

Congress Brings Warranties Into The Internet Age

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On Tuesday, Sept. 8, the House by overwhelming majority passed S. 1359, the E-Warranty Act of 2015, which requires the U.S. Federal Trade Commission to revise the Magnuson-Moss Warranty Act to allow manufacturers to satisfy the act's requirements by digitally posting consumer product warranties on their websites.

The Senate unanimously passed the bill back in July and the E-Warranty Act became law on Sept. 24.

The E-Warranty Act is reminiscent of the Electronic Signatures in Global and National Commerce Act, signed into law by President Clinton in 2000. As with the E-Sign Act, the E-Warranty Act is meant to bring law out of the Paper Age — this time by using the Internet to promote easy and efficient access to warranty information while reducing costs for manufacturers and consumers alike.

Under current law, generally speaking, a warranty disclosure must be made in tangible, physical form, even if an online form is available. The E-Warranty Act would change course, permitting manufacturers to provide warranty information online only, so long as it is provided “in an accessible digital format on the Internet website of the manufacturer of the consumer product in a clear and conspicuous manner.” The bill does not say what “clear and conspicuous manner” means, presumably leaving this for courts to resolve.

The act preserves a consumer's right to access paper copies of warranties by nondigital means. It would require manufacturers who avail themselves of the act's digital option to offer “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 [the warranty] terms.”

The fundamentals of warranty content would not change under the act. As explained in the House Report accompanying the act, the FTC's current rules regarding product warranties require that manufacturers disclose key pieces of information including "the identity of the party to whom the written warranty is extended; ... 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." H.R. Rep. No. 114-243, at 52 (2015).

The corresponding Senate Report echoes the House Report in this regard and goes on to feature three key aspects to the legislation's significance: 1) consumers and manufacturers want information online; 2) digitizing warranty information allows the U.S. to better compete on a global scale and 3) the act encourages environmental efficiency and conservation, while giving manufacturers more flexibility and consumers greater open access. S. Rep. No. 114-77, at 4 (2015); H.R. Rep. No. 114-243, at 52 (2015).

The 2000 E-Sign Act caused consternation and anxiety when first proposed, but on passage proved readily embraced by companies and consumers alike. Barring radical revision, much the same should go for E-Warranty. The Internet is hardly new technology and industries are accustomed by now to expansive consumer-facing use of their websites.

Moreover, much has changed since 2000. The ubiquity of the Internet means increasing amounts and types of important information are consumed online. This minimizes any unease consumers may feel towards this legislation, while allowing manufacturers and sellers to take quick advantage of this new law by tapping into and, in many instances, simply updating existing websites. Nonetheless, issues attendant to any online dissemination of information will need to be addressed, such as ensuring that online warranty information is secure, regularly updated and easily found on a manufacturer's website and through easy keyword searching in more general search engines.

Ultimately, the act, if made law, will bring significant change in how product manufacturers and sellers think of warranties and the publishing of their terms. Savvy entities should be taking steps now to prepare to convert their warranty worlds to the Internet age — with easily accessible web platforms, warranty text that is clear and reader-friendly on both desktop and mobile devices and related actions to move swiftly and smartly away from the paper world.

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