

## CONSUMER PRODUCT WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT

JUNE 13, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

### REPORT

together with

### SEPARATE AND INDIVIDUAL VIEWS

[To accompany H.R. 7917]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 7917) to provide minimum disclosure standards for written consumer product warranties against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows (page and line numbers refer to page and line numbers of the reported bill):

(1) Page 1, strike out lines 3 through 5, and insert in lieu thereof the following:

That this Act may be cited as the "Consumer Product Warranties-Federal Trade Commission Improvements Act".

(2) Page 2, strike out line 3 and all that follows down through line 9 on page 6, and insert in lieu thereof the following:

#### TITLE I—CONSUMER PRODUCT WARRANTIES

##### DEFINITIONS

Sec. 101. For the purposes of this title:

- (1) The term "consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or house-

hold purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "consumer" means the first buyer at retail of any consumer product, any person to whom such product is transferred during the duration of a warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or contract).

(4) The term "reasonable and necessary maintenance" consists of those operations (A) which the consumer reasonably can be expected to perform or have performed and (B) which are necessary to keep any consumer product performing its intended function and operating in the manner (if any) specified in the warranty.

(5) The term "remedy" means whichever the following actions the warrantor elects:

- (A) repair,
- (B) replacement, or
- (C) refund;

except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(6) The term "replacement" means furnishing a new consumer product which is identical or reasonably equivalent to the warranted product.

(7) The term "refund" means refunding the actual purchase price (less depreciation based on actual use).

(8) The term "supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(9) The term "warrantor" means any supplier who gives or offers to give a warranty.

(10) The term "warranty" means—

(A) (i) any written affirmation of fact or written promise made at the time of sale by a supplier to a purchaser which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(ii) any undertaking in writing in connection with the sale of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking.

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and the first buyer at retail of such product; or

(B) an implied warranty arising under State law.

(11) The term "service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair of a consumer product.

(12) The term "distributed in commerce" means sold in commerce, introduced or delivered for introduction into commerce, or held for sale or distribution after introduction into commerce.

(13) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(14) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, or American Samoa. The term "State law" includes a law of the United States applicable only to the District of Columbia or only to a territory or possession of the United States; and the term "Federal law" excludes any State law.

(3) Page 9, strike out line 21 and all that follows down through line 6, on page 13, and insert in lieu thereof the following:

#### 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 supplier warranting a consumer product to a consumer in writing shall fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty pursuant to any rules issued by the Commission. 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 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 procedure so provides, that the purchaser must 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 his obligations.

(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 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 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 ten 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 warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or contract).

(c) No warrantor of a consumer product may condition his warranty of such product on the consumer's using, in connection with such product, any article or service (other than

a 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 product or service so identified is used in connection with the warranted product, and

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

The Commission shall publish in the Federal Register for public comment all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its decision, 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 consumer products actually costing the consumer more than \$5.

(4) Page 17, strike out line 7 and all that follows down through line 11, on page 18, and insert in lieu thereof the following:

#### DESIGNATION OF WARRANTIES

SEC. 103. (a) Any supplier warranting a consumer product in writing shall clearly and conspicuously designate such warranty in the following manner, unless exempted from doing so by the Commission pursuant to subsection (c) of this section:

(1) If the written warranty incorporates the Federal minimum standards for warranty set forth in section 104 of this Act, then it shall be conspicuously designated a "full (statement of duration)" warranty or guaranty.

(2) If the written warranty does not incorporate the Federal minimum standards for warranty set forth in section 104 of this Act, then it shall be conspicuously designated a "limited" warranty or guaranty.

(b) Statements or representations similar to expressions of general policy concerning customer satisfaction which are not subject to any specific limitations are excluded from sections 102, 103, and 104 of this Act, but shall remain subject to the provisions of the Federal Trade Commission Act and requirements in section 110(c) of this Act.

(c) In addition to the authority given in section 102 of this Act pertaining to disclosure, the Commission may prescribe rules to define in detail the duties set forth in section 104(a) of this Act and their applicability to warrantors of different categories of consumer products with "full (statement of duration)" warranties, and to determine when a warranty in writing does not have to be designated either "full (statement of duration)" or "limited" in accordance with this section.

(d) The provisions of this section and section 104 apply only to consumer products actually costing the consumer more than \$10.

(5) Page 19, strike out line 19 and all that follows down through line 6, on page 21, and insert in lieu thereof the following:

FEDERAL MINIMUM STANDARDS FOR WARRANTY

SEC. 104. (a) In order for a supplier warranting a consumer product in writing to incorporate the Federal minimum standards for warranty—

(1) such supplier must as a minimum undertake the remedy, within a reasonable time and without charge, of such consumer product in the case of a defect, malfunction, or failure to conform with such written warranty;

(2) notwithstanding section 108(b), such supplier may not impose any limitation on the duration of any implied warranty on the product; and

(3) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts (determined under rules of the Commission) by the warrantor to remedy such defect or malfunction, such warrantor must permit the consumer to elect either a refund or replacement without charge of such product or part (as the case may be).

(b)(1) In fulfilling the duties under subsection (a) the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which does not conform to the written warranty unless the warrantor can demonstrate that such a duty is reasonable.

(2) Notwithstanding paragraph (1), a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a), that the replaced consumer product shall be made available to the supplier free and clear of liens and other encumbrances, except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.

(3) The duties under subsection (a) extend from the warrantor to each person who is a consumer with respect to the product.

(c) The performance of the duties under subsection (a) of this section shall not be required of the warrantor if he can show that damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance), caused any warranted consumer product to fail to conform to the written warranty.

(d) For purposes of this section and section 102(c), the term "without charge" means that the warrantor cannot assess the consumer for any costs the warrantor or his repre-

representatives incur in connection with the required remedy of a warranted consumer product. The obligation under subsection (a) (1) (A) to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, if any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy; then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.

(e) If a supplier designates a warranty applicable to a consumer product as a "full (statement of duration)" warranty, then the warranty on such product shall, for the purposes of any action under section 110(d) or under any State law, be deemed to incorporate at least the minimum requirements of this section.

(6) Page 23, strike out line 19 and all that follows down through line 24, on page 23, and insert in lieu thereof the following:

#### FULL AND LIMITED WARRANTIES OF A CONSUMER PRODUCT

SEC. 105. Nothing in this title shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

(7) Page 24, strike out line 7 and all that follows down through line 17, on page 24, and insert in lieu thereof the following:

#### SERVICE CONTRACTS

SEC. 106. Nothing in this title shall be construed to prevent a supplier from entering into a service contract with the consumer in addition to or in lieu of a warranty in writing if such contract fully and conspicuously discloses in simple and readily understood language its terms and conditions. The Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be clearly and conspicuously disclosed.

(8) Page 25, strike out line 3 and all that follows down through line 10, on page 25, and insert in lieu thereof the following:

#### DESIGNATION OF REPRESENTATIVES

SEC. 107. Nothing in this title shall be construed to prevent any warrantor from designating representatives to perform duties under the warranty: *Provided*, That such warrantor shall make reasonable arrangements for compensation of such designated representatives, but no such designation shall relieve the warrantor of his direct responsibilities to the consumer or make the representative a covearrantor.

(9) Page 25, strike out line 19 and all that follows down through line 9, on page 26, and insert in lieu thereof the following:

#### LIMITATION ON DISCLAIMER OF IMPLIED WARRANTIES

SEC. 108. (a) No supplier may disclaim or modify any implied warranty to a consumer with respect to a consumer product of (1) such supplier makes any express warranty in writing to the consumer with respect to such consumer product, or (2) at the time of sale, or within ninety days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

(b) For purposes of this title, implied warranties may be limited in duration of an express warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

(c) A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of any action under this title or under State law.

(10) Page 27, strike out lines 1 through 20 and insert in lieu thereof the following:

#### COMMISSION RULES

SEC. 109. Any rule prescribed under this title shall be prescribed in accordance with, and shall be subject to judicial review under, section 18 of the Federal Trade Commission Act (as amended by section 202 of this Act).

(11) Page 28, strike out line 1 down through line 3 on page 31, and insert the following:

#### REMEDIES

SEC. 110. (a) (1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

(2) The Commission shall prescribe rules setting forth requirements for any informal dispute settlement procedure which is incorporated into the terms of a warranty to which any provision of this title applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more suppliers may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If—

(A) a supplier establishes a procedure which meets such requirements and he incorporates in a warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty, and

(B) the Commission has not found, under paragraph (4), that such procedure or its implementation fails to comply with rules under paragraph (2).

then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) a class of consumers may not proceed in a class action under subsection (d) except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to such procedure. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of Rule 23 of the Federal Rules of Civil Procedure for the District Courts of the United States.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in the consumer product warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this title or any other provision of law.

(b) It shall be a violation of section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45 (a) (1)) for any person to fail to comply with any requirement imposed on such person by or pursuant to this title or to violate any prohibition contained in this title.

(c) (1) The district courts of the United States shall have jurisdiction of any action brought by the Commission to restrain (A) any supplier from making a deceptive warranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or pursuant to this title or from violating any prohibition contained in this title. Upon proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond. If a complaint under section 5 of the Federal Trade Commission Act is not within such period (not exceeding ten days) as may be specified by the court after the issuance of the temporary restraining order or preliminary

injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term "deceptive warranty" means (A) a warranty (as defined in section 101(10)) which (i) contains an affirmation, promise, description, or representation which is either false or fraudulent, or which, in light of all of the circumstances would mislead a reasonable individual exercising due care; or (ii) fails to contain information that is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care; or (B) a warranty (as so defined) created by the use of such terms as "guaranty" or "warranty", if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

(d) (1) Subject to subsections (a) (3) and (c), a consumer who is damaged by the failure of a supplier to comply with any obligation under this title, or under a warranty or service contract (as defined in section 101(10) and (11)), may bring suit—

(A) in any court of competent jurisdiction in any State or the District of Columbia; or

(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the institution and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(3) No claim shall be cognizable in a suit brought under paragraph (1) (B) of this subsection—

(A) unless each individual claim exceeds the sum or value of \$25;

(B) unless the matter in controversy exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; and

(C) if the action is brought as a class action, unless the number of named plaintiffs equals or exceeds one hundred.

(c) No action (other than a class action or an action respecting a warranty to which subsection (a) (3) applies) may be brought under subsection (d) for breach of any warranty or service contract, and a class of consumers may not proceed in a class action under such subsection with respect to such a breach except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to cure such breach. In the case of such a class action (other than a class action respecting a warranty to which subsection (a) (3) applies) brought under subsection (d) for breach of any warranty or service contract, such reasonable opportunity will be afforded by the named plaintiffs and they shall at that time notify the defendant that they are acting on behalf of the class. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of Rule 23 of the Federal Rules of Civil Procedure for the District Courts of the United States.

(f) For purposes of this section, only the supplier actually making a written affirmation of fact, promise, or undertaking shall be deemed to have created a warranty described in section 10 (10) (A), and any rights arising thereunder may be enforced under this section only against such supplier and no other person.

(12) Page 37, strike out lines 3 through 14 and insert in lieu thereof the following:

#### EFFECT ON OTHER LAWS

Sec. 111. (a) (1) Nothing contained in this title shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any statute defined therein as an Antitrust Act.

(2) Nothing in this title shall be construed to repeal, invalidate, or supersede the Federal Seed Act (7 U.S.C. 1551-1611) and nothing in this title shall apply to seed for planting.

(b) (1) Nothing in this title shall invalidate or restrict any right or remedy of any consumer under State law.

(2) Nothing in this title shall affect the liability of, or impose liability on, any person for personal injury.

(c) (1) Except as provided in subsection (b) and in paragraph (2) of this subsection, a State requirement—

(A) which relates to labeling, disclosure, or other matters (i) respecting written warranties or performance thereunder and (ii) within the scope of an applicable requirement of sections 102, 103, and 104 (and rules implementing such sections), and

(B) which is not identical to a requirement of section 102, 103, or 104 (or a rule thereunder), shall not be applicable to warranties complying with such sections (or rules thereunder).

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 109) that any requirement of such State covering any transaction to which this title applies (A) affords protection to consumers greater than the requirements of this title and (B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for as long as the State continues to administer and enforce effectively any such greater requirement.

(d) This title (other than section 102(c)) shall be inapplicable to any warranty the making or content of which is otherwise governed by Federal law. If only a portion of a written warranty is so governed by Federal law, the remaining portion shall be subject to this title.

(13) Page 39, strike out lines 5 through 21, and insert in lieu thereof the following:

#### EFFECTIVE DATE.

SEC. 112. (a) Except as provided in subsection (b) of this section, this title shall take effect six months after the date of its enactment but shall not apply to consumer products manufactured prior to such date.

(b) Those requirements in this title which cannot be reasonably met without the promulgation of rules of the Commission shall take effect six months after the final publication of such rules; except that the Commission, for good cause shown, may provide designated classes of suppliers up to an additional six months to bring their written warranties into compliance with rules promulgated pursuant to this title.

(c) The Commission shall promulgate rules for initial implementation of this title as soon as possible after the date of enactment of this Act but in no event later than one year after the date of enactment of this Act.

(14) Page 41, strike out line 6 and all that follows down through line 25 on page 46, and insert in lieu thereof the following:

#### RULEMAKING AUTHORITY

SEC. 202. (a) The Federal Trade Commission Act is amended by redesignating section 18 as section 19, and inserting after section 17 the following new section:

#### "RULEMAKING

"Sec. 18. (a) (1) The Commission shall have the power to issue (A) procedural, administrative, and advisory rules,

## PURPOSE

The purpose of this legislation is (1) to make warranties on consumer products more readily understood and enforceable, (2) to provide the Federal Trade Commission (FTC) with means of better protecting consumers and (3) to authorize appropriations for the operations of FTC for fiscal years 1975, 1976, and 1977.

## SUMMARY OF LEGISLATION AS AMENDED BY THE COMMITTEE AMENDMENTS

### *Title I—Consumer Product Warranties*

This title applies to warranties which are given in connection with consumer products. A consumer product is defined as any tangible personal property distributed in commerce and normally used for personal, family, or household purposes. The legislation does not require that a warranty be given on any consumer product. In summary title I would provide as follows:

(1) It would authorize the FTC to prescribe rules providing for disclosure of the terms and conditions of written warranties on consumer products. These provisions would apply only to consumer products actually costing the consumer more than \$5.

(2) It would require written warranties given on consumer products (other than those exempted by the FTC) to be designated as either "full" or "limited" warranties and would specify the duties of a warrantor under a "full" warranty. These provisions would only apply to consumer products actually costing more than \$10. Under a "full" written warranty of a consumer product the warrantor would be (a) required to remedy the consumer product within a reasonable time and without charge in case of a defect, malfunction, or failure to conform with such written warranty, (b) prohibited from imposing any limitation on the duration of any implied warranty on the consumer product, and (c) required to permit the consumer to elect either a refund or replacement of the warranted consumer product if it continued to be defective or to malfunction after a reasonable number of attempts are made to remedy such defect or malfunction.

(3) A service contract on a consumer product could be given in addition to or in lieu of a warranty in writing. The FTC would be authorized to prescribe by rule the manner and form in which the terms and conditions of service contracts must be clearly and conspicuously disclosed.

(4) Congressional endorsement is given to the establishment of informal dispute settlement procedures. The FTC must prescribe rules applicable to any informal dispute settlement procedure which is incorporated in the terms of a warranty on a consumer product. A warrantor may make initial resort to such an informal dispute settlement procedure a condition precedent to obtaining other remedies under title I of the legislation.

(5) The FTC would enforce the legislation and would be empowered to obtain injunctive relief against any person violating its provisions or issuing deceptive warranties in writing.

(6) Any person damaged by the failure of a supplier to comply with any obligation under title I or under a warranty or service contract as defined in such title would be authorized to bring suit in an appropriate district court of the United States (subject to certain jurisdictional limitations) or in any State court of competent jurisdiction. Before bringing such a suit the plaintiff would have to give the warrantor reasonable opportunity to cure the breach to which the action or proceeding relates.

(7) If a consumer prevails in any action described in paragraph (6) (above) the court would be allowed to award him as a part of his judgment a sum equal to the aggregate amount of his costs and expenses (including attorney's fees based on actual time expended). However, no such action could be brought and such costs and expenses would not be allowed unless the defendant was afforded a reasonable opportunity to cure the breach on which the suit was based.

#### *Title II—Federal Trade Commission Act Amendments*

Title II would amend the Federal Trade Commission Act as follows:

(1) The FTC's jurisdiction would be expanded from matters and entities *in commerce* to those *in or affecting commerce* (sec. 201).

(2) The FTC's power to issue substantive rules defining and prohibiting unfair and deceptive practices is clarified and confirmed. Specific and detailed procedures would be established which the FTC would have to follow in prescribing substantive rules under the Federal Trade Commission Act (sec. 202).

(3) The FTC's investigational authority would be broadened to cover persons, partnerships, and corporations instead of only corporations as at present (sec. 203).

(4) The FTC could be represented in any civil action in its own name and through its own representative only with the concurrence of the Attorney General (sec. 204).

The legislation would also authorize the appropriation of funds to the Federal Trade Commission to carry out its functions, powers, and duties. \$41 million would be authorized for fiscal year 1975, \$45 million for fiscal year 1976, and \$49 million for fiscal year 1977.

## COMMITTEE ACTION

Your committee acting through its Subcommittee on Commerce and Finance held six days of hearings (March 19, 20, 27, 28, 29, and 30, 1973) on H.R. 20 (introduced by Mr. Moss, for himself and Messrs. Eckhardt, Carney, Dingell, Adams, and Conte) and H.R. 5021 (introduced by Mr. Broyhill of North Carolina, for himself and Mr. McCollister).

In these hearings, the Subcommittee received testimony from the Chairman of the Federal Trade Commission, from representatives of consumers' groups, business, and trade associations and from interested individuals.

On May 17, 1973, H.R. 7917, the bill herein reported, was introduced by Mr. Moss, for himself and Messrs. Eckhardt, Helstoki, Breckinridge, Dingell, Adams, and Carney of Ohio. The bill reflected improvements developed during the Subcommittee's hearings.

The Subcommittee devoted six days to markup of H.R. 7917 and reported it to the full Interstate and Foreign Commerce Committee by voice vote.

The full committee reported the bill, as amended, to the House by voice vote after spending five days marking it up.

## BACKGROUND AND NEED—CONSUMER PRODUCT WARRANTIES

With the introduction of the assembly line and the mass production of goods, the techniques of advertising and mass merchandising, there has been made available to American consumers a continually growing assortment of goods to bring convenience and pleasure to their lives.

In 1896 the year marking the beginning of the American motor vehicle industry, thirteen cars of the same design were produced by an organized company. In 1971, 75 years later over 8.5 million passenger cars were produced in the United States.

Comparable growth was occurring in the production of other consumer products. Some idea of this growth, the diversity of products involved, the pervasiveness of the use of consumer products, and the vast sums of money spent for such products by American consumers is shown in the following table:<sup>1</sup>

## HOME APPLIANCES—MANUFACTURERS' SALES AND RETAIL VALUES, 1960 TO 1972

[Compiled from reports of associations and manufacturers. Sales include exports, except that data for consumer electronics cover domestic production only. Except as indicated, covers electric appliances only.]

Product	Sales (1,000 units)					Retail value (millions dollars)				
	1960	1965	1970	1971	1972	1960	1965	1970	1971	1972
Home laundry.....	4,776	6,567	7,075	7,986	9,032	1,148	1,399	1,482	1,660	1,901
Dryers, clothes.....	1,260	2,092	2,981	3,377	3,925	261	367	525	583	689
Electric.....	818	1,388	2,129	2,527	2,989	159	236	360	417	505
Gas.....	442	710	852	850	936	102	131	165	166	184
Washing machines.....	3,364	4,430	4,094	4,600	5,107	817	1,014	957	1,077	1,212
Automatic and semiautomatic.....	2,601	3,771	3,869	4,270	4,824	697	916	925	1,025	1,617
Washer and spinner.....	763	659	225	339	283	120	98	32	52	45
Washer-dryer combinations.....	151	39	NA	NA	NA	70	18	NA	NA	NA
Other major appliances.....	12,525	16,873	19,931	22,171	25,190	2,666	3,103	3,781	4,066	4,620
Dishwashers.....	555	1,260	2,116	2,477	3,199	142	276	456	542	676
Food waste disposers.....	760	1,360	1,977	2,292	2,772	61	82	129	137	172

<sup>1</sup> Statistical abstract of the United States, 1973, pages 734-35.

Product	Sales (1,000 units)					Retail value (millions dollars)				
	1960	1965	1970	1971	1972	1960	1965	1970	1971	1972
Freezers.....	1,045	1,160	1,359	1,437	1,576	308	271	302	311	347
Ranges, electric.....	1,425	2,085	2,362	2,714	3,232	413	446	540	601	707
Free-standing.....	850	1,285	1,767	2,014	2,422	224	299	417	469	550
Built-in.....	635	780	595	700	810	189	156	123	132	157
Range, gas.....	1,814	2,266	2,362	2,549	2,600	271	435	510	517	564
Free-standing <sup>1</sup> .....	1,475	1,787	2,035	2,186	2,270	199	334	439	445	4.8
Built-in <sup>2</sup> .....	339	479	326	363	390	72	101	71	72	76
Refrigerators, electric.....	3,475	4,930	5,296	5,691	6,315	1,129	1,282	1,448	1,542	1,705
Water heaters, electric.....	715	1,095	1,684	1,922	2,276	75	92	152	173	205
Water heaters, gas.....	2,666	2,737	2,785	3,059	3,160	267	219	234	263	269
Electric housewares.....	34,497	66,398	74,078	75,121	79,245	884	1,379	1,747	1,745	1,895
Bed coverings.....	3,335	4,610	4,050	4,000	4,200	77	78	81	72	80
Blenders.....	455	1,200	5,100	4,100	4,300	16	45	128	66	99
Broilers.....	NA	1,890	2,605	2,650	2,724	NA	43	71	73	78
With rotisseries.....	NA	515	880	950	990	NA	18	40	43	43
Without rotisseries <sup>3</sup> .....	NA	1,375	1,725	1,760	1,734	NA	25	31	30	35
Can openers <sup>4</sup> .....	1,200	4,300	5,050	4,750	4,925	28	60	65	62	64
Coffee makers, automatic.....	4,655	6,600	8,100	8,700	9,000	54	104	130	139	171
Corn poppers.....	760	1,105	2,300	2,500	4,000	4	7	23	32	52
Flour sifters.....	1,024	1,181	1,156	1,158	994	44	47	46	46	40
Frypan skillets.....	2,455	2,650	3,200	3,300	3,500	44	56	93	99	112
Griddles, automatic.....	275	390	500	550	660	6	8	13	15	18
Hair dryers, with bonnets <sup>5</sup> .....	NA	4,325	4,100	4,350	4,600	NA	78	98	96	96
Heating pads.....	2,575	3,000	3,900	3,900	4,200	15	15	23	27	34
Hotplates and buffet ranges.....	565	705	810	825	890	5	6	10	10	13
Irons.....	6,810	9,860	9,275	9,350	9,510	91	140	159	161	179
Steam and steam spray.....	4,410	7,950	7,965	8,150	8,400	73	123	144	147	168
Other.....	1,970	1,910	1,290	1,200	1,110	18	17	15	14	11
Mixers, food.....	3,245	3,925	4,675	4,875	5,150	73	59	90	93	109
Stand.....	815	950	875	850	950	29	23	33	32	38
Portable.....	2,420	2,975	3,800	4,025	4,200	44	30	57	61	71
Oral hygiene devices <sup>6,7</sup> .....	NA	3,300	2,850	2,250	2,280	NA	45	46	36	32
Slicing knives.....	NA	5,500	2,075	2,175	2,250	NA	97	42	46	50
Toasters, automatic.....	3,315	4,750	5,975	6,300	6,525	60	74	108	117	111
Vacuum cleaners.....	3,213	5,107	7,392	7,973	8,337	311	393	502	518	517
Waffle and sandwich grills.....	825	1,060	1,075	1,015	1,000	16	22	19	17	16
Air treatment.....	7,872	13,216	20,195	19,135	18,989	669	955	1,079	1,570	1,556
Air-conditioners, room.....	1,569	2,945	5,887	5,478	4,573	435	624	1,207	1,147	911
Dehumidifiers.....	575	210	598	397	506	40	16	47	33	47
Fans.....	4,637	7,703	9,875	9,450	9,850	167	235	283	245	244
Heaters.....	1,250	1,808	2,835	2,750	2,925	27	29	70	66	70
Humidifiers.....	NA	550	1,000	1,100	1,150	NA	39	72	79	84
Consumer electronics.....	21,151	34,800	30,063	32,730	38,809	2,159	3,916	3,650	4,680	5,442
Phonographs, production.....	4,333	6,245	3,860	4,562	5,184	585	795	505	544	509
Table and portable.....	2,958	4,436	2,856	3,560	4,256	NA	271	174	210	213
Console and radio-phonograph combinations.....	1,375	1,809	1,094	1,062	928	NA	525	331	334	296
Radios, production.....	10,655	14,082	8,261	8,224	9,519	314	302	173	176	210
Table and clock radios.....	6,160	8,021	3,676	4,276	4,824	155	187	95	105	128
Portable radios.....	4,535	6,031	4,585	3,948	5,025	159	115	78	71	81
Television, black and white, production.....	5,703	8,382	4,851	4,848	5,600	1,269	1,336	643	627	692
Table and portable.....	3,274	6,956	4,463	4,415	5,341	589	974	558	530	616
Console.....	2,211	1,318	388	433	259	579	330	85	97	55
Phono and/or radio combinations.....	273	108								
Television, color, production.....	1120	2,646	4,632	6,319	7,908	NA	1,482	2,339	3,333	4,032
Table and portable.....	NA	316	2,495	3,570	4,721	NA	NA	973	1,517	1,978
Console.....	NA	2,089	2,018	2,673	3,106	NA	NA	1,251	1,711	1,969
Phono and/or radio combinations.....	NA	241	119	106	81	NA	NA	115	105	85
Tape recorders <sup>8</sup> .....	295	3,445	8,459	8,747	10,268	NA	NA	NA	NA	NA
Power lawn mowers.....	3,600	4,500	5,650	5,575	6,130	352	421	791	781	858

<sup>1</sup> Beginning 1965, includes high-oven models.

<sup>2</sup> Beginning 1965, includes set-in models.

<sup>3</sup> Includes toaster-broilers.

<sup>4</sup> Includes combination can openers/knife sharpeners/ice crushers.

<sup>5</sup> Includes imports.

<sup>6</sup> Includes salon-type dryers.

<sup>7</sup> For 1965, toothbrushes only; thereafter includes water-pulsating units.

<sup>8</sup> Represents factory sales.

NA Not available.

Source: Billboard Publications, Inc., New York, N.Y., Merchandising Week, annual statistical issues. (Copyright.)

These articles, of course, represent only a small portion of the consumer products on which warranties can be and are given.

Paralleling the growth of acquisition of consumer products has been a growing concern of the American consumer with the quality and

durability of many of those products. Another growing source of resentment has been the inability to get many of those products properly repaired and the developing awareness that the paper with the filigree border bearing the bold caption "Warranty" or "Guarantee" was often of no greater worth than the paper it was printed on. Indeed, in many cases where a warranty or guarantee was ostensibly given the old saying applied "The bold print giveth and the fine print taketh away." For the paper operated to take away from the consumer the implied warranties of merchantability and fitness arising by operation of law leaving little in its stead.

Warranties are currently governed by common law and the Uniform Commercial Code. The Uniform Commercial Code has been adopted in forty-nine States (all but Louisiana) and the District of Columbia. In the jurisdictions where it is in effect, it generally controls the rights of parties in commercial transactions and it is commonly accepted as today's law of sales.

A warranty is a statement or representation expressed or implied made by a seller of goods with reference to the character or quality of the goods being sold. It is not necessary to the creation of an express warranty for the formal words "warranty" or "guarantee" to be used or that the seller have a specific intention to make a warranty.

An implied warranty arises by operation of law rather than out of an agreement or action of the parties to the sale and purchase. Unless they are expressly modified or excluded these implied warranties arise in every sale. Two types of implied warranties under the Uniform Commercial Code which are pertinent here are the implied warranties of merchantability and of fitness. Under the implied warranty of merchantability, goods must be reasonably fit for the general purpose for which they are sold. The implied warranty of fitness arises where the seller at the time of sale has reason to know the particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods. The implied warranty of fitness is that the goods will be fit for that purpose. Many of the so-called warranties and guarantees now given on consumer products disclaim or negate these implied warranties of merchantability and fitness.

### *Presidential Messages on Consumer Matters*

On March 15, 1962, President Kennedy sent the first Presidential Message on consumer interests to the Congress. Since then six additional Presidential Messages on consumer matters have been submitted to the Congress.

In his message of February 6, 1968, President Johnson established a Task Force on Appliance Warranties and Service consisting of the Special Assistant to the President for Consumer Affairs, the Chairman of the Federal Trade Commission, the Secretary of Commerce, and the Secretary of Labor. They were directed to begin work immediately with industry to (1) encourage improvements in the quality of service and repairs (2) assure that warranties and guarantees say what they mean and mean what they say (3) let the consumer know how long he may expect a product to last if properly used and (4) determine whether Federal legislation was needed.

President Nixon, in his Consumer Message of November 3, 1969, activated a task force consisting of his Special Assistant for Consumer Affairs, and representatives from the Department of Commerce, the Department of Labor, the Federal Trade Commission, the Department of Justice, and the Council of Economic Advisors to comment on the need for guarantee and warranty legislation in the household appliance industries and in other fields.

On March 1, 1971, in a message to the Congress, President Nixon proposed a Fair Warranty Disclosure Act which would provide for clearer warranties and prohibit the use of deceptive warranties. In that message, he stated

A constant source of misunderstanding between consumer and businessman is the question of warranties. Guarantees and warranties are often found to be unclear or deceptive. . . .

This proposal would increase the authority of the Federal Trade Commission to require that guarantees and warranties on consumer goods convey adequate information in simple and readily understood terms.

It would further seek to prevent deceptive warranties; and it would prohibit improper use of a written warranty or guarantee to avoid implied warranty obligations arising under state law.

#### *FTC Reports on Warranties*

Beginning in the late 1950's a rising tide of complaints was received by Members and committees of the Congress, the Federal Trade Commission, and other officials and agencies of the Federal Government from irate owners of motor vehicles complaining that automobile manufacturers and dealers were not performing in accordance with the warranties on their automobiles. During this period as many letters were received by the FTC on this subject as on any other since the Commission was established in 1914. In the main, these letters complained of the manufacturer or dealer not living up to the terms of the automobile warranty in one or more respects, of automobiles that were unsafe, poorly designed, noisy, or that attempts to get service or defects cured were unsuccessful even when the car had been returned repeatedly to the dealer.

In mid-1965 the FTC directed its staff to undertake a limited field investigation to determine whether there was sufficient evidence of the failure of American car manufacturers to perform in accordance with their new car warranties to justify additional steps being taken to protect the public interest. On the basis of its staff's preliminary report the Commission on July 6, 1966, directed an investigation of automobile warranties under section 6(b) of the Federal Trade Commission Act and ordered the four domestic auto manufacturers to file special reports with the Commission.

Initially automobile manufacturers offered a sixty-day guarantee on parts and workmanship. However, in order to obtain the benefits of the guarantee the automobile owners either had to take his car to the factory or send for the parts by mail. By 1930 with the dealer franchise system developed the warranty became a simple short-term

ninety days or 4,000 miles, whichever came first, warranty. It guaranteed against defects in materials and workmanship and ran from the manufacturer to the dealer. The entire car except tires and batteries was covered by the warranty. The dealer then passed the warranty on to the customer.

This system of warranties prevailed until the early fall of 1960 when for competitive reasons a warranty race began between the big four automobile manufacturers (American, Chrysler, Ford, and General Motors). However, by the time the 1967 models were introduced, each of the "big four" were again offering virtually the same warranty on their automobiles. It consisted of extension of the warranty coverage to subsequent owners, a basic warranty of 2 years or 24,000 miles on defects in materials and workmanship, and a five-year or 50,000 mile (whichever occurred first) warranty on the power train consisting of such items as the engine block, head and internal engine parts, water pump, transmission, drive shaft, universal, joints, rear axle and differential, steering and suspension components, and wheels and wheel bearings.

Because of costs a cutback in warranty coverage on new automobiles began with the 1968 model automobiles.

In the FTC's staff report on automobile warranties issued on November 18, 1968, the staff concluded among other things that:

1. Performance of manufacturers and dealers under the warranty has not achieved the levels implied by the warranty.

2. Failure to perform up to warranted standards has been encountered in the manufacture and preparation of cars under the warranty.

3. An excessive amount of service under the warranty does not meet the standards of consumer acceptability.

\* \* \* \* \*

11. An increase in private litigation while placing pressure on the industry for better made cars and improved service does not represent an efficient or generally satisfactory way to achieve proper performance under the warranty.

In its subsequent report on automobile warranties made on February 19, 1970, the Federal Trade Commission proposed enactment of "a new and comprehensive Automobile Quality Control Act, which would give statutory recognition to the public utility obligations of automobile manufacturers and provide for minimum standards of quality, durability, and performance of new automobiles, and all parts thereof and which would place a statutory obligation on manufacturers to provide consumers with defect-free automobiles in compliance with such standards and to repair defective automobiles and automobile parts which do not conform to such standards."

#### *Task Force on Appliance Warranties and Service*

On January 8, 1969, the Task Force on Appliance Warranties and Service consisting of the Chairman of the Federal Trade Commission, the Secretary of Commerce, the Secretary of Labor, and the Special Assistant to the President for Consumer Affairs which had been designated by President Johnson in his Consumer Message to the Congress

of February 6, 1968, issued its report. In carrying out the study leading to the report the Federal Trade Commission had concentrated on the warranty aspects of the project. In preparation for the report the Commission studied over 200 warranties used by 50 manufacturers of major appliances. Among the conclusions stated by the Federal Trade Commission in its portion of the report relating to appliance warranties and service are the following:

1. There are a number of problems associated with major appliance warranties. However, the underlying and basic problem which must be solved, is how to persuade or compel a manufacturer and the retailer to provide the purchaser of a major appliance with a meaningful guarantee which they will honor in both letter and spirit subsequent to the sale.

\* \* \* \* \*

3. Manufacturers, servicing dealers, and independent service companies are aware that consumer dissatisfaction with the manner of performance under warranties is quite prevalent. Despite the obviously harmful effects of this dissatisfaction at least to their goodwill, they have not undertaken to do much about it. Perhaps their reluctance is attributable to competitive pressures. It is difficult for a company to conform voluntarily to high standards and practices if it has competitors who continue to reap greater profits by pursuing less honorable tactics. One way these pressures can be overcome is by effective industry-wide efforts to eliminate abuses and raise standards on a uniform basis under the leadership of an impartial government agency.

4. In some instances manufacturers have not lived up to their unstated but no less real obligations under their guarantees. They have failed to maintain adequate and properly distributed stocks of spare parts, and have attempted to pass this obligation along to retailers who they know cannot afford the expense of assuming this burden. They have failed to discard a servicing dealer or independent servicing agency which does not provide acceptable warranty service. They have failed to give more than cavalier treatment to consumer appeals for assistance when the retailer has refused to honor the guarantee.

\* \* \* \* \*

6. The consumer does not have a readily available or practical means of compelling the manufacturer or the retailer from whom he purchased the appliance or the servicing agency responsible for its maintenance to perform their respective warranty obligations.

\* \* \* \* \*

10. There is substantial evidence that at the time of the sale the purchaser of a major appliance does not understand the nature and extent of the protection provided by the manufacturer's warranty or of the obligations under the

warranty of the manufacturer or of the retailer. This lack of understanding may be due to deceptive advertisements, a misleading or inaccurate explanation by the salesman who sold the appliance, or to the content and terminology of the warranty itself.

11. A number of the warranties in use, and particularly those which embody differing periods of coverage for various parts and components of a product, are deceptively captioned through the use of such terms as "Ten Year Guarantee" or "Lifetime Guarantee" because the period of coverage referred to in the caption does not apply to the entire product.

12. Virtually all major appliance warranties contain provisions which purport to disclaim any liability which might arise by virtue of the implied warranties or merchantability and fitness for particular purposes under the Uniform Commercial Code. . . .

13. The contention of manufacturers and retailers that limited warranties are justified in order that they may avoid damage claims which are frivolous or which amount to many times the value of the goods cannot be supported. . . .

14. The majority of the major appliance warranties currently in use contain exceptions and exclusions which are unfair to the purchaser and which are unnecessary from the standpoint of protecting the manufacturer from unjustified claims or excessive liability.

\* \* \* \* \*

16. A number of the present methods and criteria used to determine the amount of compensation to be paid retailers for warranty service are unsatisfactory. . . .

17. The extended service contracts and extended term warranties that are in use today may have one or more of the following disadvantages: a. they may be overpriced and designed solely to increase the margin of profit on the sale; b. they may not provide sufficient compensation for the servicing agency and aggravate the warranty problems noted above; c. they may be devised simply as a means for increasing sales and contain illusory promises which will not provide the consumer with any real protection.

\* \* \* \* \*

19. Measures must be taken to encourage both manufacturers and retailers to honor fully their warranties. One of the more promising means to this end is the intensification of efforts to persuade or to compel them to give guarantees which are explicit and which do not contain conditions or qualifications which are ambiguous or unfair to the purchaser. Avoidance of obligations which are stated in precise and exact terms is difficult even for the most callous. Moreover, opportunities for the concealment of one-sided provisions and the making of self-serving interpretations by the guarantor are minimized if the guarantee is couched in clear and understandable language.

\* \* \* \* \*

### *Committee Hearings*

In addition to the hearings held in this Congress your Committee acting through its Subcommittee on Commerce and Finance also held three days of hearings in 1970 (September 29, 30, October 1) and six days of hearings in 1971 (September 28, 29, October 12, 13, 14, and 15) on consumer product warranties. Those hearings established the need for (1) requiring that the terms and conditions of written warranties on consumer products be clearly and conspicuously stated in simple and readily understood language, (2) prohibiting the proliferation of classes of warranties on consumer products and requiring that such warranties be either a full or limited warranty with the requirements of a full warranty clearly stated, (3) safeguards against the disclaimer or modification of the implied warranties of merchantability and fitness on consumer products where a written warranty is given with respect thereto, and (4) providing consumers with access to reasonable and effective remedies where there is a breach of a warranty on a consumer product. All of these requirements are met by title I of H.R. 7917 as herein reported.

### FEDERAL TRADE COMMISSION ACT AMENDMENTS

The Federal Trade Commission was established in 1913 pursuant to the provisions of the Federal Trade Commission Act which had been enacted the preceding year. The Commission consists of five members appointed by the President by and with the advice and consent of the Senate for terms of seven years. Not more than three members of the Commission may be members of the same political party. A focal point of the Commission's jurisdiction is section 5 of the Federal Trade Commission Act. As originally enacted in 1914 section 5 proscribed unfair methods of competition in commerce. In 1938 section 5 was amended to extend the jurisdiction of the FTC to cover "unfair or deceptive acts or practices in commerce". The necessity for this amendment was explained as follows in the report from your Committee: "The words 'unfair methods of competition' in section 5 have been construed by the Supreme Court as leaving the Commission without jurisdiction to issue cease and desist orders where the Commission has failed to establish the existence of competition. In other words, the Act is construed as if its purpose were to protect competitors only and to afford no protection to the consumer without showing injury to a competitor."<sup>2</sup>

Notwithstanding the 1938 amendments, the Wheeler-Lea Act, the FTC continued to be hampered as an effective force in promoting fair and free competition and safeguarding the consuming public against unfair or deceptive acts or practices by the scope of its authority being limited to matters "in commerce" and by being made to rely solely on the cease and desist order procedure for enforcement.

#### *In or affecting Commerce*

Article I, Section 8 of the United States Constitution grants the Congress several specified powers, among them "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . ." The Federal Trade Commission Act was

<sup>2</sup> House Report No. 1613, 75th Congress, First Session, P. 3.

appointed to carry out this task. It was placed under the chairmanship of Miles W. Kirkpatrick, who at that time was Chairman of the ABA's Section of Antitrust Law.<sup>13</sup> Although couched in somewhat more subdued terms, the report of the ABA's Special Commission supported the findings of Nader's Raiders. Both reports noted the need for additional statutory authority to permit the FTC to carry out its consumer protection responsibilities.

### *The Alaska Pipeline Act (Public Law 93-153)*

Both the Nader and ABA reports recommended that the FTC be empowered to obtain preliminary injunctions against unfair or deceptive acts or practices which are unfair or deceptive to consumers. This authority was granted by Section 408 of the Alaska Pipeline Act, which authorized the FTC to obtain temporary restraining orders and preliminary injunctions of violations or threatened violations of any provision of law administered by the Commission.

In addition, Section 408 amended the Federal Trade Commission Act in two other respects sought by the Commission. It increased the penalty for violation of cease and desist orders from \$5,000 to \$10,000 and gave the Commission the right to represent itself through its own attorneys in civil actions if, after notifying the Attorney General and giving him 10 days to take the action proposed by the Commission, the Attorney General failed to do so.

## SECTION-BY-SECTION DESCRIPTION OF THE COMMITTEE AMENDMENTS TO THE BILL

As reported by your Committee, H.R. 7917 (with the exception of section 201) is amended section by section. The following description is of the Committee's amendments and section 201.

### SHORT TITLE

The first section of the bill provides that the legislation may be cited as the "Consumer Product Warranties—Federal Trade Commission Improvements Act".

## TITLE I—CONSUMER PRODUCT WARRANTIES

### SECTION 101—DEFINITIONS

Among the terms defined in section 101 which are important to understanding title I of the legislation are the following:

The term "consumer product" is defined to mean any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes. There are many products which fall within this definition which are also used for other than personal, family, or household purposes. For example, automobiles which are used for business purposes. Such items are consumer products for the purposes of this legislation.

The term is also defined so as to specifically include such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed. Under concepts of

<sup>13</sup> Mr. Kirkpatrick was later appointed and served as Chairman of the Federal Trade Commission.

property law fixtures such as hot water heaters and air conditioners when incorporated in a dwelling become a part of the real property. It is intended that the provisions of title I continue to apply to such products regardless of how they are classified.

The provisions of the legislation regarding disclosure of the terms and conditions of written warranties on consumer products (section 102) would apply only to consumer products actually costing more than \$5. The provisions of the legislation requiring that most written warranties on consumer products be designated as "full" or "limited" warranties and specifying the duties of the warrantor under a full warranty (sections 103 and 104) would only apply to consumer products actually costing more than \$10.

"Commission" is defined to mean the Federal Trade Commission.

The term "consumer" is defined to mean the first buyer at retail of any consumer product, any person to whom such product is transferred during the duration of a warranty or service contract applicable to such product and any other person who is entitled by the terms of such warranty or service contract or under applicable State law to enforce against the warrantor or contractor the obligations of the warranty or contract. Thus, where a warranty or service contract on a consumer product is given for a specified duration it would cover transferees who use the product.

As defined the term "supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers. This definition includes, among others, all persons in the chain of production and distribution of a consumer product including the producer or manufacturer, component supplier, wholesaler, distributor, and retailer. The term is intended to exclude those persons not regularly engaged in the business of making consumer products directly or indirectly available to consumers. Thus, the provisions of title I do not apply to sporadic private transactions involving consumer products.

The term "warrantor" is defined to mean any supplier who gives or offers to give a warranty. Thus, a person who is not a supplier cannot under the terms of the legislation be a warrantor.

A "warranty" is defined to mean (1) any written affirmation of fact or written promise made at the time of sale by a supplier to a purchaser which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of time (2) any undertaking in writing in connection with the sale of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking. In either case the written affirmation, promise, or undertaking must become a part of the basis of the bargain between a supplier and the first consumer purchaser. In addition, the term "warranty" also includes an implied warranty arising under state law.

The term "service contract" is defined to mean a contract in writing to perform, over a fixed period of time or for a fixed duration, services relating to the maintenance or repair of a consumer product.

Some terms which are defined in section 101 are omitted here because they are defined to have their usually understood meaning. Other terms which are omitted are used in particular sections of the legislation and will be dealt with in connection with the description of those sections.

#### SECTION 102—WARRANTY PROVISIONS

Section 102 only applies to consumer products actually costing the consumer \$5 or more. The words "actually costing" are intended to exclude added imposts such as sales taxes. For example, if a consumer product is sold for \$4.98 in a State with a 4-percent sales tax the provisions of section 102 would not be applicable to a warranty on such product even though the consumer must actually give the retailer \$5.18 for the product (\$4.98 for the product, \$0.20 for State sales tax).

Subsection (a) provides that any supplier warranting a consumer product to a consumer in writing must fully and conspicuously disclose in simple and readily understood language the terms and conditions of the warranty pursuant to rules issued by the Commission in accordance with section 109. The purpose of this requirement is to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products.

The subsection enumerates thirteen categories of information that the Commission may require to be set out in any written warranty on a consumer product. Of course, the FTC could by rule require the inclusion of additional information in any written warranty on a consumer product. On the other hand it could also omit from inclusion in any such written warranty any of the categories set out in the legislation.

Under subsection (b) the Commission must prescribe rules requiring that terms of any warranty on a consumer product be made available to the consumer or prospective consumer prior to the sale of the product to him. In addition the Commission is authorized to prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product must 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 materials or other representations in writing.

Subsection (b) also makes it clear that the Commission is not authorized by this legislation to require that any consumer product or any of its components be warranted nor to prescribe the duration of any warranty given on a consumer product.

However, the Commission is authorized to prescribe rules 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 product by reason of the failure of the product to conform with the warranty or by reason of the failure of the warrantor or service contractor to carry out his obligations within the periods specified in the warranty or contract.

Subsection (c) prohibits any warrantor of a consumer product from conditioning his warranty on the consumer using in connection with

such product, any article or service which is identified by brand, trade, or corporate name. This prohibition would not apply in the case of a service provided without charge under the terms of a warranty. Furthermore, this prohibition could be waived by the Commission if it found that the warranted product will function properly only if the product or service so identified is used in connection with the warranted product and that the waiver is in the public interest. If the FTC waived this prohibition it would be required to publish its decision in the *Federal Register* including its reasons therefore.

Under this prohibition, for example, no automobile manufacturer may condition his warranty of an automobile on the use of a named motor oil or on the use of its own automobile parts unless he shows that any other motor oil or automobile parts which are available will not function properly and will not give equivalent performance characteristics in the automobile.

#### SECTION 103—DESIGNATION OF WARRANTIES

Subsection (a) requires any supplier warranting a consumer product in writing to clearly and conspicuously designate the warranty either as a "full (statement of duration)" warranty or guaranty or as a "limited" warranty or guaranty unless exempted from doing so by the Commission pursuant to subsection (c). Only written warranties on consumer products incorporating the Federal minimum standards set forth in section 104 could be designated as "full (statement of duration)" warranties or guaranties. These requirements for designating warranties and the provisions of section 104 would only apply to written warranties on consumer products actually costing the consumer more than \$10 (exclusive of taxes).

Subsection (b) provides that the provisions of sections 102, 103, and 104 do not apply to statements or representations similar to expressions of general policy concerning customer satisfaction which are not subject to any specific limitation. The reference here is to such statements as "satisfaction guaranteed or your money refunded" where there is no other statement and no limitation on the suppliers obligation. The subsection specifically provides, however, that such a statement would remain subject to provisions of the Federal Trade Commission Act and of section 110(c) of this legislation which refers to deceptive warranties.

The Commission may by rule define in detail the duties set forth in section 104(a) and their applicability to warrantors of different kinds of consumer products who offer "full (statement of duration)" warranties. The FTC could also by rule determine when a warranty in writing did not have to be designated as a "full" or "limited" warranty. This authority would be granted by subsection (c).

#### SECTION 104—FEDERAL MINIMUM STANDARDS FOR WARRANTY

Subsection (a) defines the duties that a supplier must assume if it issues a "full" written warranty on a consumer product. Such a supplier (1) must as a minimum undertake the repair or replacement within a reasonable time and without charge of such consumer product in the case of a defect, malfunction, or failure to conform with such

written warranty, (2) may not impose any limitation on the duration of any implied warranty on the product, and (3) if the product (or a component thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy such defect or malfunction, the supplier must permit the consumer to elect either a refund or replacement of such product or parts (as the case may be) with an identical or reasonably equivalent product or part. In any case in which replacement of a component part of a consumer product is involved, replacement includes installing the part in the product without charge.

The terms "remedy", "replacement", "refund", and "without charge" are defined in paragraphs (5), (6), (7), and (11), respectively, of section 101. "Remedy" as used in title T allows the warrantor to elect repair, replacement, or refund. However, he may not elect to make a refund, unless he is unable to provide a replacement and repair is not commercially practicable or cannot be timely made; or unless the consumer is willing to accept the refund.

As defined "replacement" means furnishing a new consumer product which is identical or reasonably equivalent to the warranted product. "Refund" means refunding the actual purchase price less depreciation based on actual use.

The term "without charge" means the warrantor cannot assess the consumer for costs the warrantor or his representatives incur in connection with the required repair or replacement of a warranted consumer product. It does not mean that the warrantor must necessarily compensate the consumer for incidental expenses. However, if any incidental expenses are incurred because the repair or replacement is not made within a reasonable time or because the warrantor imposes an unreasonable duty upon the consumer as a condition of securing repair or replacement then the consumer would be entitled to recover such reasonable incidental expenses in an action against the warrantor.

Subsection (b) provides that a "full" warrantor may not impose any duty other than notification upon any consumer as a condition of securing repair or replacement of any consumer product which does not conform to the written warranty unless the warrantor can demonstrate that such duty is reasonable. Thus the burden of proof would be on the warrantor. However, the warrantor may require as a condition for the replacement of any consumer product under a "full" warranty that the replaced consumer product shall be made available to the supplier free and clear of liens and other encumbrances except as otherwise provided by rule or order of the Commission in instances in which such a requirement would not be practicable. Making the product which is to be replaced "available" to the warrantor might, if it were portable, include returning it to the place where it was purchased. One instance where it is expected that the Commission might excuse the consumer from returning the defective product to the warrantor free and clear of liens and encumbrances is where it has become a part of real property which is subject to a mortgage. It is to be presumed that the mortgagor would not object to a defect-free fixture replacing one which is defective.

Subsection (c) makes it clear that the warrantor under a "full" warranty may be excused from the duties under that warranty if unreasonable use including failure to provide reasonable and necessary maintenance caused the warranted consumer product to fail to conform to the written warranty. The term "reasonable and necessary maintenance" is defined in section 101(4) to mean operations (1) which the consumer reasonably can be expected to perform or have performed, and (2) which are necessary to keep any consumer product performing its intended function and operating in the manner (if any) specified in the warranty.

Sub-section (d) provides that if a supplier designates a warranty applicable to a consumer product as a "full (statement of duration)" warranty then the warranty on the product shall for the purposes of any legal action under this legislation or under State law be deemed to incorporate at least the minimum requirements of section 104.

#### SECTION 105—FULL AND LIMITED WARRANTING OF A CONSUMER PRODUCT

This section makes it clear that the legislation is not intended to prohibit the selling of a consumer product which has both full and limited warranties applicable to it. However, such warranties must be clearly and conspicuously differentiated. For example, the manufacturer of a television set might offer a full one-year warranty on the picture tube, but restrict the warranty to parts on all other parts of the television set. The parts warranty would, of course, have to be designated as "limited".

#### SECTION 106—SERVICE CONTRACTS

This section makes it clear that a supplier may sell a service contract on a consumer product in addition to or in lieu of a warranty in writing on such product if such contract fully and conspicuously discloses in simple and readily understood language its terms and conditions. Section 106 also authorizes the Commission to prescribe rules with respect to the manner and form in which terms and conditions of service contracts on consumer products shall be clearly and conspicuously disclosed. The authority given to the FTC under this section with respect to the disclosure of the terms and conditions of service contracts is coextensive with the authority given to the Commission under section 102 with respect to the disclosure of the terms and conditions of warranties and does not detract from the Commission's basic authority to prevent unfair or deceptive acts or practices under section 5(a) of the Federal Trade Commission Act.

#### SECTION 107—DESIGNATION OF REPRESENTATIVES

This section makes clear that the legislation does not prevent any warrantor from designating a representative to perform duties under the warranty if there are reasonable arrangements for compensation of the designated representative. However, no such designation would relieve the warrantor of his direct responsibilities to the consumer, nor would it make the designated representative a co-warrantor.

## SECTION 108—LIMITATION OF DISCLAIMER OF IMPLIED WARRANTIES

Subsection (a) provides that no supplier may disclaim or modify any implied warranty to a consumer with respect to a consumer product if (1) the supplier makes any express warranty in writing to the consumer with respect to such consumer product, or (2) at the time of sale or within 90 days thereafter the supplier enters into a service contract with the consumer which applies to the consumer product. In other words, the implied warranties of merchantability and fitness would apply with respect to a consumer product whenever an express warranty in writing is given with respect to that product or at the time of sale or within 90 days thereafter the supplier enters into a service contract with the consumer applying to that consumer product. Any disclaimer, modification, or limitation made in violation of these provisions would be ineffective for purposes of any action under title I or State law. This subsection is designed to eliminate the practice of giving an express warranty while at the same time disclaiming implied warranties. This practice often has the effect of limiting the rights of the consumer rather than expanding them as he might otherwise be led to believe.

Subsection (b) however, makes it clear that if only a "limited warranty" is given an implied warranty on the consumer product may be limited to the duration of such limited warranty if such duration is conscionable and set forth in clear and unmistakable language, and prominently displayed on the face of the warranty.

## SECTION 109—COMMISSION RULES

This section provides that rules prescribed for title I are to be prescribed in accordance with, and are subject to judicial review under the provisions of the new section 18 of the Federal Trade Commission Act which would be added by section 202 of the legislation.

## SECTION 110—REMEDIES

In subsection (a) the Congress declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms. The Commission must prescribe rules setting forth requirements for any informal dispute settlement procedure which is incorporated in any written warranty on a consumer product. Such rules must provide for the participation in such procedure by independent or government entities. It is essential that such entities be completely impartial since they are to be involved in the decision-making process under such procedure.

The rules prescribed by the FTC with respect to such informal dispute settlement procedures must also prohibit saddling the consumer with any costs which would discourage use of the procedure.

One or more suppliers could establish an informal dispute settlement procedure which is in accord with the FTC's rules. This procedure could be incorporated in written warranty on a consumer product. The supplier could then require that the consumer must initially resort to such procedure before bringing any action under section 110(d).

A limited exception is made to this requirement in the case of class action. Before a class may be established for the purpose of pursuing an action under section 110(d), the action may be brought so that the court can determine whether it may be maintained as a class action and to determine the membership of the class. The legislation permits a class action to be brought without first resorting to any informal dispute settlement procedure, but the class action could only be pursued to the point necessary to establish the representative capacity of the named plaintiffs. At that point or at some time previous to reaching it the named plaintiffs, after informing the defendant that they are acting on behalf of the class, would have to resort to the informal dispute settlement procedure before the class action could be carried further.

An adverse decision in any informal dispute settlement proceeding would not be a bar to a civil action on the warranty involved in the proceeding, but the decision reached in any informal dispute settlement procedure relating to any matter considered in such proceeding would be admissible in any civil action arising out of a warranty on a consumer product if the procedure complies with the FTC's rules and is incorporated as a part of a written warranty pertaining to consumer products.

The FTC is authorized to review the bona fide operation of any informal dispute settlement procedure which is made a prerequisite to pursuing a legal remedy under a warranty on a consumer product. Such a review could be made upon the Commission's own initiative or upon written complaint filed by any interested person. If the Commission finds that any such procedure or its implementation fails to comply with the Commission's rules it is authorized to take whatever remedial action it determines necessary under any authority it has under this legislation or any other provision of law.

Your committee expects the FTC's rules to establish reasonable time limits within which decisions must be reached. If a decision is not reached within the prescribed time limits the consumer could begin a civil action on the warranty involved.

Subsection (b) provides that it is a violation of section 5(a)(1) of the Federal Trade Commission Act for any person to fail to comply with any requirement imposed on such person by or pursuant to this legislation or to violate any prohibition contained in this legislation.

Under subsection (c) the district courts of the United States are given jurisdiction over any action brought by the Commission to restrain (1) any supplier from making a deceptive warranty with respect to a consumer product, or (2) any person from failing to comply with any requirement imposed on such person by or pursuant to this legislation or from violating any prohibition contained in this legislation. In the proper circumstances a temporary restraining order or a preliminary injunction could be granted by the court without bond. However, if a complaint under section 5 of the Federal Trade Commission Act were not filed within such period (not exceeding 10 days) as might be specified by the court after issuance of the temporary restraining order or preliminary injunction the order or injunction would be dissolved by the court and be of no further force or effect. In the case of an enforcement action against a newspaper, magazine, or other periodical, the committee anticipates that the court would

follow the procedures set out in section 13(c) of the Federal Trade Commission Act.

Subsection (d) gives a right of action to any consumer who is damaged by the failure of a supplier to comply with any obligation under title I or under a warranty or service contract as those terms are defined in section 101. This would, of course, include implied warranties arising under State law. This right of action would permit the consumer to bring suit in (1) any court of competent jurisdiction in any state or the District of Columbia, or (2) in an appropriate district court of the United States. However, in order that such a suit be brought in a district court of the United States (1) each individual claim would have to exceed the sum or value of \$25.00, (2) the matter in controversy would have to exceed the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in the suit, and (3) if brought as a class action, the number of named plaintiffs would have to equal or exceed 100.

The purpose of these jurisdictional provisions is to avoid trivial or insignificant actions being brought as class actions in the federal courts. However, if the conditions of this section are met by a class of consumers damaged by a failure to comply with a warranty as defined in Title I or a violation of Title I, Section 110(d) should be construed reasonably to authorize the maintenance of a class action. In this context, your Committee would emphasize that this section is remedial in nature and is designed to facilitate relief which would otherwise not be available as a practical matter for individual consumers. In particular, assuming that other requirements for a class action are met, your Committee does not believe that the requirement of individual notice to each potential class member should be invoked to preclude a class action where the identification and notification of the class members is not possible after reasonable effort by the plaintiff. In considering whether identification and notification of all members of the class is possible with reasonable effort, the particular circumstances of the plaintiff or plaintiffs should be carefully evaluated by the court, including the question of whether the financial burden of such identification and notification would be likely to deny them relief.

Under the provisions of section 1337 of title 28, United States Code, the district courts of the United States have original jurisdiction of any civil action or proceeding arising under any act of Congress regulating commerce. The legislation herein reported is, of course, an act of Congress regulating commerce. This original jurisdiction vested in the district courts by section 1337 pertains without regard to the amount in controversy in any civil action or proceeding. In the absence of these provisions a civil action on a warranty under the legislation could be brought in a district court of the United States without regard to the amount involved. Under the monetary and other limitation included in subsection (d), no action could be brought in a United States district court unless the overall matter in controversy exceeded \$50,000 exclusive of interests and cost, and no individual claim could be aggregated in any such action by joinder or in a class

action unless it exceeded \$25.00. In addition to these requirements if the action is to be brought as a class action, there must be at least 100 named plaintiffs.

If a consumer finally prevails in any action brought in a State or Federal court under the provisions of this subsection, the court may allow him to recover as a part of the judgment a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff in connection with the institution and prosecution of the action.

Subsection (c) prohibits the bringing of any action under this legislation for breach of a warranty or service contract unless the person obligated under the warranty or service contract is first afforded a reasonable opportunity to cure the breach. A limited exception to this prohibition is made in the case of class actions. The class action may be brought but may only be carried to the point of establishing the representative capacity of the named plaintiffs until those named plaintiffs afford the defendant the opportunity to cure the breach while notifying him that they are acting on behalf of the class. The provisions of subsection (c) would be inapplicable in any case in which the consumer has initially resorted to an informal dispute settlement procedure prescribed in the warranty.

Subsection (f) provides that only the supplier actually making a written affirmation of fact, promise, or undertaking shall be deemed to have created a warranty for purposes of this section 110. Any rights arising thereunder may be enforced under section 110 by a civil action only against such supplier and no other person.

#### SECTION 111—EFFECT ON OTHER LAWS

Subsection (a) makes it clear that nothing in title I of the legislation shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act, any statute defined in the Federal Trade Commission Act as an antitrust act, or the Federal Seed Act. In addition the subsection also spells out that title I does not apply to seed for planting.

The Committee recognizes that the provisions of this title do not cover the totality of circumstances and articles of property for which warranties and service contracts are given. Thus, subsection (a) would, among other things, preserve the authority of the Commission to promulgate rules and issue orders articulating the requirements of Section 5(a) of the Federal Trade Commission Act with respect to warranties and service contracts falling outside of the scope of title I.

Subsection (b) provides that title I of the legislation will not invalidate or restrict any right or remedy of any consumer under State law or affect the liability of or impose liability on any person for personal injury.

Any requirement of a State whether made by law or regulation which relates to labeling, disclosure or other matters regarding written warranties or performance thereunder and which is within the scope of sections 102, 103, and 104 and rules implementing those sections

and which is not the same as requirements of those sections or those rules would not under subsection (c) be applicable to warranties on consumer products complying with such sections and rules.

However, if an appropriate State agency applied to the FTC and the Commission determined that any requirement of such State covering any transaction to which title I of this legislation applies (1) affords greater protection to consumers than the requirements of title I, and (2) does not unduly burden interstate commerce, then the State requirement would not be preempted by subsection (c). This exemption would apply to the extent specified in the determination of the FTC and only for so long as the State continued to administer and effectively enforce any such greater requirement.

Except for section 102(c) which prohibits the conditioning of a warranty on a consumer product on the use of any article or service identified by brand, trade or corporate name, the provisions of title I would be inapplicable to any warranty, the making or content of which is otherwise governed by Federal law. If only a portion of a written warranty is so governed by Federal law, the remaining portion would be subject to the provisions of title I. Thus, except for section 102(c), to the extent section 207 of the Clean Air Act and the regulations of the Administrator of the Environmental Protection Agency apply to written warranties on motor vehicles and engines, the provisions of title I would be inapplicable.

#### SECTION 112—EFFECTIVE DATE

The provisions of the legislation will take effect six months after the date of enactment. Of course the legislation will not apply to any consumer product manufactured prior to such date. The requirements of title I which cannot reasonably be met without the promulgation of rules by the FTC would take effect six months after the final publication of the rules. The Commission could, for good cause shown, give designated classes of suppliers up to an additional six months to bring their written warranties into compliance with rules promulgated under title I.

Under subsection (c) the Commission is required to promulgate initial rules for the initial implementation of title I as soon as possible after the date of enactment of the legislation but in no event could such rules be promulgated later than one year after the date of the enactment of the legislation.

## TITLE II—FEDERAL TRADE COMMISSION IMPROVEMENTS

#### SECTION 201—JURISDICTION OF THE COMMISSION

This section amends sections 5, 6, and 12 of the Federal Trade Commission Act so to expand the FTC's jurisdiction from acts and practices "in" interstate commerce to those "in or affecting" interstate commerce.

The existing jurisdiction of the FTC under sections 5, 6 and 12 of the Federal Trade Commission Act is much narrower than the scope of the "commerce clause" of the Constitution. Consequently many