

1 **SHB 1399** - H AMD 172 Adopted 3-19-91

2 By Representatives Beck and Cantwell

3 On page 1, strike everything after the enacting clause and
4 insert the following:

5 NEW SECTION. **Sec. 1.** The legislature finds that electronic
6 equipment manufacturers, as a matter of practice, warrant their
7 equipment against certain defects. The warranties may be honored
8 by retailers of the manufacturers' products as part of their
9 contractual obligation or by independent maintenance and service
10 facilities. The legislature also finds that consumers do not
11 always receive prompt, complete service that returns the product to
12 its working condition at the time of purchase because manufacturers
13 cannot always supply the necessary parts promptly or at a price
14 that keeps the warranty service within the retailer's cost of doing
15 business. Because of these problems, some of the service costs are
16 transferred to customers seeking service without warranties. The
17 legislature further finds that a strong competitive market requires
18 manufacturers and sellers who fully stand behind their products by
19 complying with the spirit of the warranty. The legislature
20 declares that it is in the public interest to establish certain
21 elements as characteristic of express electronic equipment
22 warranties to protect the consumer from dilatory and unfair

1 practices and from manufacturers discontinuing the manufacture of
2 replacement parts within the time period that can be reasonably
3 anticipated as necessary to effect repairs.

4 NEW SECTION. **Sec. 2.** For the purposes of this chapter the
5 following definitions apply.

6 (1) "Buyer" or "retail buyer" means an individual who buys
7 electronic equipment from a person engaged in the business of
8 manufacturing, distributing, or selling such goods at retail.

9 (2) "Distributor" means a person that stands between the
10 manufacturer and the retail seller in purchases, consignments, or
11 contracts for sale of electronic equipment.

12 (3) "Independent repair or service facility" or "independent
13 service dealer" means a person or business, not an employee or
14 subsidiary of a manufacturer or distributor, that engages in the
15 business of servicing and repairing consumer goods.

16 (4) "Retailer," "seller," or "retail seller" means a person
17 who engages in the business of selling electronic goods to retail
18 buyers. (5) "Person" means an individual, partnership,
19 corporation, association, or other legal entity.

20 (6) "Home electronic equipment" means a television/monitor,
21 radio, antenna rotator, audio or video recorder or playback
22 equipment, video camera, video game, if it is normally used or sold
23 for personal, family, or household purposes. The term includes any
24 electronic accessory that is normally used or sold with a home
25 electronic product for one of those purposes. The term excludes

1 any single product with a wholesale price to the retail seller of
2 less than one hundred twenty five dollars.

3 (7) "Home appliance" means a refrigerator, freezer, range,
4 microwave or convection oven, washer, dryer, dishwasher, garbage
5 disposal, trash compactor, or room air conditioner normally used or
6 sold for personal, family, or household purposes. The term
7 excludes any single product with a wholesale price to the retail
8 seller of less than one hundred twenty five dollars.

9 (8) "Parts" means individual components of assemblies or
10 circuit boards.

11 (9) "Literature" means service literature only.

12 NEW SECTION. **Sec. 3.** In addition to the requirements of RCW
13 62A.2-313 every warranty shall state that the warranty period shall
14 be extended for the number of days that the product has been in the
15 repair facility for warranty repairs. If a defect exists within
16 the warranty period and the buyer takes the product to a repair
17 facility for servicing, the warranty shall not expire until the
18 defect has been fixed. The warranty period shall also be extended
19 if the repairs fail within ten days after they were completed. If,
20 after four repair attempts, the defect has not been fixed, the
21 buyer may return the product within sixty days of the completion of
22 the fourth repair for a replacement or refund, subject to the
23 deduction of a reasonable charge for use. This time extension does
24 not affect the protections or remedies the buyer has under other

1 laws.

2 NEW SECTION. **Sec. 4.** Every work order or repair invoice for
3 warranty repairs or service shall clearly and conspicuously
4 incorporate in ten point boldface type the following statement
5 either on the face or the reverse side of the work order or repair
6 invoice, or on an attachment to the work order or repair invoice:

7 A buyer of this product in this state has the right to
8 have this product serviced or repaired during the
9 warranty period. The warranty period is extended for the
10 number of whole days that the product has been out of the
11 buyer's hands for warranty repairs if the buyer takes the
12 product to the repair facility prior to the warranty
13 expiration date. The warranty period is also extended if
14 the warranty repairs have not been performed because
15 parts are not available from the manufacturer, or if the
16 warranty repairs fail within ten days after they were
17 completed. If, after four repair attempts the defect
18 has not been fixed, the buyer may return the product
19 within sixty days of the completion of the fourth repair
20 attempt for a replacement or a refund, subject to the
21 deduction of a reasonable charge for use. This time
22 extension does not affect the protections or remedies the
23 buyer had under other laws.

1 NEW SECTION. **Sec. 5.** If a manufacturer of home electronic
2 equipment and appliances sold in this state makes an express
3 warranty on such equipment or appliance, the manufacturer shall
4 maintain sufficient service and repair facilities in this state
5 that are reasonably close to all areas in which its electronic
6 equipment and appliances are sold, except for mail order
7 businesses, or may designate and authorize independent repair or
8 service facilities in this state that are reasonably close to all
9 areas in which its electronic appliances are sold, to carry out the
10 terms of the warranties. As a means of complying with this
11 section, a manufacturer may enter into warranty service contracts
12 with independent service and repair facilities.

13 NEW SECTION. **Sec. 6.** A manufacturer entering into a warranty
14 service contract with an independent service and repair facility
15 may include a fixed schedule of rates to be charged for warranty
16 service or warranty repair work. However, the rates fixed by
17 these contracts shall include the actual cost of service and
18 repair, plus a twenty percent markup on part costs and shipping
19 costs, and a reasonable profit on labor. The rates established
20 between the manufacturer and the independent service and repair
21 facility shall not preclude a good faith discount that is
22 reasonably related to reduced credit and general overhead cost
23 factors arising from the manufacturer's payment of warranty charges
24 direct to the independent service and repair facility. The

1 discount may consider all extra services the manufacturer provides
2 to the independent authorized service dealer. The warranty service
3 contracts authorized by this section may not cover more than one
4 year, and may be renewed only by a separate, new contract or letter
5 of agreement between the manufacturer and the independent service
6 and repair facility. The manufacturer who is a party to a warranty
7 service contract is only liable to the other party for repairs
8 performed under warranty.

9 NEW SECTION. **Sec. 7.** Every manufacturer contracting with an
10 independent facility for maintenance and repair of electronic or
11 appliance products shall make service literature and replacement
12 parts available to effect repairs within thirty days of the request
13 from the service repair facility. However, the thirty day
14 requirement may be suspended during a period of a national
15 emergency or natural disaster. If the manufacturer fails to supply
16 the necessary part or literature within thirty days of the service
17 repair facility's request, the manufacturer shall replace the
18 nonworking equipment or appliance with new equipment or appliance
19 upon the owner's request. Replacement parts and literature for
20 products with a wholesale price to retailers of not less than one
21 hundred twenty-five dollars and not more than one hundred
22 seventy-five dollars and ninety-nine cents, shall be available at
23 the service dealer's wholesale cost to all established independent
24 service and repair facilities who service the products, whether or

1 not under contract to provide warranty services, for three years
2 after the date the product model or type was last manufactured,
3 regardless of whether the three-year period exceeds the warranty
4 period for the product. Replacement parts and literature for
5 products with a wholesale price to retailers of not less than one
6 hundred seventy-six dollars, shall be available, at the service
7 dealer's wholesale cost, to all established independent service and
8 repair facilities who service the products, whether or not under
9 contract to provide warranty services, for seven years after the
10 date the product model or type was last manufactured, regardless of
11 whether the seven-year period exceeds the warranty period for the
12 product.

13 NEW SECTION. **Sec. 8.** Every manufacturer making express
14 warranties whose consumer goods are sold in this state shall be
15 liable as prescribed in this section to any authorized independent
16 service center that performs services or incurs obligations under
17 the express warranties that accompany the manufacturer's consumer
18 goods. The amount of the liability shall be an amount equal to the
19 actual and reasonable costs of the service and repair, including
20 cost plus twenty percent on parts and any reasonable cost of
21 transporting the goods or parts, plus a reasonable profit on labor,
22 which shall not preclude a good faith discount as described in
23 section 6 of this act. There is a rebuttable presumption affecting
24 the burden of producing evidence that the reasonable cost of

1 service or repair is an amount equal to that which is charged by
2 the independent serviceman for like services or repairs rendered to
3 service or repair customers who are not entitled to warranty
4 protection. Any waiver of the liability of a manufacturer shall be
5 void and unenforceable.

6 NEW SECTION. **Sec. 9.** A dispute initiated by either party
7 arising from cancellation of a warranty service center contract
8 that cannot be resolved by the parties to the contract must be
9 presented to the American arbitration association or a dispute
10 resolution center operated under chapter 7.75 RCW for third-party
11 committee mediation. Contracts cannot be canceled on the basis of
12 an allegation of nonperformance of contractual obligations without
13 a hearing by the committee. Only after a hearing and a showing of
14 a good faith attempt at resolution may a disputant file a legal
15 action. The statute of limitations controlling filing legal action
16 to resolve a contract dispute shall be tolled for a period of six
17 months or until the third-party mediator takes a final action,
18 either resolving the dispute or declaring it unresolvable,
19 whichever come first.

20 NEW SECTION. **Sec. 10.** Any protections or remedies in this
21 chapter do not preclude recovery under the consumer protection act,
22 chapter 19.86 RCW.

1 NEW SECTION. **Sec. 11.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act
6 shall constitute a new chapter in Title 19 RCW.

7 NEW SECTION. **Sec. 13.** This act is necessary for the
8 immediate preservation of the public peace, health, or safety, or
9 support of the state government and its existing public
10 institutions, and shall take effect July 1, 1991.

EFFECT: Clarifies substitute bill language on contracts,
warranty extensions, and reasonable profit; removes non-
renewal of contracts as a reason for dispute resolution; and
eliminates video monitors, computer equipment, telephone,
telecommunications equipment, electronic alarm systems,
electronic appliance control systems, or other kind of
electronic equipment.

Dick,

In this case, a rebuttable presumption means that the court or

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mediator will assume that the reasonable rate for warranty repairs will be same as the rate servicers charge for non-warranty repairs, but that the manufacturer may produce evidence to disprove this claim.