

Service Contracts and Consumer Products Guaranty

This Act:

- Requires service contracts to be in writing and to include certain information and terms;
- Authorizes the cancellation of a service contract by a certain person under certain circumstances;
- Provides that certain service contracts are void under certain circumstances;
- Requires a provider of a service contract to pay or credit the account of a certain person who has canceled a service contract a certain amount under certain circumstances;
- Requires a provider of a service contract to fulfill obligations under the service contract at a certain time and for a certain duration;
- Provides that a service contract is extended automatically under certain circumstances;
- Requires a provider to provide a certain explanation of reasons for delay in fulfilling the terms of the service contract under certain circumstances;
- Provides that certain duties of a provider may not be imposed on the provider under certain circumstances;
- Authorizes the state Attorney General to obtain a certain court order prohibiting the provider from further violation of this Act under certain circumstances;
- Establishes that it is the policy of the state to encourage providers to establish certain informal dispute settlement procedures;
- Establishes that the provider is liable to the person guaranteed for wrongful breach of a service contract;
- Authorizes the person guaranteed to file a certain court action if the provider breaches any duties under this Act;
- Authorizes certain costs and expenses under certain circumstances;
- Authorizes a provider to make a guaranty in addition to entering into a service contract, and
- Authorizes a provider to designate a representative.

Submitted as:

Maryland

Chapter 472 of 2002

Status: enacted into law in 2002.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act may be cited as “The Service Contracts and Consumer Products
2 Guaranty Act.”

3
4 Section 2. [*Definitions*.] As used in this Act:

5 (a) “Consumer product” means goods or services used for personal, family, or household purposes,
6 the actual cash sales price of which to the person guaranteed was in excess of [ten (10)] dollars.

7 (b) “Guarantor” means a person who is engaged in the business of making consumer products
8 available to consumers and who makes a guaranty.

9 (c) (1) “Guaranty” means any of the following which is made at the time of the sale of a
10 consumer product by a guarantor to a person guaranteed and which is part of the basis of the bargain between
11 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 or expression of general policy concerning customer satisfaction which is not subject to specified limitations; or

(ii) A service contract.

(d) “Mechanical breakdown insurance” means a policy, contract, or agreement issued by an authorized insurer that provides for the repair, replacement, or maintenance of property or indemnification for repair, replacement, or services, for the operational or structural failure of a product due to a defect in the materials or workmanship or due to normal wear and tear.

(e) “Person” includes an individual, corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(f) “Person guaranteed” means:

(1) The person who is the first buyer at retail of a consumer product which is the subject of a guaranty;

(2) A person who is entitled to enforce the obligations of a guaranty against the guarantor; or

(3) The person who is entitled to enforce the obligations of the provider under a service contract.

(g) “Provider” means a person or persons acting in concert who are contractually obligated under the terms of a service contract to provide services to the owner of a product covered by the service contract.

(h) “Reasonable and necessary maintenance” means those operations which the person guaranteed reasonably can be expected to perform or have performed and which are necessary to keep the product performing its intended function.

(i) “Replace” means:

(1) To replace a product or its component with a new and identical or equivalent product or component; or

(2) To refund the price of the product or its component less reasonable depreciation if:

(i) Neither replacement nor repair is commercially practicable; or

(ii) The person guaranteed is willing to accept the refund in place of the replacement or repair.

(j) (1) “Service contract” means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of a product, or to indemnify for the repair, replacement, or maintenance, because of an operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances.

(2) “Service contract” includes a contract or agreement for repair, replacement, or maintenance of a product for damage resulting from power surges and accidental damage from handling.

(3) “Service contract” does not include:

(i) A guaranty;

(ii) A maintenance agreement that does not include a provision for the repair, replacement, or maintenance of a product because of an operational or structural failure due to a defect in materials, workmanship, or normal wear and tear;

(iii) A warranty, service contract, or maintenance agreement offered by a public utility on its transmission devices to the extent it is regulated by the [public service commission];

(iv) A mechanical repair contract under [insert citation]; or

(v) Mechanical breakdown insurance.

(k) (1) "Services" means work, labor, or any other kind of activity furnished or agreed to be furnished to a person guaranteed.

(2) "Services" includes services for home improvement, repair of a motor vehicle and other [consumer] products, and the repair or installation of plumbing, heating, electrical, or mechanical devices.

(3) "Services" does not include the professional services of an accountant, architect, clergyman, engineer, lawyer, or medical or dental practitioner.

(l) (1) "Without charge" means that the guarantor cannot charge the person guaranteed for any costs which the guarantor or the guarantor's representative incurs in connection with the required repair or replacement of a consumer product.

(2) "Without charge" does not mean that the guarantor must compensate the person guaranteed for incidental expenses unless the expenses were incurred because the repair or replacement was not made within a reasonable time.

(m) "Wrongful breach of a guaranty" means the failure of a guarantor to perform the duties imposed by Section 5 (a), [and] (b), and (c) of this Act.

(n) "Wrongful breach of a service contract" means the failure of a provider to perform the duties imposed by Section 5 (a), (b), and (c) of this Act.

Section 3. [*Application of this Act.*] This Act shall be liberally construed and applied to promote its purposes and policies.

Section 4. [*Requirements of Guarantors.*]

(a) A guarantor shall deliver to the first person guaranteed the following written information:

(1) The duration of the guaranty period measured by time or, if practical, by some measure of usage such as mileage;

(2) Any reasonable and necessary maintenance required as a condition for the performance of the guaranty;

(3) A recital of the guarantor's obligations to the person guaranteed during the guaranty period;

(4) The procedure which the person guaranteed should follow to obtain the repair or replacement of the malfunctioning or defective consumer product; and

(5) Any means established by the guarantor for quick informal settlement of any guaranty dispute.

(b) Each service contract shall be in writing and shall specify:

(1) The duration of the service contract measured by time or, if practical, by some measure of usage;

(2) Any reasonable and necessary maintenance required to be performed by the person guaranteed as a condition for the performance of the service contract;

(3) The purchase price and terms of the service contract, including a recital of the provider's obligations under the service contract;

(4) The merchandise and services to be provided;

(5) The procedures which the person guaranteed should follow to obtain the services under the service contract or to file a claim under the service contract;

(6) Limitations, exceptions, or inclusions, if any, under the service contract;

(7) The terms, restrictions, or conditions governing the cancellation of the service contract before the termination or expiration date of the service contract either by the provider or person guaranteed; and

(8) Any means established by the provider for quick informal settlement of a service contract dispute.

(c) Within a reasonable time after the person guaranteed and the provider enter into a service contract, the provider shall deliver a copy of the service contract to the person guaranteed.

(d) A service contract may be canceled by the person guaranteed:

(1) Within [twenty (20)] days after receipt of the service contract if mailed to the person guaranteed;
 (2) Within [twenty (20)] days after the date of delivery of the service contract if delivered to the person guaranteed at the time of sale; or
 (3) For a period of time not less than [twenty (20)] days as specified in the service contract.

(e) If a service contract is canceled under subsection (d) of this section and a claim has not been made under the service contract prior to its cancellation, the service contract is void and the provider shall refund to the person guaranteed the full consideration paid for the service contract.

(f) The right to void a service contract under subsection (e) of this section:

- (1) Is not transferable;
- (2) Applies only to the original person guaranteed under the service contract; and
- (3) Applies only if a claim has not been made under the service contract prior to cancellation of the service contract.

(g) (1) A provider shall pay or credit the account of a person guaranteed who has canceled a service contract under subsection (d) of this section the full consideration paid for the service contract within [forty-five (45)] days after the cancellation.

(2) A provider that does not pay or credit the account of the person guaranteed in accordance with paragraph (1) of this subsection shall pay to the person guaranteed an amount equal to [ten (10)] percent of the value of the consideration paid for the service contract for each month that the refund is not paid or credited.

Section 5. [*Guarantor's Guarantee.*]

(a) (1) 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.

(2) A provider shall fulfill the obligations under the service contract according to its terms:

- (i) At or within the period stated in the service contract, or if no period is stated, within a reasonable time; and
- (ii) For the stated duration of the service contract.

(b) (1) (i) A guaranty is extended automatically when a guarantor fails to repair successfully a malfunctioning or defective product within the guaranty period.

(ii) The 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.

(2) (i) A service contract is extended automatically when the provider fails to perform the services under the service contract.

(ii) The service contract does not terminate until the services are provided in accordance with the terms of the service contract.

(c) If a guaranty fails to disclose the information required by Section 4 of this Act, the guarantor shall, without charge and within a reasonable period of time:

- (1) Repair a malfunctioning or defective consumer product; or
- (2) If repair is not commercially practicable or cannot be timely made, replace the malfunctioning or defective consumer product.

(d) (1) If a guarantor is unable to fulfill the terms of the guaranty within [ten (10)] days of the tender or delivery of a consumer product to the guarantor, the guarantor shall provide on request of the person guaranteed a brief written explanation of the reasons for the delay.

(2) If a provider is unable to fulfill the terms of the service contract within [ten (10)] days after the date on which the provider is required to perform obligations under the service contract, the provider shall provide on request of the person guaranteed a brief written explanation of the reasons for the delay.

Section 6. [*Guarantor Duties: Exemptions.*]

(a) The duties prescribed in Section 5 of this Act may not be imposed on a guarantor if the guarantor shows that while the consumer product was in the possession of any person other than the guarantor, damage or unreasonable use, including failure to provide any reasonable and necessary maintenance disclosed under Section 4 of this Act, caused the product to malfunction.

(b) The duties prescribed in Section 5 of this Act may not be imposed on a provider if the provider shows that while the product was in the possession of any person other than the provider, damage or unreasonable use, including failure to provide any reasonable and necessary maintenance disclosed under Section 4 of this Act, caused the product to malfunction or caused the inability of the provider to provide any service under the service contract.

Section 7. *[Violations.]*

(a) If a guarantor or provider violates any provision of this Act, the [Attorney General] may obtain a court order prohibiting the guarantor or provider from further violations.

(b) At least [seven (7)] days before the filing of an action for the order, the [Attorney General] shall give appropriate notice to the guarantor or provider stating generally the relief sought.

(c) The court may issue an order or render a judgment necessary to:

- (1) Prevent violations of this Act; and
- (2) Restore to the person damaged any money or property acquired by means of any practice in violation of any provision of this Act.

Section 8. *[State Policy.]*

(a) 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 settlement procedures; and

(2) A provider voluntarily to establish procedures whereby a service contract dispute is fairly and expeditiously settled through informal dispute settlement procedures.

(b) A guarantor or provider who establishes informal dispute settlement procedures may elect to settle guaranty disputes or service contract disputes, as the case may be, in cooperation with any private agency or the [Consumer Protection Division of the Attorney General's] office.

(c) The guarantor or provider is liable to the person guaranteed for any wrongful breach of a guaranty or wrongful breach of a service contract, as the case may be, and is under a duty to:

- (1) Perform as required under this Act; and
- (2) Compensate the person guaranteed for all reasonable incidental expenses incurred as a result of the breach.

(d) If the guarantor or provider breaches any duties under this Act, the person guaranteed may file an action in any court of competent jurisdiction.

(1) Except as provided in paragraph (3) of this subsection, if the person guaranteed prevails in an action filed under this subsection, the court shall include in the amount of the judgment a sum equal to the aggregate amount of costs and expenses which have been reasonably incurred by the person guaranteed for or in connection with the action filed.

(2) These costs and expenses shall include attorney's fees based on actual time expended, unless the court finds that an award of attorney's fees would be inappropriate.

(3) The person guaranteed is not entitled to costs and expenses, if:

- (i) The guarantor or provider affords the person guaranteed a reasonable opportunity to settle informally in accordance with subsection (a) of this section; and
- (ii) The person guaranteed fails to so settle.

Section 9. *[Service Contracts.]*

(a) (1) In addition to making a guaranty, the guarantor may enter into a service contract at the time of the sale or at any other time with the person guaranteed.

215 (2) In addition to entering into a service contract, the provider may make a guaranty at the
216 time of the sale or at any other time to the person guaranteed.

217 (b) (1) The guarantor or provider may designate a representative to perform the duties under this
218 Act.

219 (2) However, this designation does not relieve the guarantor or provider of the duties to the
220 person guaranteed.

221
222 Section 10. *[Remedies.]*

223 (a) Except for [insert citation], this Act provides the exclusive remedy by which a person guaranteed
224 may recover damages for a breach of a service contract or may enforce a service contract.

225 (b) (1) Providers, administrators, and other persons marketing, selling, or offering to enter into
226 service contracts that comply with the terms of this subtitle need not comply with any provision of the [insert
227 citation].

228 (2) Guarantors, administrators, and other persons marketing, selling, or offering to issue
229 guarantees that comply with the terms of this subtitle need not comply with any provision of the [insert
230 citation].

231 (c) (1) In this subsection, “licensee” means a person who:

232 (i) Is licensed as a master plumber and meets the qualifications to engage in the
233 business of providing plumbing services under [insert citation];

234 (ii) Provides heating, ventilation, air-conditioning, or refrigeration services in
235 accordance with a master license or a master restricted license issued under [insert citation], or

236 (iii) Is a licensed contractor under [insert citation].

237 (2) A licensee is not subject to:

238 (i) This Act if the services provided or to be provided under the service contract are
239 within the scope of the licensee’s license; or

240 (ii) Any provision of [insert citation] applicable to service contracts.

241
242 Section 11. *[Severability.]* [Insert severability clause.]

243
244 Section 12. *[Repealer.]* [Insert repealer clause.]

245
246 Section 13. *[Effective Date.]* [Insert effective date.]