
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 FOR the purpose of making certain provisions that apply to guaranties of consumer
4 products applicable to service contracts; requiring service contracts to be in
5 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
10 under certain circumstances; providing that certain duties of a provider may not
11 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
14 the policy of the State to encourage providers to establish certain informal
15 dispute settlement procedures; establishing that the provider is liable to the
16 person guaranteed for wrongful breach of a service contract; authorizing the
17 person guaranteed to file a certain court action if the provider breaches any
18 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
22 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.

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
30 subtitle "Subtitle 4. Maryland Service Contracts and Consumer Products
31 Guaranty Act"
32 Annotated Code of Maryland
33 (2000 Replacement Volume and 2001 Supplement)

1 BY repealing and reenacting, without amendments,
2 Article - Commercial Law
3 Section 14-402
4 Annotated Code of Maryland
5 (2000 Replacement Volume and 2001 Supplement)

6 BY adding to
7 Article - Commercial Law
8 Section 14-409
9 Annotated Code of Maryland
10 (2000 Replacement Volume and 2001 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 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.

17 (b) "Consumer product" means goods or services used for personal, family, or
18 household purposes, the actual cash sales price of which to the person guaranteed was
19 in excess of \$10.

20 (c) "Guarantor" means a person who is engaged in the business of making
21 consumer products available to consumers and who makes a guaranty.

22 (d) (1) "Guaranty" means any of the following which is made at the time of
23 the sale of a consumer product by a guarantor to a person guaranteed and which is
24 part of the basis of the bargain between them:

25 (i) A written affirmation of fact or written promise which relates to
26 the nature of the material or workmanship and affirms or promises that the material
27 or workmanship is defect-free or meets a specified level of performance; or

28 (ii) A written undertaking to refund, repair, replace, or take other
29 remedial action with respect to the consumer product if it proves defective in material
30 or workmanship or fails to meet a specified level of performance.

31 (2) "Guaranty" includes warranty.

32 (3) "Guaranty" does not include:

33 (I) [a] A written statement or expression of general policy
34 concerning customer satisfaction which is not subject to specified limitations; OR

1 (II) A SERVICE CONTRACT.

2 (E) "MECHANICAL BREAKDOWN INSURANCE" MEANS A POLICY, CONTRACT,
3 OR AGREEMENT ISSUED BY AN AUTHORIZED INSURER THAT PROVIDES FOR THE
4 REPAIR, REPLACEMENT, OR MAINTENANCE OF PROPERTY OR INDEMNIFICATION FOR
5 REPAIR, REPLACEMENT, OR SERVICES, FOR THE OPERATIONAL OR STRUCTURAL
6 FAILURE OF A PRODUCT DUE TO A DEFECT IN THE MATERIALS OR WORKMANSHIP OR
7 DUE TO NORMAL WEAR AND TEAR.

8 [(e)] (F) "Person" includes an individual, corporation, business trust, estate,
9 trust, partnership, association, two or more persons having a joint or common
10 interest, or any other legal or commercial entity.

11 [(f)] (G) "Person guaranteed" means:

12 (1) The person who is the first buyer at retail of a consumer product
13 which is the subject of a guaranty; [or]

14 (2) A person who is entitled to enforce the obligations of a guaranty
15 against the guarantor; OR

16 (3) THE PERSON WHO IS ENTITLED TO ENFORCE THE OBLIGATIONS OF
17 THE PROVIDER UNDER A SERVICE CONTRACT.

18 (H) "PROVIDER" MEANS A PERSON OR PERSONS ACTING IN CONCERT WHO ARE
19 CONTRACTUALLY OBLIGATED UNDER THE TERMS OF A SERVICE CONTRACT TO
20 PROVIDE SERVICES TO THE OWNER OF A PRODUCT COVERED BY THE SERVICE
21 CONTRACT.

22 [(g)] (I) "Reasonable and necessary maintenance" means those operations
23 which the person guaranteed reasonably can be expected to perform or have
24 performed and which are necessary to keep the [consumer] product performing its
25 intended function.

26 [(h)] (J) "Replace" means:

27 (1) To replace a [consumer] product or its component with a new and
28 identical or equivalent [consumer] product or component; or

29 (2) To refund the price of the [consumer] product or its component less
30 reasonable depreciation if:

31 (i) Neither replacement nor repair is commercially practicable; or

32 (ii) The person guaranteed is willing to accept the refund in place of
33 the replacement or repair.

34 (K) (1) "SERVICE CONTRACT" MEANS A CONTRACT OR AGREEMENT FOR A
35 SEPARATELY STATED CONSIDERATION FOR A SPECIFIC DURATION TO PERFORM THE
36 REPAIR, REPLACEMENT, OR MAINTENANCE OF A PRODUCT, OR TO INDEMNIFY FOR

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.

5 (2) "SERVICE CONTRACT" INCLUDES A CONTRACT OR AGREEMENT FOR
6 REPAIR, REPLACEMENT, OR MAINTENANCE OF A PRODUCT FOR DAMAGE RESULTING
7 FROM POWER SURGES AND ACCIDENTAL DAMAGE FROM HANDLING.

8 (3) "SERVICE CONTRACT" DOES NOT INCLUDE:

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 (III) A WARRANTY, SERVICE CONTRACT, OR MAINTENANCE
15 AGREEMENT OFFERED BY A PUBLIC UTILITY ON ITS TRANSMISSION DEVICES TO THE
16 EXTENT IT IS REGULATED BY THE PUBLIC SERVICE COMMISSION;

17 (IV) A MECHANICAL REPAIR CONTRACT UNDER § 15-311.2 OF THE
18 TRANSPORTATION ARTICLE; OR

19 (V) MECHANICAL BREAKDOWN INSURANCE.

20 [(i)] (L) (1) "Services" means work, labor, or any other kind of activity
21 furnished or agreed to be furnished to a person guaranteed.

22 (2) "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.

25 (3) "Services" does not include the professional services of an accountant,
26 architect, clergyman, engineer, lawyer, or medical or dental practitioner.

27 [(j)] (M) (1) "Without charge" means that the guarantor cannot charge the
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 (2) "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 [(k)] (N) "Wrongful breach of a guaranty" means the failure of a guarantor to
35 perform the duties imposed by § 14-404(a), [and] (b), AND (C) OF THIS SUBTITLE.

1 (O) "WRONGFUL BREACH OF A SERVICE CONTRACT" MEANS THE FAILURE OF
2 A PROVIDER TO PERFORM THE DUTIES IMPOSED BY § 14-404(A), (B), AND (C) OF THIS
3 SUBTITLE.

4 14-402.

5 This subtitle shall be liberally construed and applied to promote its purposes
6 and policies.

7 14-403.

8 (A) A guarantor shall deliver to the first person guaranteed the following
9 written information:

10 (1) The duration of the guaranty period measured by time or, if practical,
11 by some measure of usage such as mileage;

12 (2) Any reasonable and necessary maintenance required as a condition
13 for the performance of the guaranty;

14 (3) A recital of the guarantor's obligations to the person guaranteed
15 during the guaranty period;

16 (4) The procedure which the person guaranteed should follow to obtain
17 the repair or replacement of the malfunctioning or defective consumer product; and

18 (5) Any means established by the guarantor for quick informal
19 settlement of any guaranty dispute.

20 (B) EACH SERVICE CONTRACT SHALL BE IN WRITING AND SHALL SPECIFY:

21 (1) THE DURATION OF THE SERVICE CONTRACT MEASURED BY TIME OR,
22 IF PRACTICAL, BY SOME MEASURE OF USAGE;

23 (2) ANY REASONABLE AND NECESSARY MAINTENANCE REQUIRED TO BE
24 PERFORMED BY THE PERSON GUARANTEED AS A CONDITION FOR THE
25 PERFORMANCE OF THE SERVICE CONTRACT;

26 (3) THE PURCHASE PRICE AND TERMS OF THE SERVICE CONTRACT,
27 INCLUDING A RECITAL OF THE PROVIDER'S OBLIGATIONS UNDER THE SERVICE
28 CONTRACT;

29 (4) THE MERCHANDISE AND SERVICES TO BE PROVIDED;

30 (5) THE PROCEDURES WHICH THE PERSON GUARANTEED SHOULD
31 FOLLOW TO OBTAIN THE SERVICES UNDER THE SERVICE CONTRACT OR TO FILE A
32 CLAIM UNDER THE SERVICE CONTRACT;

33 (6) LIMITATIONS, EXCEPTIONS, OR INCLUSIONS, IF ANY, UNDER THE
34 SERVICE CONTRACT;

1 (7) THE TERMS, RESTRICTIONS, OR CONDITIONS GOVERNING THE
2 CANCELLATION OF THE SERVICE CONTRACT BEFORE THE TERMINATION OR
3 EXPIRATION DATE OF THE SERVICE CONTRACT EITHER BY THE PROVIDER OR
4 PERSON GUARANTEED; AND

5 (8) ANY MEANS ESTABLISHED BY THE PROVIDER FOR QUICK INFORMAL
6 SETTLEMENT OF A SERVICE CONTRACT DISPUTE.

7 (C) WITHIN A REASONABLE TIME AFTER THE PERSON GUARANTEED AND THE
8 PROVIDER ENTER INTO A SERVICE CONTRACT, THE PROVIDER SHALL DELIVER A
9 COPY OF THE SERVICE CONTRACT TO THE PERSON GUARANTEED.

10 14-404.

11 (a) (1) A guarantor shall fulfill [his] THE GUARANTOR'S guaranty according
12 to its terms:

13 (i) Within a reasonable time; and

14 (ii) For the stated period of the guaranty or, if no period is stated,
15 for a reasonable period of time.

16 (2) A PROVIDER SHALL FULFILL THE OBLIGATIONS UNDER THE
17 SERVICE CONTRACT ACCORDING TO ITS TERMS:

18 (I) AT OR WITHIN THE PERIOD STATED IN THE SERVICE
19 CONTRACT, OR IF NO PERIOD IS STATED, WITHIN A REASONABLE TIME; AND

20 (II) FOR THE STATED DURATION OF THE SERVICE CONTRACT.

21 [(2)] (B) (1) (I) A guaranty is extended automatically when a
22 guarantor fails to repair successfully a malfunctioning or defective product within the
23 guaranty period.

24 (II) The guaranty does not terminate until the consumer product
25 successfully performs its intended function for the remaining period of the guaranty
26 plus a period equal to the time of repair.

27 (2) (I) A SERVICE CONTRACT IS EXTENDED AUTOMATICALLY WHEN
28 THE PROVIDER FAILS TO PERFORM THE SERVICES UNDER THE SERVICE CONTRACT.

29 (II) THE SERVICE CONTRACT DOES NOT TERMINATE UNTIL THE
30 SERVICES ARE PROVIDED IN ACCORDANCE WITH THE TERMS OF THE SERVICE
31 CONTRACT.

32 [(b)] (C) If a guaranty fails to disclose the information required by § 14-403
33 OF THIS SUBTITLE, the guarantor shall, without charge and within a reasonable
34 period of time:

35 (1) Repair a malfunctioning or defective consumer product; or

1 (2) If repair is not commercially practicable or cannot be timely made,
2 replace the malfunctioning or defective consumer product.

3 [(c)] (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 (2) IF A PROVIDER IS UNABLE TO FULFILL THE TERMS OF THE SERVICE
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.

18 (B) THE DUTIES PRESCRIBED IN § 14-404 OF THIS SUBTITLE MAY NOT BE
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 (a) 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
31 generally the relief sought.

32 (c) The court may issue an order or render a judgment necessary to:

33 (1) Prevent violations of this subtitle; and

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.

36 14-407.

37 (a) It is the policy of the State to encourage:

1 (1) [a] A guarantor voluntarily to establish procedures whereby a
2 guaranty dispute is fairly and expeditiously settled through informal dispute
3 settlement procedures; AND

4 (2) A PROVIDER VOLUNTARILY TO ESTABLISH PROCEDURES WHEREBY A
5 SERVICE CONTRACT DISPUTE IS FAIRLY AND EXPEDITIOUSLY SETTLED THROUGH
6 INFORMAL DISPUTE SETTLEMENT PROCEDURES.

7 (B) A guarantor OR PROVIDER who establishes informal dispute settlement
8 procedures may elect to settle guaranty disputes OR SERVICE CONTRACT DISPUTES,
9 AS THE CASE MAY BE, in cooperation with any private agency or the Consumer
10 Protection Division of the Attorney General's office.

11 [(b)] (C) The guarantor OR PROVIDER is liable to the person guaranteed for
12 any wrongful breach of a guaranty OR WRONGFUL BREACH OF A SERVICE CONTRACT,
13 AS THE CASE MAY BE, and is under a duty to:

14 (1) Perform as required under this subtitle; and

15 (2) Compensate the person guaranteed for all reasonable incidental
16 expenses incurred as a result of the breach.

17 [(c)] (D) (1) If the guarantor OR PROVIDER breaches any [of his] duties
18 UNDER THIS SUBTITLE, the person guaranteed may file an action in any court of
19 competent jurisdiction.

20 (2) (I) Except as provided in paragraph (3) of this subsection, if the
21 person guaranteed prevails in an action filed under this subsection, the court shall
22 include in the amount of the judgment a sum equal to the aggregate amount of costs
23 and expenses which have been reasonably incurred by the person guaranteed for or in
24 connection with the action filed.

25 (II) These costs and expenses shall include attorney's fees based on
26 actual time expended, unless the court finds that an award of attorney's fees would be
27 inappropriate.

28 (3) The person guaranteed is not entitled to costs and expenses, if:

29 (i) The guarantor OR PROVIDER affords the person guaranteed a
30 reasonable opportunity to settle informally in accordance with subsection (a) of this
31 section; and

32 (ii) The person guaranteed fails to so settle.

33 14-408.

34 (a) (1) In addition to making a guaranty, the guarantor may [sell] ENTER
35 INTO a service contract at the time of the sale or at any other time [to] WITH the
36 person guaranteed.

1 (2) IN ADDITION TO ENTERING INTO A SERVICE CONTRACT, THE
2 PROVIDER MAY MAKE A GUARANTY AT THE TIME OF THE SALE OR AT ANY OTHER
3 TIME TO THE PERSON GUARANTEED.

4 (b) (1) The guarantor OR PROVIDER may designate a representative to
5 perform [his] THE duties under this subtitle.

6 (2) However, this designation does not relieve the guarantor OR
7 PROVIDER of [his] THE duties to the person guaranteed.

8 14-409.

9 (A) EXCEPT FOR TITLE 13 OF THIS ARTICLE, THIS SUBTITLE PROVIDES THE
10 EXCLUSIVE REMEDY BY WHICH A PERSON GUARANTEED MAY RECOVER DAMAGES
11 FOR A BREACH OF A SERVICE CONTRACT OR MAY ENFORCE A SERVICE CONTRACT.

12 (B) (1) PROVIDERS, ADMINISTRATORS, AND OTHER PERSONS MARKETING,
13 SELLING, OR OFFERING TO ENTER INTO SERVICE CONTRACTS THAT COMPLY WITH
14 THE TERMS OF THIS SUBTITLE NEED NOT COMPLY WITH ANY PROVISION OF THE
15 INSURANCE ARTICLE.

16 (2) GUARANTORS, ADMINISTRATORS, AND OTHER PERSONS
17 MARKETING, SELLING, OR OFFERING TO ISSUE GUARANTEES THAT COMPLY WITH
18 THE TERMS OF THIS SUBTITLE NEED NOT COMPLY WITH ANY PROVISION OF THE
19 INSURANCE ARTICLE.

20 (C) (1) IN THIS SUBSECTION, "LICENSEE" MEANS A PERSON WHO:

21 (I) IS LICENSED AS A MASTER PLUMBER AND MEETS THE
22 QUALIFICATIONS TO ENGAGE IN THE BUSINESS OF PROVIDING PLUMBING SERVICES
23 UNDER TITLE 12 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

24 (II) PROVIDES HEATING, VENTILATION, AIR-CONDITIONING, OR
25 REFRIGERATION SERVICES IN ACCORDANCE WITH A MASTER LICENSE OR A MASTER
26 RESTRICTED LICENSE ISSUED UNDER TITLE 9A OF THE BUSINESS REGULATION
27 ARTICLE; OR

28 (III) IS A LICENSED CONTRACTOR UNDER TITLE 8 OF THE BUSINESS
29 REGULATION ARTICLE.

30 (2) A LICENSEE IS NOT SUBJECT TO:

31 (I) THIS SUBTITLE IF THE SERVICES PROVIDED OR TO BE
32 PROVIDED UNDER THE SERVICE CONTRACT ARE WITHIN THE SCOPE OF THE
33 LICENSE'S LICENSEE; OR

34 (II) ANY PROVISION OF THE INSURANCE ARTICLE APPLICABLE TO
35 SERVICE CONTRACTS.

1 [14-409.] 14-410.

2 This subtitle may be cited as the Maryland SERVICE CONTRACTS AND
3 Consumer Products Guaranty Act.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2002.