

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 735

(Senator Rosapepe)

Finance

Consumer Protection - Lifetime Warranties on Consumer Goods

This bill makes a manufacturer of consumer goods liable for the fulfillment of the manufacturer's lifetime warranty on a consumer good sold by a merchant if (1) the merchant altered the warranty by including a statement that the merchant will honor the warranty if the manufacturer does not; (2) the merchant ceases to do business in the State; and (3) the manufacturer continues to do business in the State. Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's imposition of existing penalty provisions. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's imposition of existing penalty provisions.

Small Business Effect: Potential minimal.

Analysis

Current Law: An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade

practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: No statutory provisions specifically govern lifetime warranties. However, under Maryland's Uniform Commercial Code, there are four types of warranties: (1) the warranty of title and against infringement; (2) the implied warranty of merchantability; (3) the implied warranty of fitness for a particular purpose; and (4) express warranties by affirmation, promise, description, or sample.

Implied Warranty of Merchantability: In every sale by a merchant who deals in the types of goods sold, there is an implied warranty that the goods are merchantable – that they are fit for the ordinary purposes for which such goods are sold. If a merchant is in the business of selling a specific product, the merchant implicitly promises that the product will work properly, as ordinarily intended. If the product is defective, the implied warranty of merchantability requires the merchant to provide the buyer with a remedy.

Express Warranty: Any affirmation of fact or promise made by the seller to the buyer, including any sample or model, creates an express warranty if the statement, description of the goods, sample, or model is part of the basis of the bargain – *i.e.*, whether the buyer relied upon the statement or description when entering into the contract. The seller does not have to use formal words such as “warrant” or “guarantee” or even specifically intend to create an express warranty. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods conform to the seller's description.

In 1975, the U.S. Congress passed the Magnuson-Moss Warranty Act that requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage.

The Act only governs written warranties on consumer products sold at retail. Under the Act, a warrantor or seller must:

- designate or title the written warranty as “full” or “limited;”
- state specified information about the warranty coverage in a single, concise document; and
- ensure that the warranties are available where the warranted consumer products are sold.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division),
Department of Legislative Services

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mpc/kdm

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