

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1587 Session of
2003

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BELARDI, GEORGE, TRAVAGLIO, PRESTON, READSHAW, FABRIZIO,
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WANSACZ, MCGEEHAN, ROBERTS, WATERS, GRUCELA, SOLOBAY, COSTA,
BELFANTI, TANGRETTI, MYERS AND GOODMAN, JUNE 11, 2003

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JUNE 11, 2003

AN ACT

1 Providing for rights of purchasers of defective computer devices
2 and for protection from warranty abuses and effective
3 warranty repairs; imposing certain recordkeeping
4 requirements; and establishing a right of action.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Computer
9 Lemon Law.

10 Section 2. Definitions.

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

14 "Brand new computer." A computer device which is recently
15 assembled, unused and contains no reconditioned parts.

16 "Computer device." A central processing unit or terminal
17 display screen, including all circuitry and connective devices,

1 a printer, modem, scanner or other device used with a computer
2 or any programming for a computer, whether preinstalled or
3 purchased separately.

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

6 "Manufacturer." A person or for-profit entity engaged in the
7 business of manufacturing or assembling computers or computer
8 software or accessories.

9 "Nonconformity." A defect, condition or malfunction which
10 impairs the use of a computer device or causes it to operate in
11 a manner not intended.

12 "Notice." The means by which a purchaser advises a
13 manufacturer of a nonconformity, whether transmitted by any of
14 the following: certified mail, registered mail, return receipt
15 requested, facsimile transmission, electronic, e-mail or any
16 means provided for in the manufacturer's warranty or service
17 materials.

18 "Purchaser." A person who is a resident or temporary
19 resident of this Commonwealth or business entity that has fewer
20 than 30 personal computers acting either in concert with a
21 network or as stand-alone machines and who obtains a computer
22 device by lease, retail sale, Internet sale, gift, special
23 contract or other transaction, whether delivered or currently
24 located in this Commonwealth.

25 Section 3. Notice to purchaser.

26 (a) Statement of purchaser's rights.--A purchaser shall be
27 provided at the time of sale or lease with an accurate statement
28 of the purchaser's rights established by this act in 14-point
29 boldface type. The manufacturer shall secure from the purchaser
30 a signed acknowledgment that the rights have been explained and

1 are understood. Unless a signed acknowledgment of rights is
2 secured, the time limits specified in section 4 shall be tolled.

3 (b) Disclosure of programs.--At the time of sale, the
4 manufacturer of a computer device must conspicuously disclose
5 the name of all software programs and or combinations of
6 programs, by version number, which will cause or may be likely
7 to cause operating problems with the device. It shall be the
8 burden of the manufacturer to prove in any claim brought under
9 this act that such disclosure was made.

10 Section 4. Coverage and coverage period.

11 (a) Right to repair.--A purchaser of a computer device shall
12 be entitled to effective repairs by the manufacturer for any
13 nonconformity which shall arise during the first 24 months of
14 use, at no cost to the purchaser, except that if the
15 manufacturer has issued a warranty or service contract, the
16 coverage period shall be the greater of the term specified in
17 the warranty or service contract or 24 months from the date of
18 purchase.

19 (b) Manufacturer duty to repair.--Within five business days
20 after receiving notice from a purchaser of a nonconformity, plus
21 reasonable time for shipping of not more than three business
22 days, the manufacturer shall repair any computer device and
23 return it to the purchaser as follows:

24 (1) If onsite service is provided for in the warranty,
25 repairs shall be made at the purchaser's location without
26 charge.

27 (2) If onsite service is not specified in the warranty,
28 the manufacturer shall arrange and pay for the cost of
29 shipping from the purchaser's location.

30 (3) A purchaser who at the manufacturer's direction

1 conducts diagnostic, troubleshooting or attempted repairs,
2 including, but not limited to, partial disassembly, shall for
3 the purposes of this act be considered the same as if the
4 repairs were attempted by the manufacturer itself.

5 (4) All repairs shall be guaranteed by the manufacturer
6 for a term of two years.

7 (c) Second opportunity for repair.--If the repair is
8 ineffective, the manufacturer shall, upon notice from the
9 consumer, have a second opportunity to make an effective repair
10 at the purchaser's physical location, provided that the repair
11 is completed within three business days. The purchaser shall not
12 be required to ship the unit back to the manufacturer for the
13 final repair opportunity regardless of the manufacturer's
14 willingness to pay for the cost of same.

15 (d) Right to refund.--

16 (1) If the second repair is ineffective or if the
17 manufacturer fails to timely respond to the purchaser as
18 required under this section, the purchaser may elect:

19 (i) a refund of the full purchase price paid at the
20 time of sale or the full value of the lease, as the case
21 may be, plus finance and collateral charges; or

22 (ii) delivery of a brand new computer device from
23 the manufacturer, of equal or greater value than the
24 original price paid at the time of acquisition, without
25 charge or offset for use.

26 (2) If more than one nonconformity has been subject to
27 repair, no second repair attempt shall be required before
28 seeking the remedies provided in this act.

29 (e) Return of unrepaired computer device.--A manufacturer
30 may, at its discretion, request return of the unrepaired

1 computer device at cost, if the manufacturer has replaced the
2 unit or refunded the purchase price.

3 (f) Resale prohibited.--No computer device returned under
4 this section may be resold in this Commonwealth. A violation of
5 this subsection shall be a violation of the act of December 17,
6 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and
7 Consumer Protection Law, entitling any subsequent purchaser to
8 treble the purchase price paid by that purchaser.

9 (g) Breach of warranty.--Notwithstanding subsections (e) and
10 (f), a manufacturer who refuses to honor the terms of any
11 warranty booklet or materials delivered to the purchaser at,
12 prior to or after the delivery of the computer device shall be
13 in violation of the Unfair Trade Practices and Consumer
14 Protection Law, entitling the purchaser to treble the purchase
15 price paid for the device.

16 Section 5. Recordkeeping.

17 A manufacturer shall retain records of all contacts,
18 communications, notice transmissions or customer service
19 dialogues between itself and a purchaser and shall maintain a
20 list, by serial number, of all refunds or replacements made
21 pursuant to this act. Copies shall be made available to the
22 purchaser upon demand, regardless of whether the manufacturer
23 utilizes the services of a third party to manage purchaser
24 claims. Failure to comply with this section shall be a violation
25 of the act of December 17, 1968 (P.L.1224, No.387), known as the
26 Unfair Trade Practices and Consumer Protection Law, entitling
27 the purchaser to treble the purchase price paid for the device.

28 Section 6. Civil actions.

29 (a) Right of action.--If the manufacturer of a computer
30 device violates any provision of this act, the purchaser may

1 initiate an action to recover as damages any and all remedies
2 specified in section 4.

3 (b) Additional award.--In addition to refund or replacement
4 of the computer device under section 4, a prevailing purchaser
5 shall be entitled to the following:

6 (1) \$1,500, if judgment is obtained from a district
7 justice or municipal court judge;

8 (2) \$3,000, if judgment is obtained from a common pleas
9 court panel of arbitration; or

10 (3) \$6,000, if judgment is obtained from a common pleas
11 court.

12 (c) Corporate witness.--If a purchaser initiates an action
13 in this Commonwealth for a violation of this act, the
14 manufacturer shall produce at each and every court proceeding in
15 such action a corporate representative who shall be fully aware
16 of the facts and circumstances of the case and have available
17 for the court's review a copy of all data generated under the
18 provisions of this section.

19 Section 7. Attorney fees.

20 If a purchaser prevails in a claim under this act, the
21 manufacturer shall pay the purchaser's reasonable attorney fees,
22 costs and expert expenses in resolving and, if necessary,
23 litigating an action under section 6, regardless of the cost of
24 the computer device.

25 Section 8. Prohibited defenses.

26 It shall not be a defense under this act that a nonconformity
27 was caused by a software programming problem:

28 (1) If the software was preinstalled by the
29 manufacturer.

30 (2) Unless the manufacturer produces an expert witness

1 at the proceedings who examined the computer device and can
2 specify the exact cause and correction of the problem.

3 (3) Unless the manufacturer has strictly complied with
4 the notice provisions of section 3(b).

5 Section 9. Expert witness.

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

9 Section 10. Application of Unfair Trade Practices and Consumer
10 Protection Law.

11 A violation of any provision of this act shall also be a
12 violation of the act of December 17, 1968 (P.L.1224, No.387),
13 known as the Unfair Trade Practices and Consumer Protection Law.

14 Section 11. Rights preserved.

15 Nothing in this act shall limit the purchaser from pursuing
16 any other rights or remedies under any other law, contract or
17 warranty.

18 Section 12. Nonwaiver of act.

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

20 Section 13. Applicability.

21 This act shall apply to all computer devices purchased,
22 leased or delivered to a purchaser after the effective date of
23 this act.

24 Section 14. Effective date.

25 This act shall take effect in 60 days.