to report its findings and recommendations, including draft legislation, if any, to the Senate Finance Committee and the House Economic Matters Committee by December 31, 2013.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: OAG can complete the required study with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The study must (1) analyze complaints received by the division relating to home appliances; (2) evaluate whether existing requirements and remedies under State and federal law provide adequate protection to purchasers of home appliances who seek enforcement of manufacturers' express warranties on home appliances; and (3) determine what, if any, changes to State law are needed to protect consumers who purchase home appliances that do not conform to the manufacturers' express warranties.

In conducting the study, the division must consult with any person that the division considers appropriate, including consumers and representatives of consumer advocacy

organizations, manufacturers and retailers of home appliances, and the Association of Home Appliance Manufacturers.

Current Law/Background:

Maryland Consumer Protection Act

The Consumer Protection Division is responsible for enforcing the Maryland Consumer Protection Act (MCPA) and investigating the complaints of aggrieved consumers. An unfair or deceptive trade practice under MCPA includes, among other acts, 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 services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

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 MCPA. Any individual awarded damages by the court may also seek reasonable attorney's fees.

Warranties

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 State has an 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: None.

Cross File: None.

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

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Analysis by: Michael F. Bender

Direct Inquiries to:
(410) 946-5510
(301) 970-5510