

HOUSE BILL 185

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By: **Delegates Shewell, Aumann, Boteler, Carr, DeBoy, Glenn, Hecht, Heller, Kipke, Kullen, McComas, McDonough, Niemann, Norman, Riley, Robinson, Serafini, Stocksdale, Stull, F. Turner, Valderrama, Walkup, and Weir**

Introduced and read first time: January 26, 2009

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection – Home Appliances – Warranty Enforcement**

3 FOR the purpose of requiring a manufacturer of certain home appliances, its agent, or
4 its authorized dealer to repair or correct a nonconformity in a home appliance at
5 no cost to the consumer if the home appliance does not conform to all applicable
6 warranties during a certain warranty period; providing that a manufacturer's
7 obligation to repair or correct a nonconformity under this Act applies only if the
8 consumer satisfies certain conditions; requiring a manufacturer, under certain
9 circumstances and at the option of the consumer, to replace a home appliance
10 with a comparable home appliance or accept return of a home appliance and
11 refund the purchase price less certain reasonable allowances; requiring that a
12 refund of the purchase price be made to the consumer and any holder of a
13 perfected security interest in the home appliance in a certain manner; providing
14 that the manufacturer is responsible for the cost of returning a home appliance
15 to the manufacturer; providing for certain affirmative defenses; establishing a
16 certain presumption; providing for the extension of the term of a warranty, a
17 certain warranty period, and a certain out-of-service period if repair services
18 are not available for certain reasons; providing that this Act does not limit the
19 rights and remedies that otherwise are available to a consumer under any other
20 law; providing that a consumer is not required to resort to a certain informal
21 dispute settlement procedure before certain provisions of this Act apply;
22 providing that a consumer who resorts to an informal dispute resolution
23 procedure may not be precluded from seeking other available remedies;
24 providing that an agreement for the purchase of a home appliance is void to the
25 extent that it attempts to waive, limit, or disclaim certain rights of a consumer;
26 providing that a manufacturer that fails to comply with certain provisions of
27 this Act is liable to the consumer for certain damages; authorizing a court to
28 award reasonable attorney's fees to a prevailing plaintiff in an action brought

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 under this Act; authorizing a court to order a party to pay to the other party
2 reasonable attorney's fees if it appears that an action is brought in bad faith or
3 is frivolous in nature; requiring that an action brought under this Act be
4 brought within a certain time; providing that a violation of certain provisions of
5 this Act is an unfair or deceptive trade practice within the meaning of the
6 Maryland Consumer Protection Act; prohibiting a consumer who recovers
7 damages under certain provisions of this Act from recovering damages for the
8 same violation under a certain provision of the Maryland Consumer Protection
9 Act; providing for the application of this Act; defining certain terms; and
10 generally relating to home appliances and the enforcement of warranties on
11 home appliances.

12 BY adding to

13 Article – Commercial Law

14 Section 14–15A–01 through 14–15A–08 to be under the new subtitle “Subtitle
15 15A. Home Appliance Warranty Enforcement Act”

16 Annotated Code of Maryland

17 (2005 Replacement Volume and 2008 Supplement)

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

20 **Article – Commercial Law**

21 **SUBTITLE 15A. HOME APPLIANCE WARRANTY ENFORCEMENT ACT.**

22 **14–15A–01.**

23 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
24 INDICATED.

25 (B) “CONSUMER” MEANS:

26 (1) THE PURCHASER, OTHER THAN FOR PURPOSES OF RESALE,
27 OF A HOME APPLIANCE;

28 (2) ANY PERSON TO WHOM A HOME APPLIANCE IS TRANSFERRED
29 DURING THE WARRANTY PERIOD APPLICABLE TO THE HOME APPLIANCE; OR

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

32 (C) “DEALER” MEANS A PERSON ENGAGED IN THE BUSINESS OF
33 SELLING HOME APPLIANCES TO CONSUMERS.

1 (D) (1) **“HOME APPLIANCE” MEANS AN APPLIANCE NORMALLY USED**
2 **OR SOLD FOR USE IN A PRIVATE RESIDENCE.**

3 (2) **“HOME APPLIANCE” INCLUDES:**

4 (I) **A REFRIGERATOR;**

5 (II) **A FREEZER;**

6 (III) **A COOKING RANGE;**

7 (IV) **A MICROWAVE OVEN;**

8 (V) **A WASHER;**

9 (VI) **A DRYER;**

10 (VII) **A DISHWASHER;**

11 (VIII) **A TRASH COMPACTOR;**

12 (IX) **AN AIR CONDITIONER;**

13 (X) **A HEAT PUMP; AND**

14 (XI) **ANY SIMILAR APPARATUS OR DEVICE.**

15 (E) (1) **“MANUFACTURER” MEANS A PERSON ENGAGED IN THE**
16 **BUSINESS OF MANUFACTURING, ASSEMBLING, IMPORTING, OR DISTRIBUTING**
17 **HOME APPLIANCES.**

18 (2) **“MANUFACTURER” DOES NOT INCLUDE A HOME APPLIANCE**
19 **DEALER.**

20 (F) **“WARRANTY” MEANS:**

21 (1) **THE MANUFACTURER’S WRITTEN WARRANTY; AND**

22 (2) **ANY IMPLIED WARRANTIES PROVIDED FOR BY FEDERAL OR**
23 **STATE LAW, INCLUDING THE FEDERAL MAGNUSSON MOSS WARRANTY ACT AND**
24 **THE MARYLAND UNIFORM COMMERCIAL CODE.**

25 (G) (1) **“WARRANTY PERIOD” MEANS THE 18 MONTHS FOLLOWING**
26 **THE DATE OF ORIGINAL DELIVERY OF A HOME APPLIANCE TO A CONSUMER.**

1 **(2) THIS SUBSECTION DOES NOT EXTEND THE TERM OF AN**
2 **EXPRESS WARRANTY.**

3 **14-15A-02.**

4 **THIS SUBTITLE APPLIES ONLY TO A NEW HOME APPLIANCE SOLD TO A**
5 **CONSUMER FOR A PURCHASE PRICE OF \$300 OR MORE.**

6 **14-15A-03.**

7 **(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, IF A HOME**
8 **APPLIANCE DOES NOT CONFORM TO ALL APPLICABLE WARRANTIES DURING THE**
9 **WARRANTY PERIOD, THE MANUFACTURER, ITS AGENT, OR ITS AUTHORIZED**
10 **DEALER SHALL REPAIR OR CORRECT THE NONCONFORMITY AT NO COST TO THE**
11 **CONSUMER.**

12 **(B) THE MANUFACTURER'S OBLIGATION TO REPAIR OR CORRECT A**
13 **NONCONFORMITY UNDER SUBSECTION (A) OF THIS SECTION APPLIES ONLY IF**
14 **THE CONSUMER:**

15 **(1) REPORTS THE NONCONFORMITY TO THE MANUFACTURER, ITS**
16 **AGENT, OR ITS AUTHORIZED DEALER DURING THE WARRANTY PERIOD; AND**

17 **(2) MAKES THE HOME APPLIANCE AVAILABLE FOR REPAIR.**

18 **14-15A-04.**

19 **(A) IF, DURING THE WARRANTY PERIOD, THE MANUFACTURER, ITS**
20 **AGENT, OR ITS AUTHORIZED DEALER IS UNABLE AFTER A REASONABLE NUMBER**
21 **OF ATTEMPTS TO REPAIR OR CORRECT ANY NONCONFORMITY THAT**
22 **SUBSTANTIALLY IMPAIRS THE USE AND MARKET VALUE OF THE HOME**
23 **APPLIANCE TO THE CONSUMER, THE MANUFACTURER, AT THE OPTION OF THE**
24 **CONSUMER, SHALL:**

25 **(1) REPLACE THE HOME APPLIANCE WITH A COMPARABLE HOME**
26 **APPLIANCE ACCEPTABLE TO THE CONSUMER; OR**

27 **(2) ACCEPT RETURN OF THE HOME APPLIANCE FROM THE**
28 **CONSUMER AND REFUND TO THE CONSUMER THE FULL PURCHASE PRICE,**
29 **INCLUDING ALL SALES TAXES PAID IN CONNECTION WITH THE PURCHASE OF**
30 **THE HOME APPLIANCE, LESS:**

1 (I) **A REASONABLE ALLOWANCE FOR THE CONSUMER'S USE**
2 **OF THE HOME APPLIANCE NOT TO EXCEED 15% OF THE PURCHASE PRICE; AND**

3 (II) **A REASONABLE ALLOWANCE FOR DAMAGE NOT**
4 **ATTRIBUTABLE TO NORMAL WEAR BUT NOT TO INCLUDE DAMAGE RESULTING**
5 **FROM A NONCONFORMITY.**

6 **(B) ANY REFUNDS MADE UNDER SUBSECTION (A) OF THIS SECTION**
7 **SHALL BE MADE TO THE CONSUMER AND ANY HOLDER OF A PERFECTED**
8 **SECURITY INTEREST IN THE HOME APPLIANCE IN ACCORDANCE WITH THEIR**
9 **RESPECTIVE INTERESTS.**

10 **(C) THE MANUFACTURER IS RESPONSIBLE FOR THE COST OF**
11 **RETURNING THE HOME APPLIANCE TO THE MANUFACTURER.**

12 **(D) IT IS AN AFFIRMATIVE DEFENSE TO ANY CLAIM UNDER THIS**
13 **SECTION THAT THE NONCONFORMITY:**

14 **(1) DOES NOT SUBSTANTIALLY IMPAIR THE USE AND MARKET**
15 **VALUE OF THE HOME APPLIANCE; OR**

16 **(2) IS THE RESULT OF ABUSE OR NEGLIGENCE OF THE HOME**
17 **APPLIANCE.**

18 **(E) IT IS PRESUMED THAT A REASONABLE NUMBER OF ATTEMPTS HAVE**
19 **BEEN UNDERTAKEN TO CONFORM A HOME APPLIANCE TO THE APPLICABLE**
20 **WARRANTIES IF:**

21 **(1) THE SAME NONCONFORMITY HAS BEEN SUBJECT TO REPAIR**
22 **THREE OR MORE TIMES BY THE MANUFACTURER, ITS AGENT, OR ITS**
23 **AUTHORIZED DEALER WITHIN THE WARRANTY PERIOD BUT THE SAME**
24 **NONCONFORMITY CONTINUES TO EXIST; OR**

25 **(2) THE HOME APPLIANCE IS OUT OF SERVICE BY REASON OF**
26 **REPAIR OF ONE OR MORE NONCONFORMITIES FOR A CUMULATIVE TOTAL OF 30**
27 **OR MORE DAYS DURING THE WARRANTY PERIOD.**

28 **(F) THE TERM OF A WARRANTY, THE WARRANTY PERIOD, AND THE**
29 **30-DAY OUT-OF-SERVICE PERIOD SHALL BE EXTENDED BY ANY TIME DURING**
30 **WHICH REPAIR SERVICES ARE NOT AVAILABLE TO THE CONSUMER BY REASON**
31 **OF:**

32 **(1) WAR;**

- 1 (2) **INVASION;**
- 2 (3) **STRIKE; OR**
- 3 (4) **FIRE, FLOOD, OR OTHER NATURAL DISASTER.**

4 **14-15A-05.**

5 **THIS SUBTITLE DOES NOT LIMIT THE RIGHTS OR REMEDIES THAT**
6 **OTHERWISE ARE AVAILABLE TO A CONSUMER UNDER ANY OTHER LAW,**
7 **INCLUDING THE FEDERAL MAGNUSSON MOSS WARRANTY ACT AND THE**
8 **MARYLAND UNIFORM COMMERCIAL CODE.**

9 **14-15A-06.**

10 **(A) IF A MANUFACTURER HAS ESTABLISHED AN INFORMAL DISPUTE**
11 **SETTLEMENT PROCEDURE THAT COMPLIES IN ALL RESPECTS WITH 16 C.F.R.**
12 **PART 703, A CONSUMER IS NOT REQUIRED TO RESORT TO THAT PROCEDURE**
13 **BEFORE § 14-15A-04 OF THIS SUBTITLE APPLIES.**

14 **(B) A CONSUMER WHO HAS RESORTED TO AN INFORMAL DISPUTE**
15 **SETTLEMENT PROCEDURE MAY NOT BE PRECLUDED FROM SEEKING OTHER**
16 **REMEDIES AVAILABLE BY LAW.**

17 **14-15A-07.**

18 **AN AGREEMENT ENTERED INTO BY A CONSUMER FOR THE PURCHASE OF A**
19 **HOME APPLIANCE IS VOID TO THE EXTENT THAT IT ATTEMPTS TO WAIVE, LIMIT,**
20 **OR DISCLAIM THE CONSUMER'S RIGHTS UNDER THIS SUBTITLE.**

21 **14-15A-08.**

22 **(A) A MANUFACTURER THAT FAILS TO COMPLY WITH § 14-15A-03 OR §**
23 **14-15A-04 OF THIS SUBTITLE IS LIABLE TO THE CONSUMER FOR:**

24 **(1) ACTUAL DAMAGES SUSTAINED BY THE CONSUMER AS A**
25 **RESULT OF THE MANUFACTURER'S FAILURE TO COMPLY;**

26 **(2) AN AMOUNT EQUAL TO 25% OF THE PURCHASE PRICE OF THE**
27 **HOME APPLIANCE, BUT NOT MORE THAN \$1,000; AND**

28 **(3) IF THE MANUFACTURER ACTED IN BAD FAITH, UP TO \$5,000.**

1 **(B) (1) A COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A**
2 **PREVAILING PLAINTIFF UNDER THIS SUBTITLE.**

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

7 **(C) AN ACTION BROUGHT UNDER THIS SUBTITLE MUST BE BROUGHT**
8 **WITHIN 3 YEARS AFTER THE DATE OF ORIGINAL DELIVERY OF THE HOME**
9 **APPLIANCE TO THE CONSUMER.**

10 **(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A**
11 **VIOLATION OF § 14-15A-03 OR § 14-15A-04 OF THIS SUBTITLE IS AN UNFAIR**
12 **OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THIS**
13 **ARTICLE.**

14 **(2) A CONSUMER WHO RECOVERS DAMAGES UNDER THIS**
15 **SECTION FOR A VIOLATION OF § 14-15A-03 OR § 14-15A-04 OF THIS SUBTITLE**
16 **MAY NOT RECOVER DAMAGES FOR THE SAME VIOLATION UNDER § 13-408 OF**
17 **THIS ARTICLE.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
19 construed to apply only prospectively to home appliances subject to this Act that are
20 sold on or after October 1, 2009.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2009.