Unofficial Copy
2002 Regular Session
2lr2019

By: Delegate La Vay

Introduced and read first time: February 7, 2002

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 Maryland Service Contracts and Consumer Products Guaranty Act

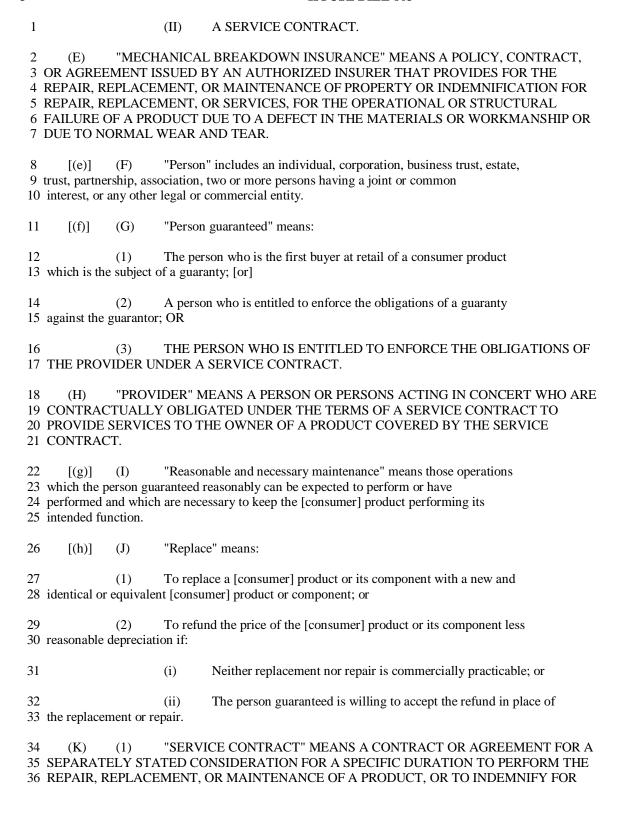
| 3 F | OR 1 | the purpose | of making | certain | provisions | that apply | / to | guaranties of consu | mer |
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- 4 products applicable to service contracts; requiring service contracts to be in
- writing and to include certain information; requiring a provider of a service
- 6 contract to fulfill obligations under the service contract at a certain time and for
- 7 a certain duration; providing that a service contract is extended automatically
- 8 under certain circumstances; requiring a provider to provide a certain
- 9 explanation of reasons for delay in fulfilling the terms of the service contract
- under certain circumstances; providing that certain duties of a provider may not
- be imposed on the provider under certain circumstances; authorizing the
- 12 Attorney General to obtain a certain court order prohibiting the provider from
- 13 further violation of this Act under certain circumstances; establishing that it is
- the policy of the State to encourage providers to establish certain informal
- dispute settlement procedures; establishing that the provider is liable to the
- person guaranteed for wrongful breach of a service contract; authorizing the
- person guaranteed to file a certain court action if the provider breaches any
- duties under this Act; authorizing certain costs and expenses under certain
- 19 circumstances; authorizing a provider to make a guaranty in addition to
- 20 entering into a service contract; authorizing a provider to designate a
- 21 representative; providing that this Act provides a certain exclusive remedy with
- certain exceptions; providing that certain persons need not comply with the
- 23 Insurance Article under certain circumstances; altering certain definitions;
- 24 adding certain definitions; making certain stylistic changes; and generally
- 25 relating to the Maryland Service Contracts and Consumer Products Guaranty
- 26 Act.

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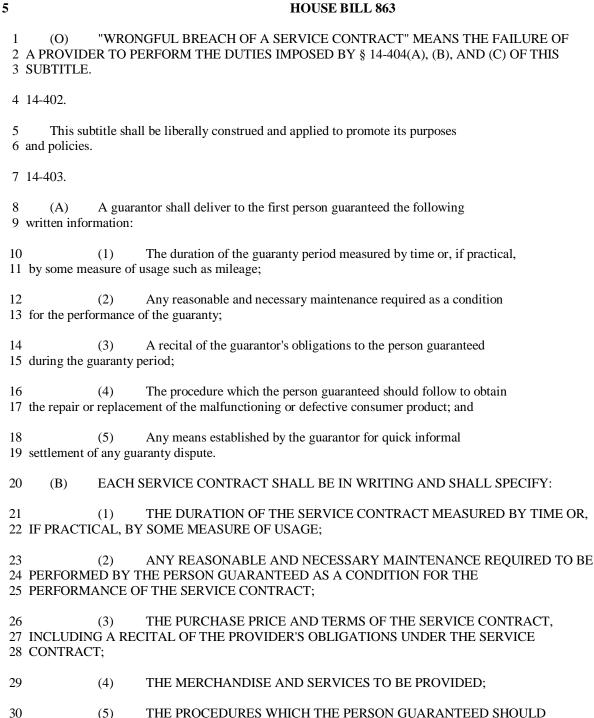
- 27 BY repealing and reenacting, with amendments,
- 28 Article Commercial Law
- 29 Section 14-401 and 14-403 through 14-409, inclusive, to be under the amended
 - subtitle "Subtitle 4. Maryland Service Contracts and Consumer Products
- 31 Guaranty Act"
- 32 Annotated Code of Maryland
- 33 (2000 Replacement Volume and 2001 Supplement)

| _ | HOUSE BILL 803 | | | | | | |
|------------------------|---|--|--|--|--|--|--|
| 1 2 3 4 5 | BY repealing and reenacting, without amendments, Article - Commercial Law Section 14-402 Annotated Code of Maryland (2000 Replacement Volume and 2001 Supplement) | | | | | | |
| 6 7 8 9 10 | Section 14-409 Annotated Code of Maryland | | | | | | |
| 11 12 | SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows: | | | | | | |
| 13 | Article - Commercial Law | | | | | | |
| 14 | Subtitle 4. MARYLAND SERVICE CONTRACTS AND Consumer Products Guaranty Act. | | | | | | |
| 15 | 14-401. | | | | | | |
| 16 | (a) In this subtitle the following words have the meanings indicated. | | | | | | |
| | (b) "Consumer product" means goods or services used for personal, family, or household purposes, the actual cash sales price of which to the person guaranteed was in excess of \$10. | | | | | | |
| 20 21 | (c) "Guarantor" means a person who is engaged in the business of making consumer products available to consumers and who makes a guaranty. | | | | | | |
| | (d) (1) "Guaranty" means any of the following which is made at the time of the sale of a consumer product by a guarantor to a person guaranteed and which is part of the basis of the bargain between them: | | | | | | |
| | (i) A written affirmation of fact or written promise which relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is defect-free or meets a specified level of performance; or | | | | | | |
| | (ii) A written undertaking to refund, repair, replace, or take other remedial action with respect to the consumer product if it proves defective in material or workmanship or fails to meet a specified level of performance. | | | | | | |
| 31 | (2) "Guaranty" includes warranty. | | | | | | |
| 32 | (3) "Guaranty" does not include: | | | | | | |
| 33 34 | (I) [a] A written statement or expression of general policy concerning customer satisfaction which is not subject to specified limitations; OR | | | | | | |



1 THE REPAIR, REPLACEMENT, OR MAINTENANCE, BECAUSE OF AN OPERATIONAL OR 2 STRUCTURAL FAILURE DUE TO A DEFECT IN MATERIALS, WORKMANSHIP, OR 3 NORMAL WEAR AND TEAR, WITH OR WITHOUT ADDITIONAL PROVISIONS FOR 4 INCIDENTAL PAYMENT OF INDEMNITY UNDER LIMITED CIRCUMSTANCES. "SERVICE CONTRACT" INCLUDES A CONTRACT OR AGREEMENT FOR 5 (2) 6 REPAIR, REPLACEMENT, OR MAINTENANCE OF A PRODUCT FOR DAMAGE RESULTING 7 FROM POWER SURGES AND ACCIDENTAL DAMAGE FROM HANDLING. 8 "SERVICE CONTRACT" DOES NOT INCLUDE: (3)9 (I) A GUARANTY: 10 (II)A MAINTENANCE AGREEMENT THAT DOES NOT INCLUDE A 11 PROVISION FOR THE REPAIR, REPLACEMENT, OR MAINTENANCE OF A PRODUCT 12 BECAUSE OF AN OPERATIONAL OR STRUCTURAL FAILURE DUE TO A DEFECT IN 13 MATERIALS, WORKMANSHIP, OR NORMAL WEAR AND TEAR; 14 A WARRANTY, SERVICE CONTRACT, OR MAINTENANCE (III) 15 AGREEMENT OFFERED BY A PUBLIC UTILITY ON ITS TRANSMISSION DEVICES TO THE 16 EXTENT IT IS REGULATED BY THE PUBLIC SERVICE COMMISSION: 17 A MECHANICAL REPAIR CONTRACT UNDER § 15-311.2 OF THE (IV) 18 TRANSPORTATION ARTICLE; OR 19 (V) MECHANICAL BREAKDOWN INSURANCE. 20 "Services" means work, labor, or any other kind of activity [(i)](L) (1) 21 furnished or agreed to be furnished to a person guaranteed. 22 "Services" includes services for home improvement, repair of a motor 23 vehicle and other [consumer] products, and the repair or installation of plumbing, 24 heating, electrical, or mechanical devices. "Services" does not include the professional services of an accountant, 26 architect, clergyman, engineer, lawyer, or medical or dental practitioner. "Without charge" means that the guarantor cannot charge the 27 28 person guaranteed for any costs which the guarantor or [his] THE GUARANTOR'S 29 representative incurs in connection with the required repair or replacement of a 30 consumer product. 31 "Without charge" does not mean that the guarantor must compensate 32 the person guaranteed for incidental expenses unless the expenses were incurred 33 because the repair or replacement was not made within a reasonable time. 34 "Wrongful breach of a guaranty" means the failure of a guarantor to [(k)]

35 perform the duties imposed by § 14-404(a), [and] (b), AND (C) OF THIS SUBTITLE.

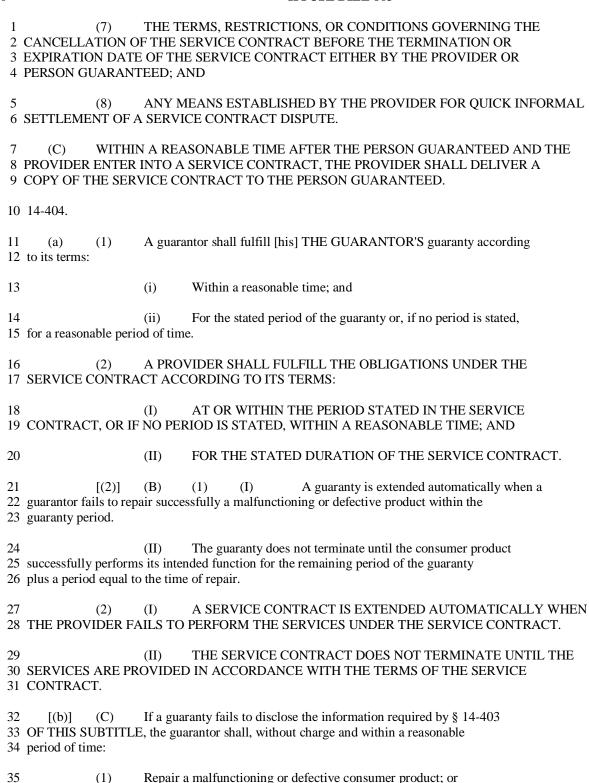


31 FOLLOW TO OBTAIN THE SERVICES UNDER THE SERVICE CONTRACT OR TO FILE A

LIMITATIONS, EXCEPTIONS, OR INCLUSIONS, IF ANY, UNDER THE

32 CLAIM UNDER THE SERVICE CONTRACT:

34 SERVICE CONTRACT;



36 14-407.

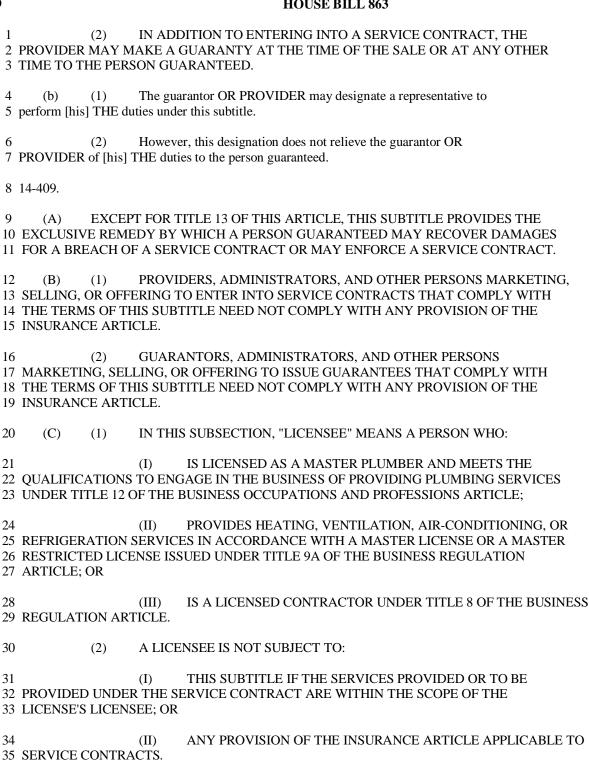
(a)

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1 If repair is not commercially practicable or cannot be timely made, (2)2 replace the malfunctioning or defective consumer product. 3 (D) (1) If a guarantor is unable to fulfill the terms of the guaranty 4 within 10 days of the tender or delivery of a consumer product to the guarantor, [he] 5 THE GUARANTOR shall provide on request of the person guaranteed a brief written 6 explanation of the reasons for the delay. 7 IF A PROVIDER IS UNABLE TO FULFILL THE TERMS OF THE SERVICE (2) 8 CONTRACT WITHIN 10 DAYS AFTER THE DATE ON WHICH THE PROVIDER IS 9 REQUIRED TO PERFORM OBLIGATIONS UNDER THE SERVICE CONTRACT, THE 10 PROVIDER SHALL PROVIDE ON REQUEST OF THE PERSON GUARANTEED A BRIEF 11 WRITTEN EXPLANATION OF THE REASONS FOR THE DELAY. 12 14-405. 13 (A) The duties prescribed in § 14-404 OF THIS SUBTITLE may not be imposed 14 on a guarantor if [he] THE GUARANTOR shows that while the consumer product was 15 in the possession of any person other than the guarantor, damage or unreasonable 16 use, including failure to provide any reasonable and necessary maintenance disclosed 17 under § 14-403 of this subtitle, caused the product to malfunction. THE DUTIES PRESCRIBED IN § 14-404 OF THIS SUBTITLE MAY NOT BE 18 (B) 19 IMPOSED ON A PROVIDER IF THE PROVIDER SHOWS THAT WHILE THE PRODUCT WAS 20 IN THE POSSESSION OF ANY PERSON OTHER THAN THE PROVIDER, DAMAGE OR 21 UNREASONABLE USE, INCLUDING FAILURE TO PROVIDE ANY REASONABLE AND 22 NECESSARY MAINTENANCE DISCLOSED UNDER § 14-403 OF THIS SUBTITLE, CAUSED 23 THE PRODUCT TO MALFUNCTION OR CAUSED THE INABILITY OF THE PROVIDER TO 24 PROVIDE ANY SERVICE UNDER THE SERVICE CONTRACT. 25 14-406. 26 If a guarantor OR PROVIDER violates any provision of this subtitle, the 27 Attorney General may obtain a court order prohibiting the guarantor OR PROVIDER 28 from further violations. 29 (b) At least [seven] 7 days before the filing of an action for the order, the 30 Attorney General shall give appropriate notice to the guarantor OR PROVIDER stating generally the relief sought. 32 The court may issue an order or render a judgment necessary to: (c) Prevent violations of this subtitle: and 33 (1) 34 (2) Restore to the person damaged any money or property acquired by 35 means of any practice in violation of any provision of this subtitle.

It is the policy of the State to encourage:

| | (1) [a] A guarantor voluntarily to establish procedures whereby a guaranty dispute is fairly and expeditiously settled through informal dispute settlement procedures; AND |
|----------|--|
| | (2) A PROVIDER VOLUNTARILY TO ESTABLISH PROCEDURES WHEREBY A SERVICE CONTRACT DISPUTE IS FAIRLY AND EXPEDITIOUSLY SETTLED THROUGH INFORMAL DISPUTE SETTLEMENT PROCEDURES. |
| 9 | (B) A guarantor OR PROVIDER who establishes informal dispute settlement procedures may elect to settle guaranty disputes OR SERVICE CONTRACT DISPUTES, AS THE CASE MAY BE, in cooperation with any private agency or the Consumer Protection Division of the Attorney General's office. |
| | [(b)] (C) The guarantor OR PROVIDER is liable to the person guaranteed for any wrongful breach of a guaranty OR WRONGFUL BREACH OF A SERVICE CONTRACT, AS THE CASE MAY BE, and is under a duty to: |
| 14 | (1) Perform as required under this subtitle; and |
| 15 16 | (2) Compensate the person guaranteed for all reasonable incidental expenses incurred as a result of the breach. |
| | [(c)] (D) (1) If the guarantor OR PROVIDER breaches any [of his] duties UNDER THIS SUBTITLE, the person guaranteed may file an action in any court of competent jurisdiction. |
| 22 23 | (2) (I) Except as provided in paragraph (3) of this subsection, if the person guaranteed prevails in an action filed under this subsection, the court shall include in the amount of the judgment a sum equal to the aggregate amount of costs and expenses which have been reasonably incurred by the person guaranteed for or in connection with the action filed. |
| | (II) These costs and expenses shall include attorney's fees based on actual time expended, unless the court finds that an award of attorney's fees would be inappropriate. |
| 28 | (3) The person guaranteed is not entitled to costs and expenses, if: |
| | (i) The guarantor OR PROVIDER affords the person guaranteed a reasonable opportunity to settle informally in accordance with subsection (a) of this section; and |
| 32 | (ii) The person guaranteed fails to so settle. |
| 33 | 14-408. |
| | (a) (1) In addition to making a guaranty, the guarantor may [sell] ENTER INTO a service contract at the time of the sale or at any other time [to] WITH the person guaranteed. |



- 1 [14-409.] 14-410.
- This subtitle may be cited as the Maryland SERVICE CONTRACTS AND Consumer Products Guaranty Act.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 5 October 1, 2002.