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2002 Regular Session 2lr1788

By: Senator Astle Introduced and read first time: February 1, 2002 Assigned to: Finance	
Committee Report: Favorable with amendments Senate action: Adopted Read second time: March 22, 2002	

CHAPTER____

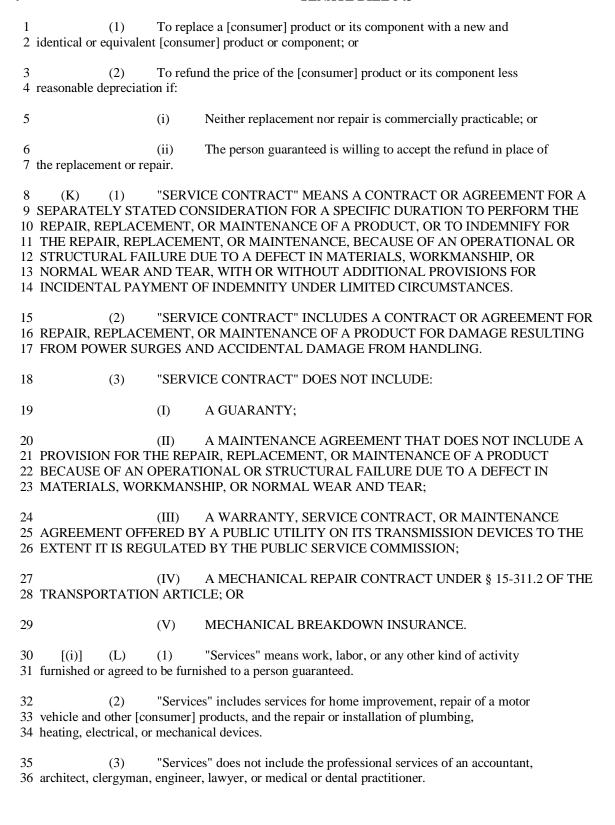
1 AN ACT concerning

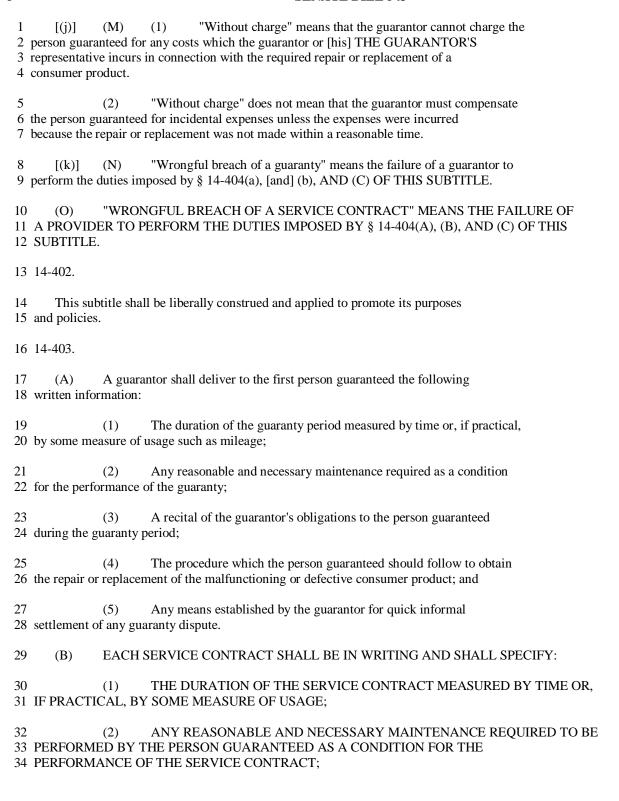
2 Maryland Service Contracts and Consumer Products Guaranty Act

- 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 <u>and terms; authorizing the</u>
- 6 <u>cancellation of a service contract by a certain person under certain</u>
- 7 circumstances; providing that certain service contracts are void under certain
- 8 circumstances; requiring a provider of a service contract to pay or credit the
- 9 account of a certain person who has canceled a service contract a certain amount
- 10 <u>under certain circumstances</u>; requiring a provider of a service contract to fulfill
- obligations under the service contract at a certain time and for a certain
- duration; providing that a service contract is extended automatically under
- 13 certain circumstances; requiring a provider to provide a certain explanation of
- 14 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 Attorney General
- 17 to obtain a certain court order prohibiting the provider from further violation of
- this Act under certain circumstances; establishing that it is the policy of the
- 19 State to encourage providers to establish certain informal dispute settlement
- 20 procedures; establishing that the provider is liable to the person guaranteed for
- wrongful breach of a service contract; authorizing the person guaranteed to file
- 22 a certain court action if the provider breaches any duties under this Act;
- 23 authorizing certain costs and expenses under certain circumstances; authorizing
- 24 a provider to make a guaranty in addition to entering into a service contract;
- 25 authorizing a provider to designate a representative; providing that this Act
- 26 provides a certain exclusive remedy with certain exceptions; providing that
- 27 certain persons need not comply with the Insurance Article under certain
- 28 circumstances; altering certain definitions; adding certain definitions; making

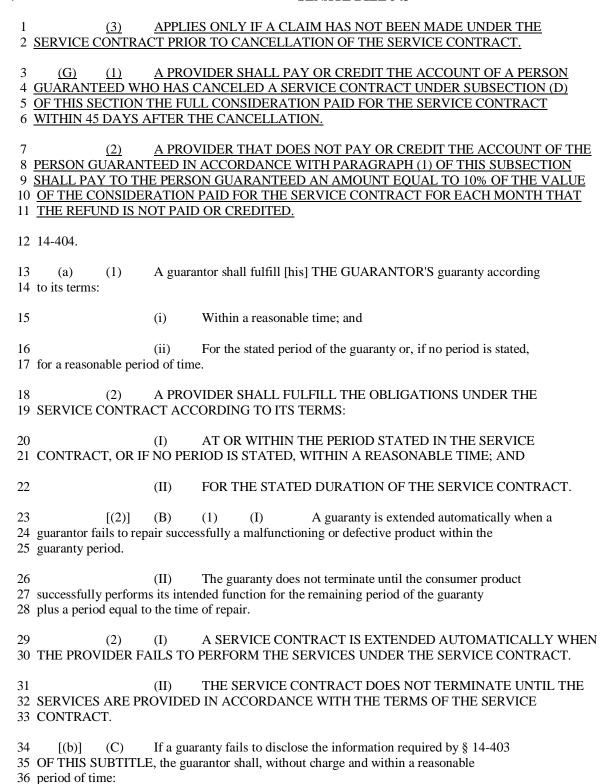
1 2	certain stylistic changes; and generally relating to the Maryland Service Contracts and Consumer Products Guaranty Act.					
3 4 5 6 7 8 9	BY repealing and reenacting, with amendments, Article - Commercial Law Section 14-401 and 14-403 through 14-409, inclusive, to be under the amended subtitle "Subtitle 4. Maryland Service Contracts and Consumer Products Guaranty Act" Annotated Code of Maryland (2000 Replacement Volume and 2001 Supplement)					
11 12 13 14	Section 14-402 Annotated Code of Maryland					
15 16 17 18 19	Section 14-409 Annotated Code of Maryland					
20 21	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:					
22	Article - Commercial Law					
23	Subtitle 4. MARYLAND SERVICE CONTRACTS AND Consumer Products Guaranty Act					
24	14-401.					
25	(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.					
29 30	(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 terial or workmanship and affirms or promises that the material lefect-free or meets a specified level of performance; or
		(ii) A written undertaking to refund, repair, replace, or take other a respect to the consumer product if it proves defective in material fails to meet a specified level of performance.
7	(2)	"Guaranty" includes warranty.
8	(3)	"Guaranty" does not include:
9 10	concerning custom	(I) [a] A written statement or expression of general policy er satisfaction which is not subject to specified limitations; OR
11		(II) A SERVICE CONTRACT.
14 15 16	OR AGREEMENT REPAIR, REPLAC REPAIR, REPLAC FAILURE OF A P	HANICAL BREAKDOWN INSURANCE" MEANS A POLICY, CONTRACT, ISSUED BY AN AUTHORIZED INSURER THAT PROVIDES FOR THE SEMENT, OR MAINTENANCE OF PROPERTY OR INDEMNIFICATION FOR SEMENT, OR SERVICES, FOR THE OPERATIONAL OR STRUCTURAL RODUCT DUE TO A DEFECT IN THE MATERIALS OR WORKMANSHIP OR L WEAR AND TEAR.
	trust, partnership, a	"Person" includes an individual, corporation, business trust, estate, ssociation, two or more persons having a joint or common er legal or commercial entity.
21	[(f)] (G)	"Person guaranteed" means:
22 23	which is the subject	The person who is the first buyer at retail of a consumer product of a guaranty; [or]
24 25	(2) against the guarant	A person who is entitled to enforce the obligations of a guaranty or; OR
26 27	` /	THE PERSON WHO IS ENTITLED TO ENFORCE THE OBLIGATIONS OF UNDER A SERVICE CONTRACT.
30	CONTRACTUAL	VIDER" MEANS A PERSON OR PERSONS ACTING IN CONCERT WHO ARE LY OBLIGATED UNDER THE TERMS OF A SERVICE CONTRACT TO CES TO THE OWNER OF A PRODUCT COVERED BY THE SERVICE
34	which the person g	"Reasonable and necessary maintenance" means those operations uaranteed reasonably can be expected to perform or have ch are necessary to keep the [consumer] product performing its
36	[(h)] (J)	"Replace" means:





- 1 (3) THE PURCHASE PRICE AND TERMS OF THE SERVICE CONTRACT, 2 INCLUDING A RECITAL OF THE PROVIDER'S OBLIGATIONS UNDER THE SERVICE 3 CONTRACT;
- 4 (4) THE MERCHANDISE AND SERVICES TO BE PROVIDED;
- 5 (5) THE PROCEDURES WHICH THE PERSON GUARANTEED SHOULD 6 FOLLOW TO OBTAIN THE SERVICES UNDER THE SERVICE CONTRACT OR TO FILE A 7 CLAIM UNDER THE SERVICE CONTRACT;
- 8 (6) LIMITATIONS, EXCEPTIONS, OR INCLUSIONS, IF ANY, UNDER THE 9 SERVICE CONTRACT;
- 10 (7) THE TERMS, RESTRICTIONS, OR CONDITIONS GOVERNING THE
- 11 CANCELLATION OF THE SERVICE CONTRACT BEFORE THE TERMINATION OR
- 12 EXPIRATION DATE OF THE SERVICE CONTRACT EITHER BY THE PROVIDER OR
- 13 PERSON GUARANTEED; AND
- 14 (8) ANY MEANS ESTABLISHED BY THE PROVIDER FOR QUICK INFORMAL 15 SETTLEMENT OF A SERVICE CONTRACT DISPUTE.
- 16 (C) WITHIN A REASONABLE TIME AFTER THE PERSON GUARANTEED AND THE
- 17 PROVIDER ENTER INTO A SERVICE CONTRACT, THE PROVIDER SHALL DELIVER A
- 18 COPY OF THE SERVICE CONTRACT TO THE PERSON GUARANTEED.
- 19 (D) A SERVICE CONTRACT MAY BE CANCELED BY THE PERSON GUARANTEED:
- 20 <u>WITHIN 20 DAYS AFTER RECEIPT OF THE SERVICE CONTRACT IF</u>
- 21 MAILED TO THE PERSON GUARANTEED;
- 22 (2) WITHIN 20 DAYS AFTER THE DATE OF DELIVERY OF THE SERVICE
- 23 CONTRACT IF DELIVERED TO THE PERSON GUARANTEED AT THE TIME OF SALE; OR
- 24 (3) FOR A PERIOD OF TIME NOT LESS THAN 20 DAYS AS SPECIFIED IN 25 THE SERVICE CONTRACT.
- 26 (E) IF A SERVICE CONTRACT IS CANCELED UNDER SUBSECTION (D) OF THIS
- 27 SECTION AND A CLAIM HAS NOT BEEN MADE UNDER THE SERVICE CONTRACT PRIOR
- 28 TO ITS CANCELLATION, THE SERVICE CONTRACT IS VOID AND THE PROVIDER SHALL
- 29 REFUND TO THE PERSON GUARANTEED THE FULL CONSIDERATION PAID FOR THE
- 30 SERVICE CONTRACT.
- 31 (F) THE RIGHT TO VOID A SERVICE CONTRACT UNDER SUBSECTION (E) OF
- 32 THIS SECTION:
- 33 (1) IS NOT TRANSFERABLE;
- 34 (2) APPLIES ONLY TO THE ORIGINAL PERSON GUARANTEED UNDER THE
- 35 SERVICE CONTRACT; AND



1	(1) Repair a malfunctioning or defective consumer product; or
2 3	(2) If repair is not commercially practicable or cannot be timely made, replace the malfunctioning or defective consumer product.
6	[(c)] (D) (1) If a guarantor is unable to fulfill the terms of the guaranty within 10 days of the tender or delivery of a consumer product to the guarantor, [he] THE GUARANTOR shall provide on request of the person guaranteed a brief written explanation of the reasons for the delay.
10 11	(2) IF A PROVIDER IS UNABLE TO FULFILL THE TERMS OF THE SERVICE CONTRACT WITHIN 10 DAYS AFTER THE DATE ON WHICH THE PROVIDER IS REQUIRED TO PERFORM OBLIGATIONS UNDER THE SERVICE CONTRACT, THE PROVIDER SHALL PROVIDE ON REQUEST OF THE PERSON GUARANTEED A BRIEF WRITTEN EXPLANATION OF THE REASONS FOR THE DELAY.
13	14-405.
16 17	(A) The duties prescribed in § 14-404 OF THIS SUBTITLE may not be imposed on a guarantor if [he] THE GUARANTOR shows that while the consumer product was in the possession of any person other than the guarantor, damage or unreasonable use, including failure to provide any reasonable and necessary maintenance disclosed under § 14-403 of this subtitle, caused the product to malfunction.
21 22 23 24	(B) THE DUTIES PRESCRIBED IN § 14-404 OF THIS SUBTITLE MAY NOT BE IMPOSED ON A PROVIDER IF THE PROVIDER SHOWS THAT WHILE THE PRODUCT WAS IN THE POSSESSION OF ANY PERSON OTHER THAN THE PROVIDER, DAMAGE OR UNREASONABLE USE, INCLUDING FAILURE TO PROVIDE ANY REASONABLE AND NECESSARY MAINTENANCE DISCLOSED UNDER § 14-403 OF THIS SUBTITLE, CAUSED THE PRODUCT TO MALFUNCTION OR CAUSED THE INABILITY OF THE PROVIDER TO PROVIDE ANY SERVICE UNDER THE SERVICE CONTRACT.
26	14-406.
	(a) If a guarantor OR PROVIDER violates any provision of this subtitle, the Attorney General may obtain a court order prohibiting the guarantor OR PROVIDER from further violations.
	(b) At least [seven] 7 days before the filing of an action for the order, the Attorney General shall give appropriate notice to the guarantor OR PROVIDER stating generally the relief sought.
33	(c) The court may issue an order or render a judgment necessary to:
34	(1) Prevent violations of this subtitle; and
35 36	(2) Restore to the person damaged any money or property acquired by means of any practice in violation of any provision of this subtitle.

1	14-407.					
2	(a)	It is the	policy of	the State to encourage:		
	guaranty disp settlement pr		rly and e	arantor voluntarily to establish procedures whereby a xpeditiously settled through informal dispute		
			CT DISP	VIDER VOLUNTARILY TO ESTABLISH PROCEDURES WHEREBY A UTE IS FAIRLY AND EXPEDITIOUSLY SETTLED THROUGH LEMENT PROCEDURES.		
11	(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.					
13 14 15	any wrongfu	[(b)] (C) The guarantor OR PROVIDER is liable to the person guaranteed for my wrongful breach of a guaranty OR WRONGFUL BREACH OF A SERVICE CONTRACT, S THE CASE MAY BE, and is under a duty to:				
16		(1)	Perform	as required under this subtitle; and		
17 18	expenses inc	(2) curred as		sate the person guaranteed for all reasonable incidental f the breach.		
	F(.)]			If the guarantor OR PROVIDER breaches any [of his] duties e person guaranteed may file an action in any court of		
24 25	(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.					
	actual time e		(II) , unless th	These costs and expenses shall include attorney's fees based on he court finds that an award of attorney's fees would be		
30		(3)	The pers	son guaranteed is not entitled to costs and expenses, if:		
	reasonable of section; and		(i) ty to settl	The guarantor OR PROVIDER affords the person guaranteed a e informally in accordance with subsection (a) of this		
34			(ii)	The person guaranteed fails to so settle.		

- 1 14-408. 2 (a) (1) In addition to making a guaranty, the guarantor may [sell] ENTER 3 INTO a service contract at the time of the sale or at any other time [to] WITH the 4 person guaranteed. IN ADDITION TO ENTERING INTO A SERVICE CONTRACT, THE 6 PROVIDER MAY MAKE A GUARANTY AT THE TIME OF THE SALE OR AT ANY OTHER 7 TIME TO THE PERSON GUARANTEED. 8 The guarantor OR PROVIDER may designate a representative to (1) perform [his] THE duties under this subtitle. (2) However, this designation does not relieve the guarantor OR 11 PROVIDER of [his] THE duties to the person guaranteed. 12 14-409. 13 (A) EXCEPT FOR TITLE 13 OF THIS ARTICLE, THIS SUBTITLE PROVIDES THE 14 EXCLUSIVE REMEDY BY WHICH A PERSON GUARANTEED MAY RECOVER DAMAGES 15 FOR A BREACH OF A SERVICE CONTRACT OR MAY ENFORCE A SERVICE CONTRACT. PROVIDERS, ADMINISTRATORS, AND OTHER PERSONS MARKETING. 16 (B) (1) 17 SELLING, OR OFFERING TO ENTER INTO SERVICE CONTRACTS THAT COMPLY WITH 18 THE TERMS OF THIS SUBTITLE NEED NOT COMPLY WITH ANY PROVISION OF THE 19 INSURANCE ARTICLE. 20 GUARANTORS, ADMINISTRATORS, AND OTHER PERSONS 21 MARKETING, SELLING, OR OFFERING TO ISSUE GUARANTEES THAT COMPLY WITH 22 THE TERMS OF THIS SUBTITLE NEED NOT COMPLY WITH ANY PROVISION OF THE 23 INSURANCE ARTICLE. 24 (C) (1) IN THIS SUBSECTION, "LICENSEE" MEANS A PERSON WHO:
- 25 IS LICENSED AS A MASTER PLUMBER AND MEETS THE (I)
- 26 QUALIFICATIONS TO ENGAGE IN THE BUSINESS OF PROVIDING PLUMBING SERVICES
- 27 UNDER TITLE 12 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;
- PROVIDES HEATING, VENTILATION, AIR-CONDITIONING, OR 28 (II)
- 29 REFRIGERATION SERVICES IN ACCORDANCE WITH A MASTER LICENSE OR A MASTER
- 30 RESTRICTED LICENSE ISSUED UNDER TITLE 9A OF THE BUSINESS REGULATION
- 31 ARTICLE; OR
- IS A LICENSED CONTRACTOR UNDER TITLE 8 OF THE BUSINESS 32 (III)
- 33 REGULATION ARTICLE.
- 34 A LICENSEE IS NOT SUBJECT TO: (2)

- 1 (I) THIS SUBTITLE IF THE SERVICES PROVIDED OR TO BE
- 2 PROVIDED UNDER THE SERVICE CONTRACT ARE WITHIN THE SCOPE OF THE
- 3 LICENSE'S LICENSEE <u>LICENSEE'S LICENSE</u>; OR
- 4 (II) ANY PROVISION OF THE INSURANCE ARTICLE APPLICABLE TO
- 5 SERVICE CONTRACTS.
- 6 [14-409.] 14-410.
- 7 This subtitle may be cited as the Maryland SERVICE CONTRACTS AND
- 8 Consumer Products Guaranty Act.
- 9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 10 October 1, 2002.