

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

House Bill 185  
Economic Matters

(Delegate Shewell, *et al.*)

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Consumer Protection - Home Appliances - Warranty Enforcement

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This bill establishes the Home Appliance Warranty Enforcement Act. Under the bill, a home appliance manufacturer, its agent, or its authorized dealer must repair or correct a nonconformity in a home appliance at no cost to the consumer if it does not conform to all applicable warranties during the warranty period.

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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.

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Analysis

**Bill Summary:** A "home appliance" covered under the bill means an appliance typically used in a private residence and includes a refrigerator, freezer, cooking range, microwave oven, washer, dryer, dishwasher, trash compactor, air conditioner, heat pump, and any similar apparatus or device. The bill defines the applicable "warranty period" as the 18-month period following the original date of delivery of a home appliance to a consumer. However, the bill does not extend the terms of any express warranty.

A manufacturer is obligated to repair or correct a nonconforming home appliance if (1) the consumer reports the problem to manufacturer, its agent, or authorized dealer during the warranty period; (2) the consumer makes the home appliance available for repair; and (3) the original purchase price of the new home appliance was \$300 or more.

If the manufacturer, its authorized agent, or an authorized dealer 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, less a reasonable allowance for the consumer's use and ordinary wear and tear.

Any refund given by the manufacturer must take into account the interests of the consumer and the holder of any perfected security interest. 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;
- an amount equal to 25% of the cost of the home appliance, up to \$1,000; and
- if the manufacturer acted in bad faith, up to \$5,000.

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 three-year statute of limitations from the date of original delivery of the home appliance. A violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA); however, a consumer may not recover 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.

**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.

*Implied Warranty of Merchantability:* In every sale by a merchant who deals in the types of goods sold, there is an implied warranty that the goods are merchantable – that they are fit for the ordinary purposes for which such goods are sold. If a merchant is in the business of selling a specific product, the merchant implicitly promises that the product will work properly, as ordinarily intended. If the product is defective, the implied warranty of merchantability requires the merchant to provide the buyer with a remedy.

*Express Warranty:* 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 your warranted consumer products are sold.

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.

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### **Additional Information**

**Prior Introductions:** None.

**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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