

## **Magnuson–Moss Warranty Act**

The Magnuson–Moss Warranty Act (P.L. 93-637) is a United States federal law, (15 U.S.C. § 2301 et seq.). Enacted in 1975, it is the federal statute that governs warranties on consumer products. The Act was sponsored by Senator Warren G. Magnuson of Washington and U.S. Representative John E. Moss of California, both Democrats, as well as Senator Frank Moss of Utah, who co-sponsored it with Magnuson.

### **Purpose:**

According to the Report of the House of Representatives which accompanied the law (House Report No. 93-1197, 93d Cong 2d Sess.) the Magnuson–Moss act was enacted by Congress in response to the widespread misuse by merchants of express warranties and disclaimers. The legislative history indicates that the purpose of the Act is to make warranties on consumer products more readily understood and enforceable and to provide the Federal Trade Commission with means to better protect consumers.

The statute is remedial in nature and is intended to protect consumers from deceptive warranty practices. Consumer products are not required to have warranties, but if one is given, it must comply with the Magnuson–Moss Act.

### **The Magnuson–Moss Act contains many definitions:**

A "consumer" is a buyer of consumer goods for personal use. A buyer of consumer products for resale is not a consumer.

A "supplier" is any person engaged in the business of making a consumer product directly or indirectly available to consumers.

A "warrantor" is any supplier or other person who gives or offers a written warranty or who has some obligation under an implied warranty.

A "consumer product" is generally any tangible personal property for sale and that is normally used for personal, family, or household purposes. It is important to note that the determination whether a good is a consumer product requires a factual finding, on a case-by-case basis.  
Najran Co. for General Contracting and Trading v. Fleetwood Enterprises, Inc., 659 F. Supp. 1081 (S.D. Ga. 1986).

A "written warranty" (also called an express warranty) is any written promise made in connection with the sale of a consumer product by a supplier to a consumer that relates to the material and/or workmanship and that affirms that the product is defect-free or will meet a certain standard of performance over a specified time.

An "implied warranty" is defined in state law. The Magnuson–Moss Act simply provides limitations on disclaimers and provides a remedy for their violation.

**Designations:**

A "full warranty" is one that meets the federal minimum standards for a warranty. Such warranties must be "conspicuously designated" as full warranties. If each of the following five statements is true about your warranty's terms and conditions, it is a "full" warranty:

You do not limit the duration of implied warranties.

You provide warranty service to anyone who owns the product during the warranty period; that is, you do not limit coverage to first purchasers.

You provide warranty service free of charge, including such costs as returning the product or removing and reinstalling the product when necessary.

You provide, at the consumer's choice, either a replacement or a full refund if, after a reasonable number of tries, you are unable to repair the product.

You do not require consumers to perform any duty as a precondition for receiving service, except notifying you that service is needed, unless you can demonstrate that the duty is reasonable.

A "limited warranty" is one that does not meet the federal minimums. Such warranties must be "conspicuously designated" as limited warranties.

A "multiple warranty" is part full and part limited.

A "service contract" is different from a warranty because service contracts do not affirm the quality or workmanship of a consumer product. A service contract is a written instrument in which a supplier agrees to perform, over a fixed period or for a specified duration, services relating to the maintenance or repair, or both, of a consumer product. Agreements that meet the statutory definition of service contracts, but are sold and regulated under state law as contracts of insurance, do not come under the Act's provisions.

Disclaimer or Limitation of Implied Warranties when a service contract is sold:

Sellers of consumer products who make service contracts on their products are prohibited under the Act from disclaiming or limiting implied warranties.<sup>[6]</sup> (Remember also that sellers who extend written warranties on consumer products cannot disclaim implied warranties, regardless of whether they make service contracts on their products.) However, sellers of consumer products that merely sell service contracts as agents of service contract companies

and do not themselves extend written warranties can disclaim implied warranties on the products they sell.

### **Requirements**

The Act provides that any warrantor warranting a consumer product to a consumer by means of a written warranty must disclose, fully and conspicuously, in simple and readily understood language, the terms and conditions of the warranty to the extent required by rules of the Federal Trade Commission. The FTC has enacted regulations governing the disclosure of written consumer product warranty terms and conditions on consumer products actually costing the consumer more than \$15. The Rules can be found at 16 C.F.R. Part 700.

Under the terms of the Act, ambiguous statements in a warranty are construed against the drafter of the warranty.

Likewise, service contracts must fully, clearly, and conspicuously disclose their terms and conditions in simple and readily understood language.

Warrantors cannot require that only branded parts be used with the product in order to retain the warranty. This is commonly referred to as the "tie-in sales" provisions, and is frequently mentioned in the context of third-party computer parts, such as memory and hard drives.

### **Full Warranty Requirements**

Under a full warranty, in the case of a defect, malfunction, or failure to conform with the written warranty, the warrantor:

Can remedy the consumer product within a reasonable time and without charge;

May not impose any limitation on the duration of any implied warranty on the product;

May not exclude or limit consequential damages for a breach of any written or implied warranty on the product, unless the exclusion or limitation conspicuously appears on the face of the warranty; and

If the product, or a component part, contains a defect or malfunction, must permit the consumer to elect either a refund or replacement without charge, after a reasonable number of repair attempts.

In addition, the warrantor may not impose any duty, other than notification, upon any consumer, as a condition of securing the repair of any consumer product that malfunctions, is defective, or does not conform to the written warranty. However, the warrantor may require consumers to return a defective item to its place of purchase for repair.

## Limitations

**The Magnuson–Moss Warranty Act** does not invalidate or restrict any right or remedy of any consumer under any other federal law, nor does the Act supersede the Federal Trade Commission Act as it pertains to antitrust actions.

The Act does not invalidate or restrict any right or remedy of any consumer under state law. The Act is not the dominant regulation of consumer product warranties, and while it prescribes certain disclosures and restricts certain limitations on warranties, it leaves other warranty law untouched.[9]

Although the Act covers warranties on repair or replacement parts in consumer products, warranties on services for repairs are not covered.

The federal minimum standards for full warranties are waived if the warrantor can show that the problem associated with a warranted consumer product was caused by damage while in the possession of the consumer, or by unreasonable use, including a failure to provide reasonable and necessary maintenance.

## Remedies under the Act

The Act is meant to provide consumers with access to reasonable and effective remedies where there is a breach of warranty on a consumer product. The Act provides for informal dispute-settlement procedures and for actions brought by the government and by private parties.

The FTC has been mandated by Congress to promulgate rules to encourage the use of alternative dispute resolution, and full warranties may require mediation and/or arbitration as a first step toward settling disputes.

In addition, the federal government has the authority to take injunctive action against a supplier or warrantor who fails to meet the requirements of the act.

Finally, consumers may seek redress in the courts for alleged violations of the Magnuson–Moss Act. A consumer who has been injured by the noncompliance of a supplier may bring an action in federal court if the amount in controversy is over \$25,000 or a class action if the number of class plaintiffs is greater than 100. If the jurisdictional amount, or number of plaintiffs, do not meet these thresholds, an action under the act may be brought only in state court.[10] Moreover, one of the key aids to the effectiveness of the Act is that a prevailing plaintiff may recover reasonable costs of suit, including attorney fees.[11]

See also

Specialty Equipment Market Association

A Businessperson's Guide to Federal Warranty Law, from ftc.gov

American Law Encyclopedia: Magnuson-Moss Warranty Act

The John E. Moss Foundation

## **Understanding the Magnuson-Moss Warranty Act**

The Magnuson-Moss Warranty Act is the federal law that governs consumer product warranties. Passed by Congress in 1975, the Act requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage. In addition, it affects both the rights of consumers and the obligations of warrantors under written warranties.

To understand the Act, it is useful to be aware of Congress' intentions in passing it. First, Congress wanted to ensure that consumers could get complete information about warranty terms and conditions. By providing consumers with a way of learning what warranty coverage is offered on a product before they buy, the Act gives consumers a way to know what to expect if something goes wrong, and thus helps to increase customer satisfaction.

Second, Congress wanted to ensure that consumers could compare warranty coverage before buying. By comparing, consumers can choose a product with the best combination of price, features, and warranty coverage to meet their individual needs.

Third, Congress intended to promote competition on the basis of warranty coverage. By assuring that consumers can get warranty information, the Act encourages sales promotion on the basis of warranty coverage and competition among companies to meet consumer preferences through various levels of warranty coverage.

Finally, Congress wanted to strengthen existing incentives for companies to perform their warranty obligations in a timely and thorough manner and to resolve any disputes with a minimum of delay and expense to consumers. Thus, the Act makes it easier for consumers to pursue a remedy for breach of warranty in the courts, but it also creates a framework for companies to set up procedures for resolving disputes inexpensively and informally, without litigation.

### **What the Magnuson-Moss Act Does Not Require**

In order to understand how the Act affects you as a businessperson, it is important first to understand what the Act does not require.

First, the Act does not require any business to provide a written warranty. The Act allows businesses to determine whether to warrant their products in writing. However, once a business decides to offer a written warranty on a consumer product, it must comply with the Act.

Second, the Act does not apply to oral warranties. Only written warranties are covered.

Third, the Act does not apply to warranties on services. Only warranties on goods are covered. However, if your warranty covers both the parts provided for a repair and the workmanship in making that repair, the Act does apply to you.

Finally, the Act does not apply to warranties on products sold for resale or for commercial purposes. The Act covers only warranties on consumer products. This means that only warranties on tangible property normally used for personal, family, or household purposes are covered. (This includes property attached to or installed on real property.) Note that applicability of the Act to a particular product does *not*, however, depend upon how an individual buyer will use it.

The following section of this manual summarizes what the Magnuson-Moss Warranty Act requires warrantors to do, what it prohibits them from doing, and how it affects warranty disputes.

### **What the Magnuson-Moss Act Requires**

In passing the Magnuson-Moss Warranty Act, Congress specified a number of requirements that warrantors must meet. Congress also directed the FTC to adopt rules to cover other requirements. The FTC adopted three Rules under the Act, the *Rule on Disclosure of Written Consumer Product Warranty Terms and Conditions* (the Disclosure Rule), the *Rule on Pre-Sale Availability of Written Warranty Terms* (the Pre-Sale Availability Rule), and the *Rule on Informal Dispute Settlement Procedures* (the Dispute Resolution Rule). In addition, the FTC has issued an interpretive rule that clarifies certain terms and explains some of the provisions of the Act. This section summarizes all the requirements under the Act and the Rules.

The Act and the Rules establish three basic requirements that may apply to you, either as a warrantor or a seller.

1. As a warrantor, you must designate, or title, your written warranty as either "full" or "limited."
2. As a warrantor, you must state certain specified information about the coverage of your warranty in a single, clear, and easy-to-read document.
3. As a warrantor or a seller, you must ensure that warranties are available where your warranted consumer products are sold so that consumers can read them before buying.

The titling requirement, established by the Act, applies to all written warranties on consumer products costing more than \$10. However, the disclosure and pre-sale availability requirements, established by FTC Rules, apply to all written warranties on consumer products costing more than \$15. Each of these three general requirements is explained in greater detail in the following chapters.

### **What the Magnuson-Moss Act Does Not Allow**

There are three prohibitions under the Magnuson-Moss Act. They involve implied warranties, so-called "tie-in sales" provisions, and deceptive or misleading warranty terms.

#### ***Disclaimer or Modification of Implied Warranties***

The Act prohibits anyone who offers a written warranty from disclaiming or modifying implied warranties. This means that no matter how broad or narrow your written warranty is, your customers always will receive the basic protection of the implied warranty of merchantability. This is explained in [Understanding Warranties](#).

There is one permissible modification of implied warranties, however. If you offer a "limited" written warranty, the law allows you to include a provision that restricts the duration of implied warranties to the duration of your limited warranty. For example, if you offer a two-year limited warranty, you can limit implied warranties to two years. However, if you offer a "full" written warranty, you cannot limit the duration of implied warranties. This matter is explained in [Titling Written Warranties as "Full" or "Limited"](#).

If you sell a consumer product with a written warranty from the product manufacturer, but you do not warrant the product in writing, you can disclaim your implied warranties. (These are the implied warranties under which the seller, not the manufacturer, would otherwise be responsible.)

But, regardless of whether you warrant the products you sell, as a seller, you must give your customers copies of any written warranties from product manufacturers.

### ***"Tie-In Sales" Provisions***

Generally, tie-in sales provisions are not allowed. Such a provision would require a purchaser of the warranted product to buy an item or service from a particular company to use with the warranted product in order to be eligible to receive a remedy under the warranty. The following are examples of prohibited tie-in sales provisions.

In order to keep your new Plenum Brand Vacuum Cleaner warranty in effect, you must use genuine Plenum Brand Filter Bags. Failure to have scheduled maintenance performed, at your expense, by the Great American Maintenance Company, Inc., voids this warranty.

While you cannot use a tie-in sales provision, your warranty need not cover use of replacement parts, repairs, or maintenance that is inappropriate for your product. The following is an example of a permissible provision that excludes coverage of such things.

While necessary maintenance or repairs on your AudioMundo Stereo System can be performed by any company, we recommend that you use only authorized AudioMundo dealers. Improper or incorrectly performed maintenance or repair voids this warranty.

Although tie-in sales provisions generally are not allowed, you can include such a provision in your warranty if you can demonstrate to the satisfaction of the FTC that your product will not work properly without a specified item or service. If you believe that this is the case, you should contact the warranty staff of the FTC's Bureau of Consumer Protection for information on how to apply for a waiver of the tie-in sales prohibition.

### ***Deceptive Warranty Terms***

Obviously, warranties must not contain deceptive or misleading terms. You cannot offer a warranty that appears to provide coverage but, in fact, provides none. For example, a warranty covering only "moving parts" on an electronic product that has no moving parts would be deceptive and unlawful. Similarly, a warranty that promised service that the warrantor had no intention of providing or could not provide would be deceptive and unlawful.

### **How the Magnuson Moss Act May Affect Warranty Disputes**

Two other features of the Magnuson-Moss Warranty Act are also important to warrantors. First, the Act makes it easier for consumers to take an unresolved warranty problem to court. Second, it encourages companies to use a less formal, and therefore less costly, alternative to legal proceedings. Such alternatives, known as dispute resolution mechanisms, often can be used to settle warranty complaints before they reach litigation.

### ***Consumer Lawsuits***

The Act makes it easier for purchasers to sue for breach of warranty by making breach of warranty a violation of federal law, and by allowing consumers to recover court costs and reasonable attorneys' fees. This means that if you lose a lawsuit for breach of either a written or an implied warranty, you may have to pay the customer's costs for bringing the suit, including lawyer's fees.

Because of the stringent federal jurisdictional requirements under the Act, most Magnuson-Moss lawsuits are brought in state court. However, major cases involving many consumers can be brought in federal court as class action suits under the Act.

Although the consumer lawsuit provisions may have little effect on your warranty or your business, they are important to remember if you are involved in warranty disputes.

### ***Alternatives to Consumer Lawsuits***

Although the Act makes consumer lawsuits for breach of warranty easier to bring, its goal is not to promote more warranty litigation. On the contrary, the Act encourages companies to use informal dispute resolution mechanisms to settle warranty disputes with their customers.

Basically, an informal dispute resolution mechanism is a system that works to resolve warranty problems that are at a stalemate. Such a mechanism may be run by an impartial third party, such as the Better Business Bureau, or by company employees whose only job is to administer the informal dispute resolution system. The impartial third party uses conciliation, mediation, or arbitration to settle warranty disputes.

The Act allows warranties to include a provision that requires customers to try to resolve warranty disputes by means of the informal dispute resolution mechanism before going to court. (This provision applies only to cases based upon the Magnuson-Moss Act.) If you include such a requirement in your warranty, your dispute resolution mechanism *must* meet the requirements stated in the FTC's *Rule on Informal Dispute Settlement Procedures* (the Dispute Resolution Rule). Briefly, the Rule requires that a mechanism must:

- Be adequately funded and staffed to resolve all disputes quickly;
- Be available free of charge to consumers;
- Be able to settle disputes independently, without influence from the parties involved;
- Follow written procedures;
- Inform both parties when it receives notice of a dispute;
- Gather, investigate, and organize all information necessary to decide each dispute fairly and quickly;
- Provide each party an opportunity to present its side, to submit supporting materials, and to rebut points made by the other party; (the mechanism may allow oral presentations, but only if both parties agree);
- Inform both parties of the decision and the reasons supporting it within 40 days of receiving notice of a dispute;
- Issue decisions that are not binding; either party must be free to take the dispute to court if dissatisfied with the decision (however, companies may, and often do, agree to be bound by the decision);
- Keep complete records on all disputes; and
- Be audited annually for compliance with the Rule.

It is clear from these standards that informal dispute resolution mechanisms under the Dispute Resolution Rule are not "informal" in the sense of being unstructured. Rather, they are informal because they do not involve the technical rules of evidence, procedure, and precedents that a court of law must use.

Currently, the FTC's staff is evaluating the Dispute Resolution Rule to determine if informal dispute resolution mechanisms can be made simpler and easier to use. To obtain more information about this review, contact the FTC's warranty staff.

As stated previously, you do not have to comply with the Dispute Resolution Rule if you do not require consumers to use a mechanism before bringing suit under the Magnuson-Moss Act. You may want to consider establishing a mechanism that will make settling warranty disputes easier, even though it may not meet the standards of the Dispute Resolution Rule.

### **Titling Written Warranties as "Full" or "Limited"**

The Magnuson-Moss Warranty Act requires that every written warranty on a consumer product that costs more than \$10 have a title that says the warranty is either "full" or "limited" (The Act calls these titles "designations.") The title is intended to provide consumers, at a glance, with a key to some of the important terms and conditions of a warranty.

The title "full warranty" is a shorthand message to consumers that the coverage meets the Act's standards for comprehensive warranty coverage. Similarly, the title "limited warranty" alerts consumers that the coverage does not meet at least one of the Act's standards, and that the coverage is less than "full" under the Act.

What the Terms "Full" and "Limited" Mean Determining whether your warranty is a "full" or a "limited" warranty is not difficult. If each of the following five statements is true about your warranty's terms and conditions, it is a "full" warranty:

1. You do not limit the duration of implied warranties.
2. You provide warranty service to anyone who owns the product during the warranty period; that is, you do not limit coverage to first purchasers.
3. You provide warranty service free of charge, including such costs as returning the product or removing and reinstalling the product when necessary.
4. You provide, at the consumer's choice, either a replacement or a full refund if, after a reasonable number of tries, you are unable to repair the product.
5. You do not require consumers to perform any duty as a precondition for receiving service, except notifying you that service is needed, unless you can demonstrate that the duty is reasonable.

If any of these statements is not true, then your warranty is "limited".

You are not required to make your entire warranty "full" or "limited" If the statements above are true about the coverage on only some parts of your product, or if the statements are true about the coverage during only one part of the warranty period, then your warranty is a multiple warranty that is part full and part limited.