

Report to the Senate Finance and House Economic Matters Committees on Home Appliance Warranties

**Workgroup on Home Appliance Warranties
Convened by the Consumer Protection Division of the
Office of the Attorney General of Maryland
Baltimore, Maryland**

December 31, 2013

**HOME APPLIANCE WARRANTY STUDY
CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL**

During the 2013 session, the General Assembly enacted Chapter 408, Consumer Protection – Appliances and Warranty Enforcement – Study. The legislation provides that:

(a)(1) The Consumer Protection Division of the Office of the Attorney General shall conduct a study of the consumer protections available to purchasers of home appliances who seek enforcement of manufacturers’ express warranties on home appliances.

(2) The study shall:

(i) analyze complaints received by the Consumer Protection Division related to home appliances;

(ii) evaluate whether existing requirements and remedies under State and federal law provide adequate protection to purchasers of home appliances who seek enforcement of manufacturers’ express warranties on home appliances; and

(iii) determine what, if any, changes to State law are needed to protect consumers who purchase home appliances that do not conform to the manufacturers’ express warranties.

(b) In conducting its study, the Consumer Protection Division shall consult with:

(1) consumers and representatives of consumer advocacy organizations;

(2) manufacturers and retailers of home appliances;

(3) the Association of Home Appliance Manufacturers; and

(4) any other person that the Consumer Protection Division considers appropriate.

(c) On or before December 31, 2013, the Consumer Protection Division shall report, in accordance with § 2-1246 of the State Government Article, its findings and recommendations, including draft legislation, if any, to the Senate Finance Committee and the House Economic Matters Committee.

In accordance with Chapter 408, the Consumer Protection Division (“Division”) convened a workgroup that included the following members:

Melanie Askey, Marketing Analyst, BGE Home
Rebecca Bowman, Administrator, Howard County Office of Consumer Affairs
Eric Friedman, Director, Montgomery County Office of Consumer Protection
Luke Harms, Manager, Government Relations, Whirlpool
Dean Landers, Owner, Landers Appliance Service
Michael Lemov, Member, Consumer Council of Maryland
Kevin Messner, Vice President, Policy and Government Relations, Association of Home Appliance Manufacturers

Steve Sakamoto-Wengel, Consumer Protection Division
The Honorable Jay Walker, District 26, Prince George's County
Marceline White, Executive Director, Maryland Consumer Rights Coalition
Jeffrie Zellmer, Legislative Director, Maryland Retailers Association

(1) Analysis of Complaints Received by the Consumer Protection Division

Since 2006, the Consumer Protection Division has received more than 300 complaints regarding home appliance repairs. Of those, 71 are relevant to this study. The remainder of the complaints concern either appliances that are no longer under warranty and the consumer has contacted an independent repair shop or appliances that would not have been covered by the legislation, such as furnaces and air conditioners. The three main allegations raised by the complaints are:

- Failure to competently perform the repair (10 complaints)
- Failure to schedule warranty repairs in a timely manner or failure to show up for a repair appointment (18 complaints)
- Either misrepresenting or misunderstanding the terms of a service contract or warranty (12 complaints)

An analysis of the complaints determined that 23 of the complaints (an average of 2.5 per year) may fall within the scope and purpose of House Bill 1215 as introduced.

(2) Existing Remedies

A. Implied Warranty of Merchantability

Commercial Law Article, Annotated Code of Maryland § 2-314 provides:

(1) Unless excluded or modified (§ 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section, the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. Notwithstanding any other provision of this title:

(a) In § 2-314 through 2-318 of this title, "seller" includes the manufacturer, distributor, dealer, wholesaler or other middleman or the retailer; and

(b) Any previous requirement of privity is abolished as between the buyer and the seller in any action brought by the buyer.

(2) Goods to be merchantable must be at least such as:

(a) Pass without objection in the trade under the contract description; and

(b) In the case of fungible goods, are of fair average quality within the description; and

(c) Are fit for the ordinary purposes for which such goods are used; and

(d) Run, with the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) Are adequately contained, packaged, and labeled as the agreement may require; and

(f) Conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (§ 2-316) other implied warranties may arise from course of dealing or usage of trade.

(4) Subsections (1) and (2) of this section apply to a lease of goods and a bailment for hire of goods that pass through the physical possession of and are maintained by the lessor, sublessor, or bailor.

Section 2-316.1 provides that implied warranties may not be excluded or modified in connection with the sale of consumer goods or services.

B. Magnuson Moss Act

The federal Magnuson Moss Act, 15 U.S.C. § 2301, et seq., sets certain minimum requirements for written warranties if a manufacturer chooses to offer one. The section most relevant to this study provides:

§ 2304. Federal minimum standards for warranties. In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty--

- (1) such warrantor must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty;
- (2) notwithstanding section 108(b) [15 USCS § 2308(b)], such warrantor may not impose any limitation on the duration of any implied warranty on the product;
- (3) such warrantor may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty; and
- (4) if the product (or component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such product or part (as the case may be). The Commission may by rule specify for purposes of this paragraph, what constitutes a reasonable number of attempts to remedy particular kinds of defects or malfunctions under different circumstances. If the warrantor replaces a component part of a consumer product, such replacement shall include installing the part in the product without charge. Although authorized to do so, the Commission has not promulgated a rule specifying what constitutes a reasonable number of repair attempts for purposes of this study.

The Act authorizes consumers to sue violators in State or federal court, either individually or as part of a class action. 15 U.S.C § 2310. If the consumer is successful, the consumer may recover costs and attorney's fees. *Id.* If the warrantor has established an alternative dispute resolution mechanism, a consumer must try to resolve the claim through the warrantor's program before filing a lawsuit. *Id.* The dispute resolution mechanism must be available free of charge to consumers. 16 C.F.R. 703.3. Decisions of the dispute resolution mechanism are not legally binding, but are admissible in evidence in a subsequent court proceeding. 16 C.F.R. 703.5. The Act may also be enforced by State Attorneys General. 15 U.S.C. § 2310.

C. Maryland Service Contracts and Consumer Products Guaranty Act

The Maryland Service Contracts and Consumer Products Guaranty Act sets forth certain minimum requirements for guarantees and service contracts. Commercial Law Article, Annotated Code of Maryland § 14-401, *et seq.* The law defines a guaranty as:

§ 14-401(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 the nature of the material or workmanship and affirms or promises that the material or workmanship is defect-free or meets a specified level of performance; or

(ii) A written undertaking to refund, repair, replace, or take other remedial action with respect to the consumer product if it proves defective in material or workmanship or fails to meet a specified level of performance.

(2) "Guaranty" includes warranty.

(3) "Guaranty" does not include:

(i) A written statement of expression of general policy concerning customer satisfaction which is not subject to specified limitations; or

(ii) A service contract.

The law defines a guarantor as "a person who is engaged in the business of making consumer products available to consumers and who makes a guaranty." § 14-401(c).

Section 14-404(a) provides that a guarantor "shall fulfill the guarantor's guaranty according to its terms (i) within a reasonable time; and (ii) for the stated period of the guaranty or, if no period is stated, for a reasonable period of time." Section 14-404(b) provides that "[a] guaranty is extended automatically when a guarantor fails to repair successfully a malfunctioning or defective product within the guaranty period." That section further provides that "[t]he guaranty does not terminate until the consumer product successfully performs its intended function for the remaining period of the guaranty plus a period equal to the time of repair."

Section 14-407 provides that "it is the policy of the State to encourage (1) a guarantor voluntarily to establish procedures whereby a guaranty dispute is fairly and expeditiously settled through informal dispute resolution procedures." The guarantor may "elect to settle guaranty disputes . . . in cooperation with any private agency or the Consumer Protection Division of the Office of the Attorney General. Violations of the statute may be enforced by the Attorney General, §14-406, or in a private action by a consumer. § 14-407. The guarantor is "liable to the person guaranteed for any wrongful breach of a guaranty . . . and is under a duty to (1) perform as required under this subtitle; and (2) compensate the person guaranteed for all reasonable incidental expenses incurred as a result of the breach." § 14-407(c). If the consumer files a lawsuit and prevails, the court shall award costs and expenses, including reasonable attorney's fees. § 14-407(d).

D. Montgomery County Chapter 38A and Chapter 11

Businesses and individuals in Montgomery County that repair or maintain electrical appliances are required to be registered with the Montgomery County Office of Consumer Protection. The Office may revoke or suspend a registration for, among other things, "willful failure to perform, without justification, any contract for repair, installation or maintenance; or willful deviation from or disregard of any written estimate in any material respect without consent of the consumer." The law gives consumers the right to request a written estimate for labor and parts. Final charges may not exceed the written estimate by more than 10% without the consent of the consumer.

Section 11-4 of the Montgomery County Code defines deceptive trade practices to include falsely stating that replacement or repairs are needed; failure of a merchant to comply with a warranty; failure to provide a written estimate of repairs, alterations, modifications or services when requested by a consumer; performing repairs, alterations, modifications or services that exceed the written estimate by 25% without prior consent from the consumer; imposing or demanding a labor or service charge without notifying the consumer of the charge before dismantling, disassembling, or otherwise altering a consumer good; replacing any part in an electrical or mechanical appliance when the part was not defective unless requested by the consumer; or falsely stating that a repair or service was performed.

E. Howard County Code Title 17, Subtitle 4

Section 17.403 of the Howard County Code defines deceptive or unfair trade practices to include falsely stating that services, replacements or repairs are needed; failure to provide a written estimate of repairs, alterations, modifications or servicing when requested by a consumer; making repairs, alterations, modifications or services that exceed the price quoted in a written estimate by 10% without prior written or verbal approval of a consumer; failing to reassemble or restore an ...appliance...to its tendered condition, unless a service or labor charge is paid without notification of the service or labor charge prior to receiving the tendered item; replacing parts or components in an ...appliance... when such parts or components are not defective, unless this replacement is specifically requested by the consumer; or falsely stating that repairs, alterations, modifications or servicing have been made when they have not been.

(3) Possible Changes to State Law

A. Defining Reasonable Number of Attempts to Repair

House Bill 1215 as introduced provided that, if a manufacturer or its agent is unable to conform a home appliance to the manufacturer's express warranties after a reasonable number of attempts and the nonconformity substantially impairs the use and value of the home appliance to the consumer, then the manufacturer shall either replace the home appliance with a comparable appliance or accept the return of the home appliance and provide a refund to the consumer. The bill defined "reasonable number of attempts" as three or more attempts to repair the same nonconformity that were unsuccessful or the home appliance being out of service for one or more nonconformities for a period of 30 or more days.

During a discussion of the issue, Delegate Walker and some consumer advocates argued that defining what constitutes a reasonable number of repair attempts would create a bright line so that consumers and warrantors would know with certainty whether efforts to make repairs are unsuccessful. Delegate Walker noted that, in his situation, his refrigerator required three calls to a technician within six months. He also noted that, despite the Service Contracts and Consumer Products Guaranty Act, he was told that he was not entitled to compensation for spoiled food. Industry representatives, however, argued that what is reasonable will vary depending on the appliance and the problem

The industry members contended that adopting a set number of repair attempts would (1) reduce the flexibility and judgment of the county and state consumer protection experts to make a fair determination of wrong doing by either the consumer or the manufacturer, (2) create disincentives for "goodwill repairs" for the consumer, and (3) creating a set number of attempts is not done in federal or any other state law for appliances because these repairs occur in a person's most private area – their home – and this would incentivize repairmen to stay as long as possible in the home while possibly waiting for parts delivery (because it is uneconomical for repairman to carry all models of all parts in a van) or trying to "band-aid" the product to prevent returning for another "attempt." The industry representatives also noted that often subsequent repairs are not for the same problem and some "attempts" are purely diagnostic to determine the problem and what parts need to be ordered. These in-home repairs are much different than a vehicle repair situation because the vehicle can be left at the repair shop and the consumer can even possibly obtain a loaner car.

The appliance manufacturers contended that this would create a perverse incentive for manufacturers to shorten the warranty period if a set number of repair attempts was set forth in the law (some parts could have lifetime warranties that would see increased risk) They also noted that often subsequent repairs are not for the same problem. The appliance manufacturers contended that

manufacturers may not complete additional repairs discovered during a visit if a set number of repair attempts was set forth in the law. However, the workgroup was unable to reach consensus as to whether a bright line test should be set for what constitutes a reasonable number of repair attempts.

B. Disclosure to Consumers

In some instances consumers were misled either by the individual performing repairs or the company that provided the warranty about their rights under the law. Both consumer advocates and representatives of the home appliance industry thought it would be good if the individuals performing repairs were required to provide consumers with a separate disclosure form either advising consumers of their warranty rights or, at the very least, providing consumers with information about how to contact the Consumer Protection Division to find out about their rights under the law.

The workgroup then consulted with representatives of the repair industry regarding the proposal. Dean Landers from Landers Appliance expressed concern that providing the disclosure to consumers would result in consumers questioning the repairs and refusing to pay the company that performed the repairs. He also stated that, if Third Party Warranty Administrators better trained the service providers as to what service contracts cover, there would be fewer issues with consumers.

BGE HOME stated that requiring a service company that has no affiliation with appliance manufacturer warranties is neither timely nor impactful with respect to educating customers about their in-warranty rights. BGE HOME feels the handout could cause confusion among consumers, as well as cause delays in complaint and billing resolution. BGE HOME feels that this type of information is more timely conveyed upon the purchase of an appliance or the purchase of a residence where home appliance warranties are sold.

CONCLUSION

Members of the workgroup were not able to reach consensus as to whether a bright line test for what constitutes a reasonable number of repair attempts should be adopted. A majority believes that informing consumers of their rights when they are having repairs made to home appliances will result in fewer issues between warrantors and their customers since consumers will be better informed about their rights and remedies.