

C O R P O R A T E

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A L E R T

## FUNDAMENTAL CHANGE TO WARRANTY LAW: CONSUMER WARRANTIES CAN BE POSTED ONLINE

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Recent changes to the federal statute governing warranties on consumer products will make it easier and more cost-effective for consumer product manufacturers and suppliers to satisfy the federally-mandated warranty notification requirements. On September 24, 2015, President Obama signed into law the E-Warranty Act of 2015. The E-Warranty Act amends the Magnuson-Moss Warranty Act of 1975, (the MMWA) modernizing the warranty notification requirements. It allows manufacturers and suppliers of retail products to publish the terms and conditions of consumer product warranties online rather than including the terms and conditions with the products themselves. The Federal Trade Commission (FTC) must issue rules no later than September 24, 2016 to reflect the terms of the E-Warranty Act.

Although the E-Warranty Act augments the available methods of delivery for consumer product warranties, the substantive requirements of such warranties will remain the same. Thus, manufacturers and suppliers offering written warranties with their retail products will still be required to designate whether such warranties are “full” or “limited” and include those items of information already mandated by the FTC rules. The MMWA will also continue to prohibit manufacturers and suppliers from disclaiming implied warranties and using so-called “tie-in” provisions that require consumers to use

additional branded products in conjunction with a covered product to preserve the availability of a warranty.

The E-Warranty Act is intended to address Congress’s findings that (i) both manufacturers and consumers often prefer the option of providing and receiving warranty information electronically or online, (ii) modernization of the warranty notification rules will allow the United States to better compete internationally, and (iii) the use of online warranties will allow for greater consumer access to information in an “environmentally friendly way” while providing manufacturers with more flexibility in satisfying the warranty notification rules. See 15 U.S.C. §2302(b).

The warranty notification requirements of the MMWA are aimed at both protecting consumers from deceptive warranty practices and fostering retail competition. Consumer product manufacturers and suppliers are not obligated to offer written warranties with retail products. However, if they choose to do so, the MMWA requires that the terms and conditions of those warranties be provided “fully and conspicuously” and “in simple and readily understood language.” 15 U.S.C. § 2302(a). The FTC has the authority to enact rules related to the enforcement of the MMWA, including the manner and form in which information must be presented. The FTC rules require that written warranties contain certain

items of information including, among other things, the products or parts covered, the period of coverage, how defective products will be replaced or repaired, and the means by which the consumer can contact the manufacturer or supplier for warranty service. See 16 C.F.R. § 701.3. Prior to passage of the E-Warranty Act, a manufacturer or seller of retail products costing more than \$15 was obligated to disclose warranty terms and conditions conspicuously on a single document either on the products or within the product packaging. Under the E-Warranty Act, manufacturers will be permitted to provide this information online.

Much as with written warranties, manufacturers and suppliers who opt to publish warranty terms and conditions online must do so in a “clear and conspicuous manner.” 15 U.S.C. § 2302(b). The E-Warranty Act requires the product, product packaging, or product manual to include a web address where the terms and conditions can be found. To protect less tech-savvy consumers, the E-Warranty Act also requires that a phone number, mailing address, or other reasonable non-Internet means by which consumers can access the warranty terms and conditions be provided. Additionally, in most cases, where the product is sold in a retail location, by catalog, or through door-to-door sales, retailers will still be required to make the terms and conditions available to consumers prior to sale. Retailers have the option of doing so by electronic means, presumably by providing consumers with access to the terms and conditions on an in-store computer or other electronic device.

The E-Warranty Act is good for consumers and manufacturers and suppliers. It makes warranty information easily accessible to the consumer and provides more flexibility and a competitive advantage to manufacturers and suppliers. ♦

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