
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2284 Session of
2003

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WHEATLEY AND YOUNGBLOOD, DECEMBER 23, 2003

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, DECEMBER 23, 2003

AN ACT

1 Relating to protecting the purchasers of defective computer
2 equipment.

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2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Computer
6 Lemon Law.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Brand-new computer." A computer device which has been
12 recently assembled, is unused and contains no reconditioned
13 parts.

14 "Computer device." A central processing unit or terminal
15 display screen, including all circuitry and connective devices,
16 a printer, a modem, a scanner or any other device used with a
17 computer or any programming for a computer, whether preinstalled
18 or purchased separately.

19 "Date of sale or lease." The date when a computer device is
20 first delivered to a purchaser.

21 "Manufacturer." A person or for-profit entity engaged in the
22 business of manufacturing or assembling computers or computer
23 software or accessories.

24 "Nonconformity." A defect, condition or malfunction that
25 impairs the use of a computer device or causes it to operate in
26 a manner not intended.

27 "Notice." The method by which a purchaser advises a
28 manufacturer of a nonconformity. Notice may be transmitted by
29 any of the following means:

30 (1) Certified or registered mail, return receipt

1 requested.

2 (2) Facsimile transmission.

3 (3) Electronically.

4 (4) e-mail.

5 (5) Any means provided for in the manufacturer's
6 warranty or service materials.

7 "Purchaser." A person who is a resident or temporary
8 resident of this Commonwealth or a business entity that has
9 fewer than 30 personal computers acting either in concert with a
10 network or as stand-alone machines and who obtains a computer
11 device by lease, retail sale, Internet sale, gift, special
12 contract or other transaction, whether delivered or currently
13 located in this Commonwealth.

14 Section 3. Notice to purchaser.

15 (a) Purchaser's rights.--At the time of sale or lease of a
16 computer device, a purchaser must be provided an accurate
17 written statement of the purchaser's rights established by this
18 act. The statement must be printed in 14-point boldface type.
19 The manufacturer must secure from the purchaser a signed
20 acknowledgement that the manufacturer has explained to the
21 purchaser his or her rights and that the purchaser understands
22 those rights. Unless a signed acknowledgement of rights is
23 secured, the time limits specified in section 4 must be tolled.

24 (b) Disclosure.--At the time of sale of a computer device,
25 the manufacturer must conspicuously disclose the name and
26 version number of all software programs or combinations of
27 programs that will or may be likely to cause operating problems
28 with the computer device. In any action brought under this act,
29 when there is a claim that such a disclosure was not made, the
30 burden is on the manufacturer to prove that such a disclosure

1 was made.

2 Section 4. Coverage and coverage period.

3 (a) Repairs.--A purchaser of a computer device is entitled
4 to effective repairs by the manufacturer for any nonconformity
5 that arises during the first 24 months of use, at no cost to the
6 purchaser. However, if the manufacturer has issued a warranty or
7 service contract, the coverage period must be the greater of the
8 term specified in the warranty or service contract or 24 months
9 from the date of purchase.

10 (b) Conditions of repairs.--Within five business days after
11 receiving notice from a purchaser of a nonconformity, plus
12 reasonable time for shipping of not more than three business
13 days, the manufacturer must repair any computer device and
14 return it to the purchaser subject to the following conditions:

15 (1) If onsite service is provided for in the warranty,
16 repairs must be made at the purchaser's location without
17 charge.

18 (2) If onsite service is not provided for in the
19 warranty, the manufacturer must arrange and pay for the cost
20 of shipping from the purchaser's location.

21 (3) If onsite service is conducted by the purchaser who,
22 at the manufacturer's direction, performs diagnostic tests or
23 troubleshooting procedures or attempts repairs, including,
24 but not limited to, partial disassembly, the service is
25 considered to be conducted by the manufacturer.

26 (4) All repairs must be guaranteed by the manufacturer
27 for a term of two years.

28 (c) Second opportunity for repairs.--If the repair is
29 ineffective, the manufacturer must have, upon notice from the
30 purchaser, a second opportunity to make an effective repair at

1 the purchaser's physical location, provided that the repair is
2 completed within three business days. The manufacturer may not
3 require the purchaser to ship the unit back to the manufacturer
4 for the final repair opportunity regardless of the
5 manufacturer's willingness to pay for shipping costs.

6 (d) Election by purchaser.--If the second repair is
7 ineffective or if the manufacturer fails to timely respond to
8 the purchaser as required under this section, the purchaser may
9 elect to do either of the following:

10 (1) Receive from the manufacturer a refund of the full
11 purchase price paid at the time of sale or the full value of
12 the lease, as the case may be, plus finance and collateral
13 charges.

14 (2) Receive from the manufacturer delivery of a brand-
15 new computer device of equal or greater value than the
16 original price paid at the time of acquisition, without
17 charge or offset for use.

18 If more than one nonconformity has been subject to repair, no
19 second repair attempt is required before the purchaser may seek
20 the remedies provided in this act.

21 (e) Manufacturers' rights.--A manufacturer may, at its
22 discretion, request return of the unrepaired computer device at
23 cost if the manufacturer has replaced the unit or refunded the
24 purchase price.

25 (f) Resale.--A computer device returned in accordance with
26 this section may not be resold in this Commonwealth. Any person
27 who violates this subsection shall be subject, in addition to
28 any other remedies provided by law, to damages in the amount of
29 treble the purchase price paid by that purchaser for the device.

30 (g) Manufacturer.--Any manufacturer who refuses to honor the

1 terms of any warranty booklet or materials delivered to the
2 purchaser at, prior to or after the delivery of the computer
3 device is in violation of this act and shall be subject, in
4 addition to any other remedies provided by law, to damages in
5 the amount of treble the purchase price paid by that purchaser
6 for the device.

7 Section 5. Records.

8 A manufacturer must retain records of all contacts,
9 communications, notice transmissions or customer service
10 dialogues between itself and a purchaser and must maintain a
11 list, by serial number, of all refunds or replacements made
12 under this act. Copies must be made available to the purchaser
13 upon demand, regardless of whether the manufacturer uses the
14 services of a third party to manage purchaser claims. Failure to
15 comply with this section is a violation of this act and, in
16 addition to any other remedies provided by law, the original
17 purchaser is entitled to damages in the amount of treble the
18 purchase price paid by that purchaser for the device.

19 Section 6. Civil actions.

20 (a) Damages.--If the manufacturer of a computer device
21 violates any provision of this act, the purchaser may initiate a
22 civil action to recover as damages any and all remedies
23 specified in this act.

24 (b) Other damages.--In addition to refund or replacement of
25 the computer device under this act, a prevailing purchaser is
26 entitled to an additional award of \$6,000.

27 (c) Corporate representation.--If a purchaser initiates an
28 action in this Commonwealth for a violation of this act, the
29 manufacturer must produce at each and every court proceeding in
30 that action a corporate representative who is fully aware of the

1 facts and circumstances of the case and has available for the
2 court's review a copy of all records required by section 5.
3 Section 7. Attorney fees.

4 If a purchaser prevails in a claim under this act, the
5 manufacturer must pay the purchaser's reasonable attorney fees,
6 costs and expert expenses in resolving and, if necessary,
7 litigating an action under this act, regardless of the cost of
8 the computer device.

9 Section 8. Prohibited defenses.

10 It is not a defense under this act that a nonconformity was
11 caused by a software programming problem under the following
12 conditions:

13 (1) The software was preinstalled by the manufacturer.

14 (2) The manufacturer produces an expert witness at the
15 proceedings who examined the computer device and can specify
16 the exact cause and correction of the problem.

17 (3) The manufacturer has strictly complied with the
18 notice provisions of section 3.

19 Section 9. Expert witness.

20 A purchaser who seeks relief under this act shall not under
21 any circumstances be required to retain the opinion of an expert
22 to prevail against a manufacturer.

23 Section 10. Rights preserved.

24 Nothing in this act limits the purchaser from pursuing any
25 other rights or remedies under any other law, contract or
26 warranty.

27 Section 11. Nonwaiver.

28 The provisions of this act may not be waived by a purchaser.

29 Section 12. Applicability.

30 This act applies to all computer devices purchased, leased or

1 delivered to a purchaser on or after the effective date of this
2 act.

3 Section 13. Effective date.

4 This act shall take effect in 180 days or the first January
5 succeeding the date of enactment, whichever is later.