
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 684 Session of
2005

INTRODUCED BY BUNT, THOMAS, PRESTON, FICHTER, BAKER, BELARDI,
BELFANTI, BROWNE, CORNELL, COSTA, CRAHALLA, CURRY, DENLINGER,
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STABACK, E. Z. TAYLOR, TIGUE, WALKO, WANSACZ AND YOUNGBLOOD,
MARCH 1, 2005

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 1, 2005

AN ACT

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

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

5 Section 1. Short title.

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

8 Section 2. Definitions.

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

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

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

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

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

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

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

1 (1) Certified or registered mail, return receipt
2 requested.

3 (2) Facsimile transmission.

4 (3) Electronically.

5 (4) E-mail.

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

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

15 Section 3. Notice to purchaser.

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

26 (b) Disclosure.--At the time of sale of a computer device,
27 the manufacturer must conspicuously disclose the name and
28 version number of all software programs or combinations of
29 programs that will or may be likely to cause operating problems
30 with the computer device. In any action brought under this act,

1 when there is a claim that such a disclosure was not made, the
2 burden is on the manufacturer to prove that such a disclosure
3 was made.

4 Section 4. Coverage and coverage period.

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

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

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

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

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

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

30 (c) Second opportunity for repairs.--If the repair is

1 ineffective, the manufacturer must have, upon notice from the
2 purchaser, a second opportunity to make an effective repair at
3 the purchaser's physical location, provided that the repair is
4 completed within three business days. The manufacturer may not
5 require the purchaser to ship the unit back to the manufacturer
6 for the final repair opportunity regardless of the
7 manufacturer's willingness to pay for shipping costs.

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

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

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

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

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

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

1 treble the purchase price paid by that purchaser for the device.

2 (g) Manufacturer.--Any manufacturer who refuses to honor the
3 terms of any warranty booklet or materials delivered to the
4 purchaser at, prior to or after the delivery of the computer
5 device is in violation of this act and shall be subject, in
6 addition to any other remedies provided by law, to damages in
7 the amount of treble the purchase price paid by that purchaser
8 for the device.

9 Section 5. Records.

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

21 Section 6. Civil actions.

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

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

29 (c) Corporate representation.--If a purchaser initiates an
30 action in this Commonwealth for a violation of this act, the

1 manufacturer must produce at each and every court proceeding in
2 that action a corporate representative who is fully aware of the
3 facts and circumstances of the case and has available for the
4 court's review a copy of all records required by section 5
5 (relating to records).

6 Section 7. Attorney fees.

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

12 Section 8. Prohibited defenses.

13 It is not a defense under this act that a nonconformity was
14 caused by a software programming problem under the following
15 conditions:

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

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

20 (3) The manufacturer has strictly complied with the
21 notice provisions of section 3 (relating to notice to
22 purchaser).

23 Section 9. Expert witness.

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

27 Section 10. Rights preserved.

28 Nothing in this act limits the purchaser from pursuing any
29 other rights or remedies under any other law, contract or
30 warranty.

1 Section 11. Nonwaiver.

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

3 Section 12. Applicability.

4 This act applies to all computer devices purchased, leased or
5 delivered to a purchaser on or after the effective date of this
6 act.

7 Section 13. Effective date.

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