
By: **Senators Klausmeier, Colburn, Forehand, Hooper, Lawlah, and Stone**

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Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection - Vessel Warranty Enforcement Act**

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

26 BY repealing and reenacting, with amendments,
27 Article - Commercial Law
28 Section 13-301(14)(xx)
29 Annotated Code of Maryland
30 (2005 Replacement Volume)

31 BY adding to
32 Article - Commercial Law

1 Section 13-301(14)(xxii); and 14-15A-01 through 14-15A-05, inclusive, to be
2 under the new subtitle "Subtitle 15A. Vessel Warranty Enforcement Act"
3 Annotated Code of Maryland
4 (2005 Replacement Volume)

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

7 **Article - Commercial Law**

8 13-301.

9 Unfair or deceptive trade practices include any:

10 (14) Violation of a provision of:

11 (xx) Title 14, Subtitle 32 of this article, the Maryland Telephone
12 Consumer Protection Act; [or]

13 (XXII) TITLE 14, SUBTITLE 15A OF THIS ARTICLE, THE VESSEL
14 WARRANTY ENFORCEMENT ACT; OR

15 SUBTITLE 15A. VESSEL WARRANTY ENFORCEMENT ACT.

16 14-15A-01.

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

19 (B) "CONSUMER" MEANS:

20 (1) THE PURCHASER, OTHER THAN FOR PURPOSES OF RESALE, OF A
21 NEW VESSEL;

22 (2) ANY OTHER PERSON TO WHOM A NEW VESSEL IS TRANSFERRED
23 DURING THE DURATION OF THE WARRANTY APPLICABLE TO THE VESSEL; OR

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

26 (C) "DEALER" HAS THE MEANING STATED IN § 8-701 OF THE NATURAL
27 RESOURCES ARTICLE.

28 (D) "MANUFACTURER" HAS THE MEANING STATED IN § 8-701 OF THE NATURAL
29 RESOURCES ARTICLE.

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

31 (I) 15 MONTHS FOLLOWING THE DATE OF THE ORIGINAL
32 DELIVERY OF THE VESSEL TO THE CONSUMER; OR

1 (II) 150 HOURS ON THE VESSEL'S ENGINE HOUR METER.

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

4 (F) "NEW VESSEL" INCLUDES A DEMONSTRATOR, A DEALER-OWNED VESSEL,
5 AND ANY OTHER VESSEL SOLD WITH A MANUFACTURER'S NEW VESSEL WARRANTY.

6 (G) "VESSEL" MEANS A VESSEL THAT IS TITLED IN THE STATE IN
7 ACCORDANCE WITH § 8-715 OF THE NATURAL RESOURCES ARTICLE.

8 (H) (1) "WARRANTY" MEANS WARRANTIES AS DEFINED IN §§ 2-312, 2-313,
9 2-314, AND 2-315 OF THIS ARTICLE.

10 (2) "WARRANTY" INCLUDES ANY TERMS AND CONDITIONS PRECEDENT
11 TO THE ENFORCEMENT OF OBLIGATIONS UNDER AN EXPRESS WRITTEN WARRANTY.
12 14-15A-02.

13 (A) (1) (I) IF A NEW VESSEL DOES NOT CONFORM TO ALL APPLICABLE
14 WARRANTIES DURING THE WARRANTY PERIOD, THE CONSUMER SHALL, DURING
15 SUCH PERIOD, REPORT THE NONCONFORMITY, DEFECT, OR CONDITION BY GIVING
16 WRITTEN NOTICE TO THE MANUFACTURER AND ITS AGENT BY CERTIFIED MAIL,
17 RETURN RECEIPT REQUESTED.

18 (II) NOTICE OF THIS PROCEDURE SHALL BE CONSPICUOUSLY
19 DISCLOSED TO THE CONSUMER IN WRITING AT THE TIME OF SALE OR DELIVERY OF
20 THE VESSEL.

21 (2) THE CONSUMER SHALL PROVIDE AN OPPORTUNITY FOR THE
22 MANUFACTURER OR ITS AGENT TO CURE THE NONCONFORMITY, DEFECT, OR
23 CONDITION.

24 (3) (I) THE MANUFACTURER, ITS AGENT, OR ITS AUTHORIZED DEALER
25 SHALL CORRECT THE NONCONFORMITY, DEFECT, OR CONDITION AT NO CHARGE TO
26 THE CONSUMER, EVEN IF REPAIRS ARE MADE AFTER THE EXPIRATION OF THE
27 WARRANTY PERIOD.

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

31 (B) (1) IF, DURING THE WARRANTY PERIOD, THE MANUFACTURER, ITS
32 AGENT, OR ITS AUTHORIZED DEALER IS UNABLE TO REPAIR OR CORRECT ANY
33 NONCONFORMITY, DEFECT, OR CONDITION THAT SUBSTANTIALLY IMPAIRS THE USE
34 AND MARKET VALUE OF THE VESSEL TO THE CONSUMER AFTER A REASONABLE
35 NUMBER OF ATTEMPTS, THE MANUFACTURER, AT THE OPTION OF THE CONSUMER,
36 SHALL:

1 (I) REPLACE THE VESSEL WITH A COMPARABLE VESSEL
2 ACCEPTABLE TO THE CONSUMER; OR

3 (II) ACCEPT RETURN OF THE VESSEL FROM THE CONSUMER AND
4 REFUND TO THE CONSUMER THE FULL PURCHASE PRICE INCLUDING ALL EXCISE
5 TAXES, NUMBERING FEES, REGISTRATION FEES, AND ANY SIMILAR GOVERNMENTAL
6 CHARGES, LESS:

7 1. A REASONABLE ALLOWANCE FOR THE CONSUMER'S USE
8 OF THE VESSEL NOT TO EXCEED 15% OF THE PURCHASE PRICE; AND

9 2. A REASONABLE ALLOWANCE FOR DAMAGE NOT
10 ATTRIBUTABLE TO NORMAL WEAR BUT NOT TO INCLUDE DAMAGE RESULTING FROM
11 A NONCONFORMITY, DEFECT, OR CONDITION.

12 (2) IT IS AN AFFIRMATIVE DEFENSE TO ANY CLAIM UNDER THIS
13 SECTION THAT THE NONCONFORMITY, DEFECT, OR CONDITION:

14 (I) DOES NOT SUBSTANTIALLY IMPAIR THE USE AND MARKET
15 VALUE OF THE VESSEL TO THE CONSUMER; OR

16 (II) IS THE RESULT OF ABUSE, NEGLIGENCE, OR UNAUTHORIZED
17 MODIFICATIONS OR ALTERATIONS OF THE VESSEL.

18 (C) IT SHALL BE PRESUMED THAT A REASONABLE NUMBER OF ATTEMPTS
19 HAVE BEEN UNDERTAKEN TO CONFORM A VESSEL TO THE APPLICABLE
20 WARRANTIES IF:

21 (1) THE SAME NONCONFORMITY, DEFECT, OR CONDITION HAS BEEN
22 SUBJECT TO REPAIR FOUR OR MORE TIMES BY THE MANUFACTURER, ITS AGENTS, OR
23 AUTHORIZED DEALERS WITHIN THE WARRANTY PERIOD BUT SUCH
24 NONCONFORMITY, DEFECT, OR CONDITION CONTINUES TO EXIST; OR

25 (2) THE VESSEL IS OUT OF SERVICE BY REASON OF REPAIR OF ONE OR
26 MORE NONCONFORMITIES, DEFECTS, OR CONDITIONS FOR A CUMULATIVE TOTAL OF
27 60 OR MORE DAYS DURING THE WARRANTY PERIOD.

28 (D) THE TERM OF ANY WARRANTY, THE WARRANTY PERIOD, AND THE 60-DAY
29 OUT-OF-SERVICE PERIOD SHALL BE EXTENDED BY ANY TIME DURING WHICH
30 REPAIR SERVICES ARE NOT AVAILABLE TO THE CONSUMER BY REASON OF WAR,
31 INVASION, STRIKE, OR FIRE, FLOOD, OR OTHER NATURAL DISASTER.

32 (E) (1) (I) IT SHALL BE THE DUTY OF A DEALER TO NOTIFY THE
33 MANUFACTURER OF THE EXISTENCE OF A NONCONFORMITY, DEFECT, OR
34 CONDITION WITHIN 7 DAYS WHEN THE VESSEL IS DELIVERED TO THE SAME DEALER
35 FOR A FOURTH TIME FOR REPAIR OF THE SAME NONCONFORMITY OR WHEN THE
36 VESSEL IS OUT OF SERVICE BY REASON OF REPAIR OF ONE OR MORE
37 NONCONFORMITIES, DEFECTS, OR CONDITIONS FOR A CUMULATIVE TOTAL OF 20
38 DAYS.

1 (II) 1. THE NOTIFICATION SHALL BE SENT BY CERTIFIED MAIL
2 AND A COPY OF THE NOTIFICATION SHALL BE SENT TO THE DEPARTMENT OF
3 NATURAL RESOURCES;

4 2. FAILURE OF THE DEALER TO GIVE THE NOTICE REQUIRED
5 UNDER THIS SUBSECTION SHALL NOT AFFECT THE CONSUMER'S RIGHTS UNDER
6 THIS SUBTITLE.

7 (2) IF A VESSEL IS RETURNED TO A MANUFACTURER EITHER UNDER
8 THIS SUBTITLE OR BY JUDGMENT, DECREE, ARBITRATION AWARD, OR VOLUNTARY
9 AGREEMENT, THE MANUFACTURER SHALL NOTIFY THE DEPARTMENT OF NATURAL
10 RESOURCES IN WRITING WITHIN 15 DAYS OF THE FACT THAT THE VESSEL WAS
11 RETURNED.

12 (F) (1) IF A VESSEL THAT IS RETURNED TO THE MANUFACTURER UNDER
13 EITHER THIS SUBTITLE OR BY JUDGMENT, DECREE, ARBITRATION AWARD,
14 SETTLEMENT AGREEMENT, OR VOLUNTARY AGREEMENT IN THIS OR ANY OTHER
15 STATE IS THEN TRANSFERRED TO A DEALER IN MARYLAND, THE MANUFACTURER
16 SHALL DISCLOSE THIS INFORMATION TO THE DEALER.

17 (2) IF THE RETURNED VESSEL IS THEN MADE AVAILABLE FOR RESALE,
18 THE SELLER SHALL DISCLOSE BEFORE THE SALE IN WRITING IN A CLEAR AND
19 CONSPICUOUS MANNER, ON A SEPARATE PIECE OF PAPER IN 10 POINT ALL CAPITAL
20 TYPE, TO A CONSUMER THE MATERIAL FACT THAT THE VESSEL WAS RETURNED TO
21 THE MANUFACTURER, THE NATURE OF THE DEFECT THAT RESULTED IN THE
22 RETURN, AND THE CONDITION OF THE VESSEL AT THE TIME OF RESALE.

23 (G) THIS SECTION DOES NOT LIMIT THE RIGHTS OR REMEDIES THAT ARE
24 OTHERWISE AVAILABLE TO A CONSUMER UNDER ANY OTHER LAW, INCLUDING ANY
25 IMPLIED WARRANTIES.

26 (H) (1) IF A MANUFACTURER HAS ESTABLISHED AN INFORMAL DISPUTE
27 SETTLEMENT PROCEDURE THAT COMPLIES IN ALL RESPECTS WITH TITLE 16, CODE
28 OF FEDERAL REGULATIONS, PART 703, AS AMENDED, A CONSUMER MAY RESORT TO
29 THAT PROCEDURE BEFORE SUBSECTION (B) OF THIS SECTION APPLIES.

30 (2) A CONSUMER WHO HAS RESORTED TO AN INFORMAL DISPUTE
31 SETTLEMENT PROCEDURE MAY NOT BE PRECLUDED FROM SEEKING THE RIGHTS
32 AND REMEDIES AVAILABLE BY LAW.

33 (I) (1) ANY AGREEMENT ENTERED INTO BY A CONSUMER FOR THE
34 PURCHASE OF A NEW VESSEL THAT WAIVES, LIMITS, OR DISCLAIMS THE RIGHTS SET
35 FORTH IN THIS SECTION SHALL BE VOID.

36 (2) THE RIGHTS AVAILABLE TO A CONSUMER UNDER THIS SECTION
37 SHALL INURE TO A SUBSEQUENT TRANSFEREE OF A NEW VESSEL FOR THE
38 DURATION OF THE APPLICABLE WARRANTIES.

1 (J) ANY ACTION BROUGHT UNDER THIS SECTION SHALL BE COMMENCED
2 WITHIN 3 YEARS OF THE DATE OF ORIGINAL DELIVERY OF THE VESSEL TO THE
3 CONSUMER.

4 (K) (1) A COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A
5 PREVAILING PLAINTIFF UNDER THIS SECTION.

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

10 (L) THIS SUBTITLE DOES NOT APPLY TO A FLEET PURCHASE OF FIVE OR
11 MORE VESSELS.

12 14-15A-03.

13 (A) IF A DEALER OR MANUFACTURER IS REQUIRED UNDER A JUDGMENT,
14 DECREE, ARBITRATION AWARD, OR SETTLEMENT AGREEMENT TO ACCEPT, OR BY
15 VOLUNTARY AGREEMENT ACCEPTS, RETURN OF A VESSEL FROM A CONSUMER, THE
16 CONSUMER SHALL BE ENTITLED TO RECOVER FROM THE DEPARTMENT OF NATURAL
17 RESOURCES THE EXCISE TAXES ORIGINALLY PAID BY THE CONSUMER, SUBJECT TO
18 SUBSECTION (B) OF THIS SECTION.

19 (B) THE EXCISE TAXES THAT A CONSUMER IS ENTITLED TO RECOVER UNDER
20 THIS SECTION SHALL BE CALCULATED BASED ON THE AMOUNT OF THE PURCHASE
21 PRICE OR ANY PORTION OF THE PURCHASE PRICE OF THE VESSEL THAT THE DEALER
22 OR MANUFACTURER REFUNDS TO THE CONSUMER.

23 (C) A DEALER OR MANUFACTURER WHO IS REQUIRED UNDER A JUDGMENT,
24 DECREE, ARBITRATION AWARD, OR SETTLEMENT AGREEMENT TO ACCEPT, OR WHO
25 ACCEPTS BY VOLUNTARY AGREEMENT, RETURN OF A VESSEL SHALL NOTIFY THE
26 CONSUMER IN WRITING THAT THE CONSUMER IS ENTITLED TO RECOVER THE
27 EXCISE TAXES FROM THE DEPARTMENT OF NATURAL RESOURCES.

28 14-15A-04.

29 (A) THE DEPARTMENT OF NATURAL RESOURCES SHALL:

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

32 (2) MAKE THE NOTICE AVAILABLE TO ALL DEALERS THAT SELL NEW
33 VESSELS IN THE STATE; AND

34 (3) ADOPT REGULATIONS AS NECESSARY TO IMPLEMENT THE
35 PROVISIONS OF THIS SECTION.

36 (B) THE NOTICE SHALL:

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

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

5 (C) EACH DEALER THAT SELLS A NEW VESSEL IN THE STATE SHALL PROVIDE
6 TO THE PURCHASER, AT THE TIME OF THE SALE OR DELIVERY OF THE VESSEL, A
7 COPY OF THE NOTICE DEVELOPED BY THE DEPARTMENT OF NATURAL RESOURCES
8 UNDER THIS SECTION.

9 14-15A-05.

10 (A) A VIOLATION OF THIS SUBTITLE IS AN UNFAIR OR DECEPTIVE TRADE
11 PRACTICE UNDER TITLE 13 OF THIS ARTICLE.

12 (B) IN ADDITION TO ANY OTHER REMEDIES THAT MAY BE AVAILABLE UNDER
13 THIS SUBTITLE, IF A MANUFACTURER OR DEALER IS FOUND TO HAVE ACTED IN BAD
14 FAITH, THE COURT MAY AWARD THE CONSUMER DAMAGES OF UP TO \$10,000.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
16 construed to apply only prospectively and may not be applied or interpreted to have
17 any effect on or application to any new vessel purchased or delivered before the
18 effective date of this Act.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2006.