

2011 -- H 5472

LC01426

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO UNIFORM COMMERCIAL CODE -- SALES

Introduced By: Representative Joseph M. McNamara

Date Introduced: March 02, 2011

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 6A-2-329 of the General Laws in Chapter 6A-2 entitled "Sales" is  
2 hereby amended to read as follows:

3 **6A-2-329. Servicing of warranties.** -- (1) Definition of terms. - (a) "Consumer sale"  
4 means a sale of new goods, or as regards an express warranty, any goods, purchased primarily for  
5 personal, family, or household purposes, and not for agricultural or business purposes.

6 (b) "New goods" means those goods which are purchased for the first time other than for  
7 purposes of resale.

8 (2) Implied warranties. - (a) Unless disclaimed in the manner prescribed in subsection  
9 (2)(b) of this section, every consumer sale in this state shall be accompanied by an implied  
10 warranty that the goods are merchantable, and, in a consumer sale where the seller has reason to  
11 know that the goods are required for a particular purpose and the buyer is relying on the seller's  
12 skill or judgment to select or furnish suitable goods, an implied warranty of fitness.

13 (b) Disclaimer. - No consumer sale on an "as is" or "with all faults" basis shall be  
14 effective to disclaim the implied warranty of merchantability, or, where applicable, the implied  
15 warranty of fitness, unless a conspicuous writing clearly informs the buyer, prior to the sale, in  
16 simple and concise language each of the following:

17 (i) The goods are being sold on an "as is" or "with all faults" basis; and

18 (ii) The entire risk as to the quality and performance of the goods is with the buyer.

19 (c) In the event of a consumer sale by means of a mail order catalog, the catalog may

1 contain the required writing in lieu of the notification in writing.

2 (3) Express warranties. - (a) Disclaimers. No express warranty arising out of a consumer  
3 sale of new goods shall disclaim implied warranties of merchantability, or, where applicable, of  
4 fitness.

5 (b) Honoring of express warranties. - The maker of an express warranty arising out of a  
6 consumer sale in this state shall designate a representative in the United States to provide services  
7 or repairs under the warranty. In a consumer sale, the manufacturer shall honor an express  
8 warranty made by the manufacturer; the distributor shall honor an express warranty made by the  
9 distributor; and the retail seller shall honor an express warranty made by the retail seller.

10 (c) Liability of manufacturer. - Every manufacturer, whether domestic or foreign, who  
11 makes an express warranty pursuant to a consumer sale shall designate a representative within the  
12 state to provide services or repairs under the terms of the express warranty. Further, the  
13 manufacturer must make parts available to the representative within thirty (30) days of receipt of  
14 the order by the manufacturer. Provided, however, delay caused by conditions beyond the control  
15 of the manufacturer such as, by way of example but not limited to, labor disputes, act of God, or  
16 transit strike shall serve to extend this thirty (30) day requirement. Where such delays arise,  
17 conforming goods shall be tendered to the representative as soon as possible following  
18 termination of the condition giving rise to the delay.

19 (d) Liability of manufacturers and/or distributors. - Every manufacturer and/or  
20 distributor who makes an express warranty pursuant to a consumer sale, and who designates a  
21 representative within this state to provide sale and service under the terms of the express  
22 warranty, shall be liable to the representative in the amount equal to that which is charged by the  
23 representative for like service and repairs rendered to retail consumers who are not entitled to  
24 warranty protection. This equality of charges shall apply both to labor and parts used.

25 (e) Service information and parts availability. - Any manufacturer whether domestic or  
26 foreign selling in this state must have adequate service information and replacement parts  
27 available to service facilities to effect repair, and restore to operating condition. Manufacturers  
28 will have such service information and parts available from distributors.

29 (f) Liability of the designated representative to the consumer and manufacturer. - Every  
30 designated representative who performs service or makes repairs to a product under the terms of  
31 the express warranty, shall provide services or make repairs in a manner fully consistent with that  
32 service or repair which would be made if the consumer were not entitled to warranty protection.  
33 The representative or service repairperson who performs the service shall do so within thirty (30)  
34 days of receipt of the item to be repaired, if in fact, the representative or service repairperson has

1 the part in stock. In the event the representative or service repairperson does not have the part  
2 available then he or she must so notify the consumer of this fact and must order the part within  
3 two (2) days of receipt of the item to be repaired, and upon receipt of the part from the  
4 manufacturer must complete the repairs within ten (10) days thereafter, unless the buyer agrees to  
5 the contrary. Delays caused by conditions beyond the control of the representative or service  
6 repairman such as by way of example, but not limited to, labor disputes, acts of God, or transit  
7 strikes shall serve to extend the aforementioned time limits. Where such delays arise the repairs  
8 shall be performed as soon as possible following termination of the conditions giving rise to the  
9 delay.

10 (4) Facilities. - (a) Wherever competent repair or service facilities are available within  
11 the state of Rhode Island, the maker of an express warranty shall provide for means of the  
12 warranty repair or service performed within the state of Rhode Island.

13 (b) This shall not be construed to exclude use of facilities outside the state of Rhode  
14 Island where acceptable to all parties.

15 (5) Service information and parts availability. - Any manufacturer selling in this state  
16 must have adequate service information and replacement parts available to warranty stations and  
17 independent service facilities, to effect repair and restore to operating condition. The service  
18 information and parts availability shall continue for a period of not less than four (4) years from  
19 the date of last sale of any given model or type. The service information and parts shall be  
20 available within the state of Rhode Island.

21 (6) Penalties. - Any person, firm, or corporation failing to comply with any provision of  
22 this section shall be liable for a fine of twenty-five dollars (\$25.00) a day for every day of  
23 noncompliance and/or be liable to the consumer for replacement of the item to be repaired.  
24 Prosecution under the provisions of this section shall be brought by the attorney general's  
25 department in the appropriate division of the district court of the state of Rhode Island.

26 (7) Severability of provisions. - If any provision of this section, or application thereof to  
27 any person or circumstances, is held unconstitutional or otherwise invalid, the remaining  
28 provisions of this section and the application of the provisions to other persons or circumstances,  
29 other than those to which it is held invalid, shall not be affected thereby.

30 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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RELATING TO UNIFORM COMMERCIAL CODE -- SALES

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1           This act would provide that distributors who make an express warranty pursuant to a  
2 consumer sale, and who designate a representative to provide sales and services under the express  
3 warranty, would be liable to the representative in an amount equal to that which is charged by the  
4 representative for service and repairs rendered to consumers who aren't entitled to warranty  
5 protection.

6           This act would take effect upon passage.

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