

E-WARRANTY ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1359



JULY 7, 2015.—Ordered to be printed

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 1359]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1359) to allow manufacturers to meet warranty and labeling requirements for consumer products by displaying the terms of warranties on Internet websites, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 1359, the E-Warranty Act of 2015, is to modernize the warranty notice rules by allowing manufacturers to meet their warranty and applicable labeling requirements by making warranty information available online.

BACKGROUND AND NEEDS

The Federal Trade Commission (FTC) currently enforces rules governing the content and availability of product warranties. While there are no requirements that manufacturers provide warranties for their products, if manufacturers choose to provide warranties, the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (15 U.S.C. 2301 et seq.) (Magnuson-Moss Warranty Act) and the FTC warranty rules require sellers and warrantors to disclose specific terms and to make the terms available to consumers prior to sale (see parts 701 and 702 of title 16, Code of Federal Regulations).

The FTC adopted its Disclosure of Written Consumer Product Warranty Terms and Conditions Rule (16 C.F.R. Part 701) (Disclosure Rule) and Pre-Sale Availability Rule (16 C.F.R. Part 702) in

1975. Since the 1970s, significant changes in technology and information dissemination have occurred. However, the FTC has not updated these provisions to reflect modern methods of communication.

The Disclosure Rule contains specific requirements for written warranties for consumer products costing more than \$15, including that the warranty clearly and conspicuously disclose in a single document in simple and readily understood language, certain information such as the identity of the party to whom the written warranty is extended, and a clear description and identification of the products covered by the warranty.

The Pre-Sale Availability Rule states that for consumer products with written warranties and costing more than \$15, sellers are required to make the text of the warranties readily available for inspection by prospective buyers. This can happen by displaying them in close proximity to the products or furnishing them upon request prior to sale. If sellers choose the latter, they must also place signs reasonably calculated to elicit the prospective buyers attention in the store or department, advising them of the availability of the warranties upon request. The rule further specifies that, for these consumer products, manufacturers must provide sellers with written warranty materials necessary for sellers to comply with the rule's requirements.

Manufacturers may meet the Pre-Sale Availability Rule requirements by providing the materials to the retailers in a number of ways: providing copies of the warranties to be placed in a binder; providing warranty stickers, tags, signs, or posters; or printing warranties on the product's packaging.

Under the current rules, manufacturers may not satisfy the warranty requirements by making applicable warranty information available only online. The FTC has interpreted the Pre-Sale Availability Rule to allow for manufacturers to provide electronic versions of consumer product warranties at the point of sale, written warranties that are included on CDs, DVDs, or on the internal drives of warranted products would qualify as being "provided with" or as "accompanying" the products, in compliance with the Pre-Sale Availability Rule. A plain reading of the rule contains no mention of electronic warranties satisfying its requirements.

S. 1359, the E-Warranty Act of 2015, would modernize the warranty notice rules by allowing manufacturers to meet applicable warranty requirements by posting warranty information on their websites. It also would ensure that consumers and prospective consumers remain able to obtain copies of warranties at the point of sale. This accommodation would preserve the ability of consumers who do not have access to the Internet to receive warranty information.

SUMMARY OF PROVISIONS

The E-Warranty Act of 2015 would allow manufacturers and sellers to satisfy applicable warranty obligations by posting warranties online, while retaining consumers' rights to obtain paper copies at the point of sale or by other means. The FTC would have one year to revise its rules to be in compliance with the provisions of the bill.

LEGISLATIVE HISTORY

On May 14, 2015, Senator Fischer introduced S. 1359, the E-Warranty Act of 2015. The bill is cosponsored by Senator Nelson. On May 20, 2015, in an open Executive Session, the Committee considered the bill. The Committee, by voice vote, ordered S. 1359 to be reported favorably without amendment.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 1359—E-Warranty Act of 2015

Under current law, manufacturers of consumer products must provide written warranty information to consumers at the place where those goods are purchased. S. 1359 would allow those manufacturers to make such warranty information available on the Internet and remain in compliance with the law. The bill would require the Federal Trade Commission (FTC) to revise rules to reflect the new notification standards.

Based on information from the FTC, CBO estimates that implementing the rulemaking requirement in S. 1359 would not have a significant effect on discretionary costs. Enacting S. 1359 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1359 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 1359, as reported, would not impose any new regulatory requirements on businesses.

ECONOMIC IMPACT

Enactment of this legislation is not expected to have an adverse impact on the Nation's economy.

PRIVACY

S. 1359 would not have an adverse impact on the personal privacy of individuals.

PAPERWORK

S. 1359 would not measurably increase paperwork requirements for most businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section would establish the bill's short title as the "E-Warranty Act of 2015."

Section 2. Findings

This section would include findings that: (1) businesses and consumers prefer to have the option of receiving warranty information online; (2) modernizing warranty notification rules enhances the United States' global competitiveness; and (3) electronic warranties expand consumer access to information in an environmentally-friendly way.

Section 3. Electronic display of terms of written warranty for consumer products

This section would amend section 102(b) of the Magnuson-Moss Warranty Act, (15 U.S.C. 2302(b)), so that a manufacturer would have the option of meeting the warranty notification requirements by posting its warranty information in an accessible digital format on the manufacturer's website and by making that warranty information available at the point of sale upon request. Manufacturers choosing to make their warranties available online would be required to provide consumers and prospective consumers with information on how to obtain and review their warranties. They could do so by indicating on the products themselves, their packaging, or in the product manuals, the Internet websites where the warranties can be viewed, and the phone numbers, mailing addresses or another reasonable non-Internet means that consumers may use to contact manufacturers to obtain copies of the warranties. The E-Warranty Act would not change the rules regarding the content of the warranty information.

This section also would require the FTC to revise its rules to comply with the requirements of the Act within 1 year of the date of enactment. Additionally, it would give the FTC the option of waiving the requirement of section 109(a) of the Magnuson-Moss Warranty Act, (15 U.S.C. 2309(a)), which requires the agency to give interested persons the opportunity for oral presentation, if it determines that giving interested persons that opportunity would interfere with the FTC's ability to revise the rules in a timely manner. Interested persons would still be permitted to submit written comments.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

MAGNUSON-MOSS WARRANTY—FEDERAL TRADE
COMMISSION IMPROVEMENT ACT

[15 U.S.C. 2301 et seq.]

SEC. 102. RULES GOVERNING CONTENTS OF WARRANTIES.

[15 U.S.C. 2302]

* * * * *

(b) AVAILABILITY OF TERMS TO CONSUMER; MANNER AND FORM FOR PRESENTATION AND DISPLAY OF INFORMATION; DURATION; EXTENSION OF PERIOD FOR WRITTEN WARRANTY OR SERVICE CONTRACT.—

(1)(A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this title (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of the product to conform with the written warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

(4)(A) *Except as provided in subparagraph (B), the rules prescribed under this subsection shall allow for the satisfaction of all requirements concerning the availability of terms of a written warranty on a consumer product under this subsection by—*

(i) making available such terms in an accessible digital format on the Internet website of the manufacturer of the consumer product in a clear and conspicuous manner; and

(ii) providing to the consumer (or prospective consumer) information with respect to how to obtain and review such

terms by indicating on the product or product packaging or in the product manual—

(I) the Internet website of the manufacturer where such terms can be obtained and reviewed; and

(II) the phone number of the manufacturer, the postal mailing address of the manufacturer, or another reasonable non-Internet based means of contacting the manufacturer to obtain and review such terms.

(B) With respect to any requirement that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to sale of the product, in a case in which a consumer product is offered for sale in a retail location, by catalog, or through door-to-door sales, subparagraph (A) shall only apply if the seller makes available at the location of the sale to the consumer purchasing the consumer product the terms of the warranty on the consumer product before the purchase.

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