SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Provides that sales or leases of consumer products in this state occur subject to implied warranty of merchantability and, as appropriate, to implied warranty of fitness unless supplier sells or leases consumer product as is with required disclosures. Provides that buyer may not waive implied warranty.

Permits manufacturer to provide express warranty. Specifies conditions to which express warranty is subject, disclosures required and remedies for buyer.

A BILL FOR AN ACT

Relating to warranties for consumer products sold or leased in this state.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 4 of this 2023 Act:

(1) “As is” means a disclaimer of all implied warranties of merchantability or implied warranties of fitness that would otherwise apply to a sale or lease of consumer products.

(2) “Buyer” means a resident individual who purchases or leases consumer products from a supplier.

(3) “Conspicuous notice” means:

(a) A written statement in a larger typeface than surrounding text or in a contrasting typeface, font or color, set off from other text in a manner that clearly calls attention to the statement; or

(b) An audio statement with a volume and cadence that is readily audible and understandable and that is distinguishable from surrounding audio.

(4)(a) “Consumer product” means any new product or component of a new product that a resident individual bought or leased from a retail seller or lessor and used in this state primarily for personal, family or household purposes, including devices that assist individuals with disabilities to treat or mitigate a disease or replace the structure or function of the individual’s body.

(b) “Consumer product” does not include clothing or products that an individual uses for personal care that are consumed or expended in the course of the use.

(5) “Distributor” means a person that engages in the business of purchasing or receiving on consignment from a manufacturer, or from another person that purchases or receives from a manufacturer, consumer products that the person sells or offers on consignment to a retail seller.

(6) “Express warranty” means:

(a) A written statement a supplier makes in connection with the sale or lease of a consumer product in which the supplier promises to preserve the utility or performance of the consumer product for a specified time or to provide compensation, repairs, replacements or
other services related to the consumer product if the consumer product does not retain the
promised utility or performance during the specified time; and

(b) A promise that a consumer product conforms to any sample or model of the con-
sumer product that the supplier provides or makes available for inspection or use.

(7)(a) “Implied warranty of fitness” means:
(A) A supplier has reason to know that a resident individual has a particular use or
purpose for purchasing or using a consumer product;
(B) The resident individual relies on the supplier's skill and judgment to select and pro-
vide a suitable consumer product for the resident individual's particular use or purpose; and
(C) The consumer product the supplier provides to the resident individual is fit for the
resident individual's use or purpose.

(b) “Implied warranty of fitness” as applied to a device that a resident individual pur-
chases at retail to assist the resident individual with a disability, to treat or mitigate a dis-
ease, or to replace the structure or function of the resident individual's body means that the
device is fit for the resident individual's particular needs, purposes or uses.

(8) “Implied warranty of merchantability” means that a consumer product:
(a) Passes without objection in the trade under the contract description;
(b) Is fit for the ordinary purposes for which the consumer product is used;
(c) Is adequately contained, packaged and labeled; and
(d) Conforms to the promises or affirmations of fact that appear on the container or label
for the consumer product.

(9) “Manufacturer” means a person that engages in the business of manufacturing, as-
sembling, producing or otherwise originating consumer products.
(10) “Resident individual” means a natural person who resides in this state.
(11) “Retail seller” means a person that engages in the business of selling or leasing
consumer products to resident individuals.
(12) “Supplier” means a manufacturer, distributor or retail seller.

SECTION 2. (1) A supplier manufactures or distributes consumer products in this state
or sells or leases consumer products at retail in this state subject to an implied warranty
of merchantability, unless the supplier disclaims the warranty as provided in subsection
(3)(b) of this section. A retail seller may seek contribution or indemnity from a manufacturer
for the amount of any liability the retail seller has under this subsection.

(2) A retail seller sells or leases consumer products at retail in this state subject to an
implied warranty of fitness if the retail seller has reason to know at the time of the sale or
lease that a buyer requires a consumer product for a particular purpose and is relying on
the retail seller's skill or judgment to select or provide a consumer product that is suitable
for the particular purpose.

(3)(a) Except as provided in paragraph (b) of this subsection, a supplier or a buyer may
not disclaim or waive an implied warranty of merchantability or, if applicable, an implied
warranty of fitness. A buyer's purported waiver of an implied warranty described in this
paragraph is contrary to public policy and is void and unenforceable.
(b) A supplier is not subject to and disclaims a warranty described in paragraph (a) of
this subsection if the supplier sells a consumer product as is and in strict compliance with
subsection (4) of this section.

(4) A supplier that sells or leases a consumer product as is must attach to or provide
with the consumer product, or with any advertisement of or offer for the consumer product, a conspicuous notice that in simple and concise language tells the buyer that:
(a) The supplier is selling or leasing the consumer product as is, with all faults;
(b) The entire risk as to the quality or performance of the consumer product is with the buyer; and
(c) The buyer assumes the entire cost of all necessary servicing, repair or replacement of the consumer product if the consumer product is defective.

SECTION 3. (1)(a) Except as provided in this section, sections 1 to 4 of this 2023 Act do not affect a supplier's right to make express warranties with respect to consumer products the supplier sells or leases in this state.
(b) An express warranty for a consumer product is subject to the requirements of this section and is in addition to, and not in lieu of, an applicable implied warranty described in section 2 of this 2023 Act.

(2) A supplier that makes an express warranty for a consumer product shall write the warranty in simple and readily understood language that clearly identifies the party that is making the express warranty and otherwise conforms to the federal standards for disclosing warranty terms and conditions specified in the federal Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 15 U.S.C. 2301 et seq., and regulations the Federal Trade Commission adopts under the Act, both as in effect on the effective date of this 2023 Act.

(3) A supplier may provide a product registration card or form or an electronic product registration form for a consumer product, but the supplier's express warranty is valid and enforceable even if a resident individual does not register the product. A registration form or card may not include a label or language indicating that the card or form is a warranty registration or warranty confirmation and must display a conspicuous notice that states:
(a) The card or form is for product registration; and
(b) A failure to complete and submit the card or form does not diminish a resident individual's warranty rights.

(4)(a) A person that performs warranty repairs or service on a consumer product in this state must provide the buyer with a copy of the work order or invoice for the warranty repairs or service. The face or reverse of the work order or invoice, or an attachment to the work order or invoice, must incorporate in 10-point boldfaced type a conspicuous notice that reads in substance:

A buyer of this product in Oregon has the right to have this product serviced or repaired during the warranty period. The warranty period must be extended for the number of whole days that the product has been out of the buyer's hands for warranty repairs. If a defect exists within the warranty period, the warranty will not expire until the defect has been fixed. The warranty period must also be extended if the warranty repairs are not performed because of delays caused by circumstances beyond the control of the buyer or if the warranty repairs do not remedy the defect and the buyer notifies the seller or manufacturer within 60 days after the completion of the repair that the repairs did not remedy the defect. If after a reasonable number of attempts, warranty repairs or service has not fixed the defect, the
buyer may return this product for a replacement or refund, less a reasonable charge for usage. The warranty time extension described in this notice does not affect the protections or remedies the buyer has under other laws.

(b) If the notice described in paragraph (a) of this subsection appears on the reverse side of a work order or invoice for a warranty repair, the face of the work order or invoice must include a conspicuous notice in 10-point boldface type that reads: “Notice to consumer: Please read important information on back.”

(5) If a supplier maintains repair and service facilities in this state, the supplier shall, at the time the supplier sells or leases a consumer product in this state, provide the buyer with:
   (a) The name, address and telephone number of each service and repair facility in this state;
   (b) The name, address and telephone number of a central directory for repair and service facilities within this state that, at the buyer's request, must provide the buyer with the name, address and telephone number of the repair or service center that is nearest to the buyer's location; or
   (c) Access to, on the retail seller's premises or on the supplier's website, a current listing of the supplier's authorized repair and service facilities, or of retail sellers to which the buyer can return the consumer product for repair or service, each of which must, at the buyer's request, provide the buyer with the name, address and telephone number of the repair and service facility that is nearest to the buyer's location.

SECTION 4. (1) If a manufacturer makes an express warranty for a consumer product sold or leased in this state, the manufacturer shall:
   (a) Maintain in this state, or authorize other persons to maintain, adequate repair and service facilities that are located reasonably close to locations in which retail sellers sell or lease the manufacturer's consumer product; or
   (b) Provide the buyer with:
      (A) Prepaid postage in an amount that is sufficient to enable the buyer to send the consumer product to a repair and service facility located outside this state or outside a reasonable distance from the buyer's location; and
      (B) A container for shipment that can accommodate and adequately protect the consumer product.

(2) If a manufacturer does not comply with subsection (1) of this section, a buyer may return a defective consumer product to the retail seller from which the buyer purchased the consumer product or to any retail seller within this state that sells or leases the manufacturer's consumer products. The retail seller shall:
   (a) Service or repair the consumer product so that the consumer product conforms to the manufacturer's express warranty;
   (b) Direct the buyer to a reasonably close independent service or repair facility that is willing to provide service for or repairs to the consumer product;
   (c) Replace the defective consumer product with a consumer product that is identical or reasonably equivalent to the consumer product; or
   (d) Refund the buyer's purchase price for the consumer product.
(3) A manufacturer that does not comply with subsection (1) of this section is liable to a retail seller of the manufacturer's consumer products in an amount that is equivalent to the actual cost the retail seller incurs in providing:

(a) A replacement of the consumer product to the buyer, including costs in transporting the replacement consumer product and a reasonable handling charge;

(b) Service or repair of the consumer product to buyers who are not entitled to warranty protections, including costs of transporting parts or components or replacement consumer products, plus a reasonable profit; or

(c) A refund to the buyer of the purchase price of the consumer product, plus a reasonable handling charge.

(4) A person that provides service and repair for a manufacturer's consumer products in this state shall begin the service or repair within a commercially reasonable time, which must be within 30 days unless the buyer agrees otherwise in writing or unless a delay occurs that is beyond the control of the manufacturer or the person that provides the service or repair.

(5)(a) Except as provided in paragraph (b) of this subsection, a buyer shall deliver a consumer product for which the buyer seeks service or repair to the manufacturer's service and repair facility within this state or to an authorized service and repair facility.

(b)(A) If a buyer cannot deliver a consumer product to a service and repair facility because of the size and weight of the consumer product or because a method of attachment or installation or the nature of the defect makes delivery impractical or unreasonable, the buyer may notify the manufacturer in writing and the manufacturer or a person that provides service and repair on the manufacturer's behalf shall, at the manufacturer's or the person's option:

(i) Service or repair the consumer product at the buyer's residence or other location where the buyer holds the consumer product; or

(ii) Pick up or arrange for transporting the consumer product to the service and repair facility.

(B) Costs associated with transporting a consumer product under subparagraph (A) of this paragraph from the buyer's residence or other location to a service and repair facility and from the service and repair facility to the buyer's residence or other location are the responsibility of the manufacturer or the person that provides service and repair.

(6) If a manufacturer or person that provides service and repair for the manufacturer's consumer products cannot conform the consumer product to the express warranty after a reasonable number of attempts, the manufacturer shall either replace the consumer product with a consumer product of like capability and quality or refund to the buyer the purchase price the buyer paid for the consumer product, less a reasonable amount that is directly attributable to the buyer's use of the consumer product before discovering a defect.

SECTION 5. Sections 1 to 4 of this 2023 Act apply to transactions in consumer products that occur on and after the effective date of this 2023 Act.