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E-WARRANTY ACT OF 2015

SEPTEMBER 8, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 3154]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3154) to allow manufacturers to meet warranty and labeling requirements for consumer products by displaying the terms of warranties on Internet websites, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 3154, E-Warranty Act of 2015, is to modernize the rules that manufacturers and sellers must follow to meet their warranty content and disclosure obligations by allowing online posting of such information in certain circumstances. The E-Warranty Act of 2015 would require the Federal Trade Commission (FTC) to update its rules to comply with the bill.

BACKGROUND AND NEED FOR LEGISLATION

Currently, manufacturers of consumer products must provide written warranty information to consumers where the consumer products are purchased. Under the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (15 U.S.C. 2301 et seq.), the FTC has rulemaking and enforcement authority over the content and availability of warranty disclosures at the point of sale where manufacturers choose to provide warranties. Today, the FTC does not permit manufacturers or sellers to meet their obligations by posting warranty information on their websites.

In 1975, the FTC adopted its Disclosure of Written Consumer Product Warranty Terms and Conditions Rule (16 C.F.R. Part 701) (Disclosure Rule) and Pre-Sale Availability Rule (16 C.F.R. Part 702) for products costing the consumer more than $15. Although there have been significant technological advancements since 1975, the FTC has not updated these provisions to reflect modern methods of communication.

The Disclosure Rule requires that warranty disclosures must be clearly and conspicuously disclosed in a single document in simple and readily understood language with nine elements including: the identity of the party to whom the written warranty is extended (e.g. original consumer purchaser); a description of the product covered by and where necessary for clarification, excluded from the warranty; the warranty duration; and a step-by-step explanation of the procedure that the consumer should follow in order to obtain performance of any warranty obligation.

The Pre-Sale Availability Rule outlines the duties of both warrantors and sellers. Sellers are required to make the text of the warranty readily available for examination by the prospective buyer by displaying it in close proximity to the product or providing it upon request subject to certain disclosure requirements. Warrantors are required to provide the written warranty materials necessary for sellers to comply with the Rule. The Pre-Sale Availability Rule also includes particularized requirements for catalog sales, mail order sales, and door-to-door sales.

Under the plain language of the current rules, manufacturers may not satisfy the warranty requirements by making applicable warranty information available only online. The FTC has interpreted the Pre-Sale Availability Rule to allow for manufacturers to provide electronic versions of consumer product warranties at the point of sale, written warranties that are included on CDs, DVDs, or on the internal drives of warranted products would qualify as being "provided with" or as "accompanying" the products, in compliance with the Pre-Sale Availability Rule.

H.R. 3154 would require the FTC to update the warranty rules to allow manufacturers to fulfill their obligations by making war-

ranty information available online or through other electronic means while ensuring that consumers' and prospective consumers remain able to obtain copies of warranties at the point of sale without placing additional burdens on sellers.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On July 23, 2015, the Subcommittee on Commerce, Manufacturing, and Trade met in open markup session and forwarded H.R. 3154 to the full Committee, without amendment, by a voice vote. On July 29, 2015, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 3154 reported to the House, without amendment, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3154 reported.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 3154 is to allow manufacturers of consumer products to fulfill their warranty disclosure and labeling obligations through online or other electronic means in certain circumstances without limiting consumers' access to the warranty information.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3154 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 3154 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 19, 2015.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3154, the E-Warranty Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 3154—E-Warranty Act of 2015

Under current law, manufacturers of consumer products must provide written warranty information to consumers at the place where those goods are purchased. H.R. 3154 would allow those manufacturers to make such warranty information available on the Internet and remain in compliance with the law. The bill would require the Federal Trade Commission (FTC) to revise rules to reflect the new notification standards.

Based on information from the FTC, CBO estimates that implementing the rulemaking requirement in H.R. 3154 would not have a significant effect on discretionary costs. Enacting H.R. 3154 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 3154 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On June 10, 2015, CBO transmitted a cost estimate for S. 1359, the E-Warranty Act of 2015, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on May 20, 2015. The two pieces of legislation are similar and the estimated budgetary effects are the same.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 3154 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 3154 specifically directs to be completed 1 rule making within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides that the Act may be cited as the "E-Warranty Act of 2015."

Section 2. Findings

This section includes Congressional findings that (1) manufacturers and consumers prefer to have the option to provide or receive warranty information online; (2) modernizing warrant notification rules is necessary to allow the United States to compete globally in manufacturing, trade, and the development of consumer products connected to the Internet; and (3) expanding consumer access to relevant consumer information in an environmentally friendly way and providing manufacturers flexibility to meet labeling and warranty requirements would be achieved by allowing an electronic warrant option.

Section 3. Electronic display of terms of written warranty for consumer products

This section would amend existing warranty disclosure provisions of the Magnuson-Moss Warranty Act to allow a seller to make written warranty terms available in an accessible digital format on the Internet website of the manufacturer of the consumer product and providing the consumer, or prospective consumer, with information about how to obtain and review the warranty terms by indicating on the product, the product packaging, or in the product manual the Internet website of the manufacturer where the warranty terms can be obtained and viewed and the phone number, postal mailing address, or other reasonable non-Internet based

means of contacting the manufacturer to obtain and review the warranty terms.

This section requires that, in the case where the terms of any written warranty must be disclosed to the consumer prior to the sale of the product at a retail location, by catalog, or through door-to-door sales, the option to provide the terms in an accessible digital format shall only apply if the seller makes the terms of the warranty available, through electronic or other means, at the location of the sale to the consumer.

This section requires the Federal Trade Commission to revise the relevant rules to comply with the Act within one year of enactment. The Commission may waive the requirement of section 109(a) of the Magnuson-Mass Warranty-Federal Trade Commission Improvement Act (15 U.S.C. 2302(b)) to give interested persons an opportunity for oral presentation if the Commission determines that giving interested persons such opportunity would interfere with the ability of the Commission to revise the rules in a timely manner.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

MAGNUSON-MOSS WARRANTY—FEDERAL TRADE COMMISSION IMPROVEMENT ACT

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WARRANTY PROVISIONS

SEC. 102. (a) In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty. Such rules may require inclusion in the written warranty of any of the following items among others:

(1) The clear identification of the names and addresses of the warrantors.

(2) The identity of the party or parties to whom the warranty is extended.

(3) The products or parts covered.

(4) A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty—at whose expense—and for what period of time.

(5) A statement of what the consumer must do and expenses he must bear.

(6) Exceptions and exclusions from the terms of the warranty.

(7) The step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the

warranty, including the identification of any person or class of persons authorized to perform the obligations set forth in the warranty.

(8) Information respecting the availability of any informal dispute settlement procedure offered by the warrantor and a recital, where the warranty so provides, that the purchaser may be required to resort to such procedure before pursuing any legal remedies in the courts.

(9) A brief, general description of the legal remedies available to the consumer.

(10) The time at which the warrantor will perform any obligations under the warranty.

(11) The period of time within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty.

(12) The characteristics or properties of the products, or parts thereof, that are not covered by the warranty.

(13) The elements of the warranty in words or phrases which would not mislead a reasonable, average consumer as to the nature or scope of the warranty.

(b)(1)(A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this title (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of the product to conform with the written warranty or by reason of the failure of the warrantor (or service contract) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

(4)(A) Except as provided in subparagraph (B), the rules prescribed under this subsection shall allow for the satisfaction of all requirements concerning the availability of terms of a written warranty on a consumer product under this subsection by—

(i) making available such terms in an accessible digital format on the Internet website of the manufacturer of the consumer product in a clear and conspicuous manner; and

(ii) providing to the consumer (or prospective consumer) information with respect to how to obtain and review such terms by indicating on the product or product packaging or in the product manual—

(I) the Internet website of the manufacturer where such terms can be obtained and reviewed; and

(II) the phone number of the manufacturer, the postal mailing address of the manufacturer, or another reasonable non-Internet based means of contacting the manufacturer to obtain and review such terms.

(B) With respect to any requirement that the terms of any written warranty for a consumer product be made available to the consumer (or prospective consumer) prior to sale of the product, in a case in which a consumer product is offered for sale in a retail location, by catalog, or through door-to-door sales, subparagraph (A) shall only apply if the seller makes available, through electronic or other means, at the location of the sale to the consumer purchasing the consumer product the terms of the warranty for the consumer product before the purchase.

(c) No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if—

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest.

The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

(d) The Commission may by rule devise detailed substantive warranty provisions which warrantors may incorporate by reference in their warranties.

(e) The provisions of this section apply only to warranties which pertain to consumer products actually costing the consumer more than $5.

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