

# House Bill 3611

Sponsored by Representative FAHEY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that sales or leases of consumer products in this state occur subject to implied warranty of merchantability and, as appropriate, to implied warranty of fitness unless supplier sells or leases consumer product as is with required disclosures. Provides that buyer may not waive implied warranty.

Permits manufacturer to provide express warranty. Specifies conditions to which express warranty is subject, disclosures required and remedies for buyer.

## A BILL FOR AN ACT

1  
2 Relating to warranties for consumer products sold or leased in this state.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 4 of this 2023 Act:**

5 (1) **"As is" means a disclaimer of all implied warranties of merchantability or implied**  
6 **warranties of fitness that would otherwise apply to a sale or lease of consumer products.**

7 (2) **"Buyer" means a resident individual who purchases or leases consumer products from**  
8 **a supplier.**

9 (3) **"Conspicuous notice" means:**

10 (a) **A written statement in a larger typeface than surrounding text or in a contrasting**  
11 **typeface, font or color, set off from other text in a manner that clearly calls attention to the**  
12 **statement; or**

13 (b) **An audio statement with a volume and cadence that is readily audible and under-**  
14 **standable and that is distinguishable from surrounding audio.**

15 (4)(a) **"Consumer product" means any new product or component of a new product that**  
16 **a resident individual bought or leased from a retail seller or lessor and used in this state**  
17 **primarily for personal, family or household purposes, including devices that assist individuals**  
18 **with disabilities to treat or mitigate a disease or replace the structure or function of the**  
19 **individual's body.**

20 (b) **"Consumer product" does not include clothing or products that an individual uses for**  
21 **personal care that are consumed or expended in the course of the use.**

22 (5) **"Distributor" means a person that engages in the business of purchasing or receiving**  
23 **on consignment from a manufacturer, or from another person that purchases or receives**  
24 **from a manufacturer, consumer products that the person sells or offers on consignment to**  
25 **a retail seller.**

26 (6) **"Express warranty" means:**

27 (a) **A written statement a supplier makes in connection with the sale or lease of a con-**  
28 **sumer product in which the supplier promises to preserve the utility or performance of the**  
29 **consumer product for a specified time or to provide compensation, repairs, replacements or**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 other services related to the consumer product if the consumer product does not retain the  
2 promised utility or performance during the specified time; and

3 (b) A promise that a consumer product conforms to any sample or model of the con-  
4 sumer product that the supplier provides or makes available for inspection or use.

5 (7)(a) "Implied warranty of fitness" means:

6 (A) A supplier has reason to know that a resident individual has a particular use or  
7 purpose for purchasing or using a consumer product;

8 (B) The resident individual relies on the supplier's skill and judgment to select and pro-  
9 vide a suitable consumer product for the resident individual's particular use or purpose; and

10 (C) The consumer product the supplier provides to the resident individual is fit for the  
11 resident individual's use or purpose.

12 (b) "Implied warranty of fitness" as applied to a device that a resident individual pur-  
13 chases at retail to assist the resident individual with a disability, to treat or mitigate a dis-  
14 ease, or to replace the structure or function of the resident individual's body means that the  
15 device is fit for the resident individual's particular needs, purposes or uses.

16 (8) "Implied warranty of merchantability" means that a consumer product:

17 (a) Passes without objection in the trade under the contract description;

18 (b) Is fit for the ordinary purposes for which the consumer product is used;

19 (c) Is adequately contained, packaged and labeled; and

20 (d) Conforms to the promises or affirmations of fact that appear on the container or label  
21 for the consumer product.

22 (9) "Manufacturer" means a person that engages in the business of manufacturing, as-  
23 sembling, producing or otherwise originating consumer products.

24 (10) "Resident individual" means a natural person who resides in this state.

25 (11) "Retail seller" means a person that engages in the business of selling or leasing  
26 consumer products to resident individuals.

27 (12) "Supplier" means a manufacturer, distributor or retail seller.

28 **SECTION 2.** (1) A supplier manufactures or distributes consumer products in this state  
29 or sells or leases consumer products at retail in this state subject to an implied warranty  
30 of merchantability, unless the supplier disclaims the warranty as provided in subsection  
31 (3)(b) of this section. A retail seller may seek contribution or indemnity from a manufacturer  
32 for the amount of any liability the retail seller has under this subsection.

33 (2) A retail seller sells or leases consumer products at retail in this state subject to an  
34 implied warranty of fitness if the retail seller has reason to know at the time of the sale or  
35 lease that a buyer requires a consumer product for a particular purpose and is relying on  
36 the retail seller's skill or judgment to select or provide a consumer product that is suitable  
37 for the particular purpose.

38 (3)(a) Except as provided in paragraph (b) of this subsection, a supplier or a buyer may  
39 not disclaim or waive an implied warranty of merchantability or, if applicable, an implied  
40 warranty of fitness. A buyer's purported waiver of an implied warranty described in this  
41 paragraph is contrary to public policy and is void and unenforceable.

42 (b) A supplier is not subject to and disclaims a warranty described in paragraph (a) of  
43 this subsection if the supplier sells a consumer product as is and in strict compliance with  
44 subsection (4) of this section.

45 (4) A supplier that sells or leases a consumer product as is must attach to or provide

1 with the consumer product, or with any advertisement of or offer for the consumer product,  
2 a conspicuous notice that in simple and concise language tells the buyer that:

3 (a) The supplier is selling or leasing the consumer product as is, with all faults;

4 (b) The entire risk as to the quality or performance of the consumer product is with the  
5 buyer; and

6 (c) The buyer assumes the entire cost of all necessary servicing, repair or replacement  
7 of the consumer product if the consumer product is defective.

8 **SECTION 3.** (1)(a) Except as provided in this section, sections 1 to 4 of this 2023 Act do  
9 not affect a supplier's right to make express warranties with respect to consumer products  
10 the supplier sells or leases in this state.

11 (b) An express warranty for a consumer product is subject to the requirements of this  
12 section and is in addition to, and not in lieu of, an applicable implied warranty described in  
13 section 2 of this 2023 Act.

14 (2) A supplier that makes an express warranty for a consumer product shall write the  
15 warranty in simple and readily understood language that clearly identifies the party that is  
16 making the express warranty and otherwise conforms to the federal standards for disclosing  
17 warranty terms and conditions specified in the federal Magnuson-Moss Warranty Federal  
18 Trade Commission Improvement Act, 15 U.S.C. 2301 et seq., and regulations the Federal  
19 Trade Commission adopts under the Act, both as in effect on the effective date of this 2023  
20 Act.

21 (3) A supplier may provide a product registration card or form or an electronic product  
22 registration form for a consumer product, but the supplier's express warranty is valid and  
23 enforceable even if a resident individual does not register the product. A registration form  
24 or card may not include a label or language indicating that the card or form is a warranty  
25 registration or warranty confirmation and must display a conspicuous notice that states  
26 that:

27 (a) The card or form is for product registration; and

28 (b) A failure to complete and submit the card or form does not diminish a resident  
29 individual's warranty rights.

30 (4)(a) A person that performs warranty repairs or service on a consumer product in this  
31 state must provide the buyer with a copy of the work order or invoice for the warranty re-  
32 pairs or service. The face or reverse of the work order or invoice, or an attachment to the  
33 work order or invoice, must incorporate in 10-point boldfaced type a conspicuous notice that  
34 reads in substance:

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37 A buyer of this product in Oregon has the right to have this product serviced or repaired  
38 during the warranty period. The warranty period must be extended for the number of whole  
39 days that the product has been out of the buyer's hands for warranty repairs. If a defect  
40 exists within the warranty period, the warranty will not expire until the defect has been  
41 fixed. The warranty period must also be extended if the warranty repairs are not performed  
42 because of delays caused by circumstances beyond the control of the buyer or if the warranty  
43 repairs do not remedy the defect and the buyer notifies the seller or manufacturer within  
44 60 days after the completion of the repair that the repairs did not remedy the defect. If after  
45 a reasonable number of attempts, warranty repairs or service has not fixed the defect, the

1 buyer may return this product for a replacement or refund, less a reasonable charge for  
2 usage. The warranty time extension described in this notice does not affect the protections  
3 or remedies the buyer has under other laws.

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6 (b) If the notice described in paragraph (a) of this subsection appears on the reverse side  
7 of a work order or invoice for a warranty repair, the face of the work order or invoice must  
8 include a conspicuous notice in 10-point boldface type that reads: "Notice to consumer:  
9 Please read important information on back."

10 (5) If a supplier maintains repair and service facilities in this state, the supplier shall,  
11 at the time the supplier sells or leases a consumer product in this state, provide the buyer  
12 with:

13 (a) The name, address and telephone number of each service and repair facility in this  
14 state;

15 (b) The name, address and telephone number of a central directory for repair and service  
16 facilities within this state that, at the buyer's request, must provide the buyer with the  
17 name, address and telephone number of the repair or service center that is nearest to the  
18 buyer's location; or

19 (c) Access to, on the retail seller's premises or on the supplier's website, a current listing  
20 of the supplier's authorized repair and service facilities, or of retail sellers to which the  
21 buyer can return the consumer product for repair or service, each of which must, at the  
22 buyer's request, provide the buyer with the name, address and telephone number of the re-  
23 pair and service facility that is nearest to the buyer's location.

24 **SECTION 4.** (1) If a manufacturer makes an express warranty for a consumer product  
25 sold or leased in this state, the manufacturer shall:

26 (a) Maintain in this state, or authorize other persons to maintain, adequate repair and  
27 service facilities that are located reasonably close to locations in which retail sellers sell or  
28 lease the manufacturer's consumer product; or

29 (b) Provide the buyer with:

30 (A) Prepaid postage in an amount that is sufficient to enable the buyer to send the con-  
31 sumer product to a repair and service facility located outside this state or outside a rea-  
32 sonable distance from the buyer's location; and

33 (B) A container for shipment that can accommodate and adequately protect the con-  
34 sumer product.

35 (2) If a manufacturer does not comply with subsection (1) of this section, a buyer may  
36 return a defective consumer product to the retail seller from which the buyer purchased the  
37 consumer product or to any retail seller within this state that sells or leases the  
38 manufacturer's consumer products. The retail seller shall:

39 (a) Service or repair the consumer product so that the consumer product conforms to  
40 the manufacturer's express warranty;

41 (b) Direct the buyer to a reasonably close independent service or repair facility that is  
42 willing to provide service for or repairs to the consumer product;

43 (c) Replace the defective consumer product with a consumer product that is identical or  
44 reasonably equivalent to the consumer product; or

45 (d) Refund the buyer's purchase price for the consumer product.

1       **(3) A manufacturer that does not comply with subsection (1) of this section is liable to**  
2 **a retail seller of the manufacturer’s consumer products in an amount that is equivalent to**  
3 **the actual cost the retail seller incurs in providing:**

4       **(a) A replacement of the consumer product to the buyer, including costs in transporting**  
5 **the replacement consumer product and a reasonable handling charge;**

6       **(b) Service or repair of the consumer product to buyers who are not entitled to warranty**  
7 **protections, including costs of transporting parts or components or replacement consumer**  
8 **products, plus a reasonable profit; or**

9       **(c) A refund to the buyer of the purchase price of the consumer product, plus a reason-**  
10 **able handling charge.**

11       **(4) A person that provides service and repair for a manufacturer’s consumer products in**  
12 **this state shall begin the service or repair within a commercially reasonable time, which**  
13 **must be within 30 days unless the buyer agrees otherwise in writing or unless a delay occurs**  
14 **that is beyond the control of the manufacturer or the person that provides the service or**  
15 **repair.**

16       **(5)(a) Except as provided in paragraph (b) of this subsection, a buyer shall deliver a**  
17 **consumer product for which the buyer seeks service or repair to the manufacturer’s service**  
18 **and repair facility within this state or to an authorized service and repair facility.**

19       **(b)(A) If a buyer cannot deliver a consumer product to a service and repair facility be-**  
20 **cause of the size and weight of the consumer product or because a method of attachment**  
21 **or installation or the nature of the defect makes delivery impractical or unreasonable, the**  
22 **buyer may notify the manufacturer in writing and the manufacturer or a person that pro-**  
23 **vides service and repair on the manufacturer’s behalf shall, at the manufacturer’s or the**  
24 **person’s option:**

25       **(i) Service or repair the consumer product at the buyer’s residence or other location**  
26 **where the buyer holds the consumer product; or**

27       **(ii) Pick up or arrange for transporting the consumer product to the service and repair**  
28 **facility.**

29       **(B) Costs associated with transporting a consumer product under subparagraph (A) of**  
30 **this paragraph from the buyer’s residence or other location to a service and repair facility**  
31 **and from the service and repair facility to the buyer’s residence or other location are the**  
32 **responsibility of the manufacturer or the person that provides service and repair.**

33       **(6) If a manufacturer or person that provides service and repair for the manufacturer’s**  
34 **consumer products cannot conform the consumer product to the express warranty after a**  
35 **reasonable number of attempts, the manufacturer shall either replace the consumer product**  
36 **with a consumer product of like capability and quality or refund to the buyer the purchase**  
37 **price the buyer paid for the consumer product, less a reasonable amount that is directly at-**  
38 **tributable to the buyer’s use of the consumer product before discovering a defect.**

39       **SECTION 5. Sections 1 to 4 of this 2023 Act apply to transactions in consumer products**  
40 **that occur on and after the effective date of this 2023 Act.**