
By: **Delegate Burns**

Introduced and read first time: March 6, 2006

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Equipment - Warranty Enforcement**

3 FOR the purpose of providing that it is an unfair or deceptive trade practice under the
4 Maryland Consumer Protection Act to violate this Act; extending the protections
5 of this Act to warranties of certain new commercial equipment; requiring a
6 manufacturer to replace or accept the return of commercial equipment under
7 certain circumstances; establishing certain affirmative defenses; requiring a
8 consumer to notify a manufacturer under certain circumstances; requiring
9 certain nonconformities, defects, or conditions to be corrected within certain
10 periods of time; requiring certain repairs to be performed free of charge under
11 certain circumstances; requiring a dealer to notify a manufacturer of certain
12 nonconformities, defects, or conditions under certain circumstances; requiring a
13 manufacturer to notify certain persons under certain circumstances; requiring
14 the return of certain excise taxes to a consumer from the Comptroller under
15 certain circumstances; providing that a consumer may resort to certain informal
16 dispute settlement procedures without prejudice to the consumer's legal rights;
17 providing that a manufacturer or dealer may be liable for certain damages
18 under certain circumstances; requiring the Office of the Attorney General to
19 develop a certain notice and make it available to certain dealers that sell new
20 commercial equipment in the State; requiring certain dealers to provide a copy
21 of the notice to purchasers of new commercial equipment at a certain time;
22 requiring the Office to adopt certain regulations; providing certain penalties;
23 defining certain terms; providing for the application of this Act; and generally
24 relating to the enforcement of warranties on new commercial equipment.

25 BY repealing and reenacting, with amendments,
26 Article - Commercial Law
27 Section 13-301(14)(xxi)
28 Annotated Code of Maryland
29 (2005 Replacement Volume)

30 BY adding to
31 Article - Commercial Law
32 Section 13-301(14)(xxiii); and 14-1401 through 14-1406 to be under the new

1 subtitle "Subtitle 14. Commercial Equipment Warranty Enforcement"
2 Annotated Code of Maryland
3 (2005 Replacement Volume)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article - Commercial Law**

7 13-301.

8 Unfair or deceptive trade practices include any:

9 (14) Violation of a provision of:

10 (xxi) Title 14, Subtitle 33 of this article, the Social Security Number
11 Privacy Act; [or]

12 (XXIII) TITLE 14, SUBTITLE 14 OF THIS ARTICLE, COMMERCIAL
13 EQUIPMENT WARRANTY ENFORCEMENT; OR

14 SUBTITLE 14. COMMERCIAL EQUIPMENT WARRANTY ENFORCEMENT.

15 14-1401.

16 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

18 (B) "COMMERCIAL EQUIPMENT" MEANS:

19 (1) A CLASS E (TRUCK) VEHICLE WITH A MANUFACTURER'S RATED
20 CAPACITY EXCEEDING THREE-FOURTHS TON; OR

21 (2) SIMILAR CONSTRUCTION, UTILITY, AND INDUSTRIAL EQUIPMENT AS
22 COMMONLY USED AND UNDERSTOOD AMONG DEALERS AND SUPPLIERS OF
23 EQUIPMENT UNDER TITLE 19 OF THIS ARTICLE.

24 (C) "CONSUMER" MEANS:

25 (1) THE PURCHASER, OTHER THAN FOR PURPOSES OF RESALE, OF NEW
26 COMMERCIAL EQUIPMENT;

27 (2) ANY PERSON TO WHOM NEW COMMERCIAL EQUIPMENT IS
28 TRANSFERRED DURING THE DURATION OF THE WARRANTY APPLICABLE TO THE
29 COMMERCIAL EQUIPMENT; OR

30 (3) ANY OTHER PERSON WHO IS ENTITLED TO ENFORCE THE
31 OBLIGATIONS OF THE WARRANTY.

32 (D) "DEALER" HAS THE MEANING STATED IN § 19-101 OF THIS ARTICLE.

1 (E) (1) "MANUFACTURER'S WARRANTY PERIOD" MEANS THE EARLIER OF:

2 (I) THE PERIOD OF THE FIRST 2,000 HOURS OF OPERATION OF THE
3 COMMERCIAL EQUIPMENT; OR

4 (II) 15 MONTHS FOLLOWING THE DATE OF ORIGINAL DELIVERY OF
5 THE COMMERCIAL EQUIPMENT TO THE CONSUMER.

6 (2) THIS SUBSECTION DOES NOT EXTEND ANY MANUFACTURER'S
7 EXPRESS WARRANTY.

8 (F) "SUPPLIER" MEANS A PERSON, PARTNERSHIP, ASSOCIATION,
9 CORPORATION, OR OTHER ENTITY ENGAGED IN THE BUSINESS OF MANUFACTURING
10 OR ASSEMBLING COMMERCIAL EQUIPMENT OR OF DISTRIBUTING COMMERCIAL
11 EQUIPMENT TO DEALERS AS DEFINED IN § 19-101 OF THIS ARTICLE.

12 (G) "WARRANTY" MEANS WARRANTIES AS DEFINED IN §§ 2-312, 2-313, 2-314,
13 AND 2-315 OF THIS ARTICLE.

14 14-1402.

15 (A) THIS SUBTITLE APPLIES TO COMMERCIAL EQUIPMENT:

16 (1) THAT IS PURCHASED FOR USE AS A PRINCIPAL ASSET IN A
17 COMMERCIAL, UTILITY, OR INDUSTRIAL BUSINESS; AND

18 (2) ON THE PURCHASE OF WHICH AN INDIVIDUAL IS PERSONALLY
19 LIABLE EITHER AS A SIGNATORY OR A GUARANTOR.

20 (B) THIS SUBTITLE DOES NOT APPLY TO A FLEET PURCHASE OF FIVE OR
21 MORE PIECES OF COMMERCIAL EQUIPMENT.

22 14-1403.

23 (A) IF THE MANUFACTURER'S WARRANTY PERIOD IS TO INCLUDE THOSE
24 HOURS OF OPERATION WHEN THE NEW COMMERCIAL EQUIPMENT IS IN THE
25 POSSESSION OF ANY PERSON OTHER THAN THE CONSUMER, THE MANUFACTURER
26 SHALL STATE THAT FACT IN 12 POINT BOLDFACE TYPE IN THE MANUFACTURER'S
27 WRITTEN WARRANTY.

28 (B) (1) (I) IF NEW COMMERCIAL EQUIPMENT DOES NOT CONFORM TO ALL
29 APPLICABLE WARRANTIES DURING THE WARRANTY PERIOD, THE CONSUMER SHALL,
30 DURING THAT PERIOD, REPORT THE NONCONFORMITY, DEFECT, OR CONDITION BY
31 GIVING WRITTEN NOTICE TO THE MANUFACTURER OR FACTORY BRANCH BY
32 CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

33 (II) NOTICE OF THIS PROCEDURE MUST BE CONSPICUOUSLY
34 DISCLOSED TO THE CONSUMER IN WRITING AT THE TIME OF SALE OR DELIVERY OF
35 THE COMMERCIAL EQUIPMENT.

1 (2) THE CONSUMER SHALL PROVIDE AN OPPORTUNITY FOR THE
2 MANUFACTURER OR FACTORY BRANCH, OR ITS AGENT, TO CURE THE
3 NONCONFORMITY, DEFECT, OR CONDITION.

4 (3) (I) THE MANUFACTURER OR FACTORY BRANCH, ITS AGENT, OR ITS
5 AUTHORIZED DEALER SHALL CORRECT THE NONCONFORMITY, DEFECT, OR
6 CONDITION AT NO CHARGE TO THE CONSUMER, EVEN IF REPAIRS ARE MADE AFTER
7 THE EXPIRATION OF THE WARRANTY PERIOD.

8 (II) THE CORRECTIONS SHALL BE COMPLETED WITHIN 30 DAYS
9 AFTER THE MANUFACTURER'S RECEIPT OF THE CONSUMER'S NOTIFICATION OF THE
10 NONCONFORMITY, DEFECT, OR CONDITION.

11 (C) (1) IF, DURING THE WARRANTY PERIOD, THE MANUFACTURER OR
12 FACTORY BRANCH, ITS AGENT, OR ITS AUTHORIZED DEALER IS UNABLE TO REPAIR
13 OR CORRECT ANY DEFECT OR CONDITION THAT SUBSTANTIALLY IMPAIRS THE USE
14 AND MARKET VALUE OF THE COMMERCIAL EQUIPMENT TO THE CONSUMER AFTER A
15 REASONABLE NUMBER OF ATTEMPTS, THE MANUFACTURER OR FACTORY BRANCH,
16 AT THE OPTION OF THE CONSUMER, SHALL:

17 (I) REPLACE THE COMMERCIAL EQUIPMENT WITH COMPARABLE
18 COMMERCIAL EQUIPMENT ACCEPTABLE TO THE CONSUMER; OR

19 (II) ACCEPT RETURN OF THE COMMERCIAL EQUIPMENT FROM THE
20 CONSUMER AND REFUND TO THE CONSUMER THE FULL PURCHASE PRICE
21 INCLUDING ALL APPLICABLE GOVERNMENTAL FEES AND CHARGES, LESS:

22 1. A REASONABLE ALLOWANCE FOR THE CONSUMER'S USE
23 OF THE COMMERCIAL EQUIPMENT NOT TO EXCEED 15% OF THE PURCHASE PRICE;
24 AND

25 2. A REASONABLE ALLOWANCE FOR DAMAGE NOT
26 ATTRIBUTABLE TO NORMAL WEAR BUT NOT TO INCLUDE DAMAGE RESULTING FROM
27 A NONCONFORMITY, DEFECT, OR CONDITION.

28 (2) THE MANUFACTURER OR FACTORY BRANCH SHALL MAKE REFUNDS
29 UNDER THIS SECTION TO THE CONSUMER AND LIENHOLDER, IF ANY, AS THEIR
30 INTERESTS APPEAR ON THE FINANCING STATEMENT FOR THE COMMERCIAL
31 EQUIPMENT FILED IN ACCORDANCE WITH TITLE 9 OF THIS ARTICLE.

32 (3) IT IS AN AFFIRMATIVE DEFENSE TO ANY CLAIM UNDER THIS
33 SECTION THAT THE NONCONFORMITY, DEFECT, OR CONDITION:

34 (I) DOES NOT SUBSTANTIALLY IMPAIR THE USE AND MARKET
35 VALUE OF THE COMMERCIAL EQUIPMENT; OR

36 (II) IS THE RESULT OF ABUSE, NEGLIGENCE, OR UNAUTHORIZED
37 MODIFICATIONS OR ALTERATIONS OF THE COMMERCIAL EQUIPMENT.

1 (D) IT SHALL BE PRESUMED THAT A REASONABLE NUMBER OF ATTEMPTS HAS
2 BEEN UNDERTAKEN TO CONFORM COMMERCIAL EQUIPMENT TO THE APPLICABLE
3 WARRANTIES IF:

4 (1) THE SAME NONCONFORMITY, DEFECT, OR CONDITION HAS BEEN
5 SUBJECT TO REPAIR FOUR OR MORE TIMES BY THE MANUFACTURER OR FACTORY
6 BRANCH, OR ITS AGENTS OR AUTHORIZED DEALERS, WITHIN THE WARRANTY
7 PERIOD, BUT THE NONCONFORMITY, DEFECT, OR CONDITION CONTINUES TO EXIST;
8 OR

9 (2) THE COMMERCIAL EQUIPMENT IS OUT OF SERVICE BY REASON OF
10 REPAIR OF ONE OR MORE NONCONFORMITIES, DEFECTS, OR CONDITIONS FOR A
11 CUMULATIVE TOTAL OF 30 OR MORE DAYS DURING THE WARRANTY PERIOD.

12 (E) THE TERM OF ANY WARRANTY, THE WARRANTY PERIOD, AND THE 30-DAY
13 OUT-OF-SERVICE PERIOD SHALL BE EXTENDED BY ANY TIME DURING WHICH
14 REPAIR SERVICES ARE NOT AVAILABLE TO THE CONSUMER BECAUSE OF WAR,
15 INVASION, OR STRIKE OR FIRE, FLOOD, OR OTHER NATURAL DISASTER.

16 (F) (1) (I) IT IS THE DUTY OF A DEALER TO NOTIFY THE MANUFACTURER
17 OF THE EXISTENCE OF A NONCONFORMITY, DEFECT, OR CONDITION WITHIN 7 DAYS
18 AFTER THE COMMERCIAL EQUIPMENT IS:

19 1. DELIVERED TO THE SAME DEALER FOR A FOURTH TIME
20 FOR REPAIR OF THE SAME NONCONFORMITY; OR

21 2. OUT OF SERVICE BY REASON OF REPAIR OF ONE OR MORE
22 NONCONFORMITIES, DEFECTS, OR CONDITIONS FOR A CUMULATIVE TOTAL OF 20
23 DAYS.

24 (II) 1. THE NOTIFICATION SHALL BE SENT BY CERTIFIED MAIL,
25 AND A COPY OF THE NOTIFICATION SHALL BE SENT TO THE OFFICE OF THE
26 ATTORNEY GENERAL.

27 2. FAILURE OF THE DEALER TO GIVE THE NOTICE REQUIRED
28 UNDER THIS SUBSECTION MAY NOT AFFECT THE CONSUMER'S RIGHTS UNDER THIS
29 SUBTITLE.

30 (2) IF COMMERCIAL EQUIPMENT IS RETURNED TO A MANUFACTURER
31 OR FACTORY BRANCH EITHER UNDER THIS SUBTITLE, BY JUDGMENT, DECREE, OR
32 ARBITRATION AWARD, OR BY VOLUNTARY AGREEMENT, THE MANUFACTURER OR
33 FACTORY BRANCH SHALL NOTIFY THE OFFICE OF THE ATTORNEY GENERAL IN
34 WRITING WITHIN 15 DAYS AFTER THE RETURN OF THE COMMERCIAL EQUIPMENT.

35 (G) (1) (I) IF COMMERCIAL EQUIPMENT THAT IS RETURNED TO THE
36 MANUFACTURER UNDER EITHER THIS SUBTITLE, BY JUDGMENT, DECREE, OR
37 ARBITRATION AWARD, SETTLEMENT AGREEMENT, OR BY VOLUNTARY AGREEMENT
38 IN THIS OR ANY OTHER STATE AND IS THEN TRANSFERRED TO A DEALER IN
39 MARYLAND, THE MANUFACTURER SHALL DISCLOSE THIS INFORMATION TO THE
40 DEALER.

1 (II) THE MANUFACTURER'S DISCLOSURE UNDER THIS PARAGRAPH
2 SHALL BE IN WRITING ON A SEPARATE PIECE OF PAPER IN 10 POINT ALL CAPITAL
3 TYPE AND SHALL STATE IN A CLEAR AND CONSPICUOUS MANNER:

4 1. THAT THE COMMERCIAL EQUIPMENT WAS RETURNED TO
5 THE MANUFACTURER OR FACTORY BRANCH;

6 2. THE NATURE OF THE DEFECT, IF ANY, THAT RESULTED IN
7 THE RETURN; AND

8 3. THE CONDITION OF THE COMMERCIAL EQUIPMENT AT
9 THE TIME THAT IT IS TRANSFERRED TO THE DEALER.

10 (2) (I) IF THE RETURNED COMMERCIAL EQUIPMENT IS THEN MADE
11 AVAILABLE FOR RESALE, THE SELLER SHALL PROVIDE A COPY OF THE
12 MANUFACTURER'S DISCLOSURE FORM TO THE CONSUMER BEFORE THE SALE.

13 (II) IF THE RETURNED COMMERCIAL EQUIPMENT IS SOLD, THE
14 SELLER SHALL SEND A COPY OF THE MANUFACTURER'S DISCLOSURE FORM, SIGNED
15 BY THE CONSUMER, TO THE OFFICE OF THE ATTORNEY GENERAL.

16 (H) THIS SECTION DOES NOT LIMIT THE RIGHTS OR REMEDIES THAT ARE
17 OTHERWISE AVAILABLE TO A CONSUMER UNDER ANY OTHER LAW, INCLUDING ANY
18 IMPLIED WARRANTIES.

19 (I) (1) IF A MANUFACTURER OR FACTORY BRANCH HAS ESTABLISHED AN
20 INFORMAL DISPUTE SETTLEMENT PROCEDURE SIMILAR TO THAT WHICH APPLIES TO
21 CONSUMER MOTOR VEHICLE PURCHASES UNDER TITLE 16, CODE OF FEDERAL
22 REGULATIONS, PART 703, A CONSUMER MAY RESORT TO THAT PROCEDURE BEFORE
23 SUBSECTION (C) OF THIS SECTION APPLIES.

24 (2) A CONSUMER WHO HAS RESORTED TO AN INFORMAL DISPUTE
25 SETTLEMENT PROCEDURE MAY NOT BE PRECLUDED FROM SEEKING THE RIGHTS OR
26 REMEDIES AVAILABLE BY LAW.

27 (J) (1) ANY AGREEMENT ENTERED INTO BY A CONSUMER FOR THE
28 PURCHASE OF NEW COMMERCIAL EQUIPMENT THAT WAIVES, LIMITS, OR DISCLAIMS
29 THE RIGHTS SET FORTH IN THIS SECTION IS VOID.

30 (2) THE RIGHTS AVAILABLE TO A CONSUMER UNDER THIS SECTION
31 SHALL RUN TO THE BENEFIT OF ANY SUBSEQUENT TRANSFEREE OF NEW
32 COMMERCIAL EQUIPMENT FOR THE DURATION OF THE APPLICABLE WARRANTIES.

33 (K) ANY ACTION BROUGHT UNDER THIS SECTION SHALL BE COMMENCED
34 WITHIN 3 YEARS AFTER THE DATE OF ORIGINAL DELIVERY OF THE COMMERCIAL
35 EQUIPMENT TO THE CONSUMER.

36 (L) (1) A COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A
37 PREVAILING PLAINTIFF UNDER THIS SECTION.

1 (2) IF IT APPEARS TO THE SATISFACTION OF THE COURT THAT AN
2 ACTION IS BROUGHT IN BAD FAITH OR IS OF A FRIVOLOUS NATURE, THE COURT MAY
3 ORDER THE OFFENDING PARTY TO PAY TO THE OTHER PARTY REASONABLE
4 ATTORNEY'S FEES.

5 14-1404.

6 (A) THE OFFICE OF THE ATTORNEY GENERAL SHALL:

7 (1) DEVELOP A NOTICE THAT DESCRIBES THE RIGHTS PROVIDED TO
8 CONSUMERS UNDER THIS SUBTITLE;

9 (2) MAKE THE NOTICE AVAILABLE TO ALL DEALERS THAT SELL NEW
10 COMMERCIAL EQUIPMENT IN THE STATE; AND

11 (3) ADOPT REGULATIONS AS NECESSARY TO IMPLEMENT THE
12 PROVISIONS OF THIS SECTION.

13 (B) THE NOTICE SHALL:

14 (1) BE WRITTEN IN SIMPLE AND READABLE PLAIN LANGUAGE; AND

15 (2) CONTAIN SUFFICIENT DETAIL TO FULLY INFORM CONSUMERS
16 ABOUT THE RIGHTS AND REMEDIES AVAILABLE UNDER THIS SUBTITLE AND THE
17 PROCEDURES TO FOLLOW TO ENFORCE THOSE RIGHTS AND REMEDIES.

18 (C) EACH DEALER THAT SELLS NEW COMMERCIAL EQUIPMENT IN THE STATE
19 SHALL PROVIDE TO THE PURCHASER, AT THE TIME OF THE SALE OR DELIVERY OF
20 THE COMMERCIAL EQUIPMENT, A COPY OF THE NOTICE DEVELOPED BY THE OFFICE
21 OF THE ATTORNEY GENERAL UNDER THIS SECTION.

22 14-1405.

23 (A) (1) IF A DEALER, MANUFACTURER, FACTORY BRANCH, OR DISTRIBUTOR
24 IS REQUIRED UNDER A JUDGMENT, DECREE, ARBITRATION AWARD, OR SETTLEMENT
25 AGREEMENT TO ACCEPT, OR BY VOLUNTARY AGREEMENT ACCEPTS, RETURN OF
26 COMMERCIAL EQUIPMENT FROM A CONSUMER, THE CONSUMER SHALL BE
27 ENTITLED TO RECOVER FROM THE COMPTROLLER THE EXCISE TAXES ORIGINALLY
28 PAID BY THE CONSUMER, SUBJECT TO SUBSECTION (B) OF THIS SECTION.

29 (2) (I) IF A DEALER, MANUFACTURER, FACTORY BRANCH, OR
30 DISTRIBUTOR REPLACES COMMERCIAL EQUIPMENT WITH COMPARABLE
31 COMMERCIAL EQUIPMENT UNDER § 14-1403(C)(1)(I) OF THIS SUBTITLE, THE
32 COMPTROLLER SHALL ALLOW A CREDIT AGAINST THE EXCISE TAX IMPOSED FOR
33 THE REPLACEMENT COMMERCIAL EQUIPMENT IN THE AMOUNT OF THE EXCISE TAX
34 ORIGINALLY PAID BY THE CONSUMER FOR THE RETURNED COMMERCIAL
35 EQUIPMENT, SUBJECT TO SUBSECTION (B) OF THIS SECTION.

36 (II) 1. IF THE EXCISE TAX ON THE REPLACEMENT COMMERCIAL
37 EQUIPMENT EXCEEDS THE CREDIT ALLOWED UNDER SUBPARAGRAPH (I) OF THIS

