



Product Safety And Consumer Protection

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Background

CONSUMER PROTECTION encompasses a broad range of consumer issues including, credit, utilities, services and goods. Many consumer complaints are simply disputes that may be resolved through communication between the consumer and the business. Others, however, others may be [FRAUDULENT](#) transactions. Consumers are protected under both state and federal laws. Some states have laws regarding major purchases that allow for a "cooling off" period in which the consumer can return the item or cancel the contract with no [PENALTY](#). Each state Attorney General's office has some type of public protection division responsible for enforcing the rights of consumers in business and service transactions and to protect the [CIVIL RIGHTS](#) of citizens. Federal standards are enforced by the Federal Trade Commission, which oversees a number of federal antitrust and consumer protection laws. The Commission seeks to ensure that the nation's markets function competitively, and are vigorous, efficient, and free of undue restrictions. The Commission also works to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive. In general, the Commission's efforts are directed toward stopping actions that threaten consumers' opportunities to exercise informed choice.

Warranties

A [WARRANTY](#) is the promise of a manufacturer or seller to resolve problems the product may have. Warranties can cover the retail sale of consumer goods. Consumer goods include new products or parts which are used, bought, or leased for use primarily for personal, family, or household purposes. There are two kinds of warranties, implied warranties and express warranties.

Implied Warranties

Implied warranties are unspoken, unwritten promises, created by state law. In consumer product transactions, there are two types of implied warranties. They are the [IMPLIED WARRANTY](#) of merchantability and the implied warranty of fitness for a particular purpose. The implied warranty of merchantability is a merchant's basic promise that the goods sold will function and have nothing significantly wrong with them. The implied warranty of fitness for a particular purpose is a promise that the seller's product can be used for some specific purpose. Implied warranties are promises about the condition of products at the time they are sold, but they do not assure that a product will last for a specific length of time. Implied warranties do not cover problems caused by misuse, ordinary wear, failure to follow directions, or improper maintenance. Generally, there is no

specified duration for implied warranties under state laws. However, the state statutes of limitations for breach of either an express or an implied warranty are generally four years from date of purchase. This means that buyers have four years in which to discover and seek a remedy for problems that were present in the product at the time it was sold. It does not mean that the product must last for four years. Implied warranties apply only when the seller is a merchant who deals in such goods, not when a sale is made by a private individual.

Express Warranties

Express warranties are explicit warranties. Express warranties can take a variety of forms, ranging from advertising claims to formal certificates. An express warranty can be made either orally or in writing; however, only written warranties on consumer products are covered by the **MAGNUSON-MOSS WARRANTYACT**.

Extended Warranties

Extended warranties are actually service contracts. Like warranties, service contracts do provide repair and/or maintenance for a specific period of time; however, service contracts cost extra and are sold separately. Warranties are included in the price of the product; service contracts are not.

Federal Acts

Food Quality Protection Act

The Food Quality Protection Act (FQPA) of 1996 amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food Drug, and Cosmetic Act (FFDCA). These amendments fundamentally changed the way EPA regulates pesticides. The requirements included a new safety standard—reasonable certainty of no harm—that must be applied to all pesticides used on food.

Safe Drinking Water Act

The Safe Drinking Water Act was established in 1974 to protect the quality of drinking water in the United States. This law focuses on all waters actually or potentially designed for drinking use, whether from above ground or underground sources. The Act authorized EPA to establish safe standards of purity and required all owners or operators of public water systems to comply with primary (health-related) standards. State governments, which assume this power from EPA, also encourage attainment of secondary standards (nuisance-related).

Federal Insecticide, Fungicide, and Rodenticide Act

The primary focus of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) enacted in 1972 was to provide federal control of pesticide distribution, sale, and use. EPA was given authority under FIFRA not only to study the consequences of pesticide usage but also to require users (farmers, utility companies, and others) to register when purchasing pesticides. Through later amendments to the law, users were required to take exams for certification as applicators of pesticides. All pesticides used in the United States must be registered (licensed) by EPA. Registration assures that pesticides will be properly labeled and that if when used in accordance with specifications will not cause unreasonable harm to the environment.

Consumer Vehicle Purchases

The Federal Anti-Tampering Odometer Law prohibits anyone from falsifying mileage readings in a new or used vehicle. The Federal Used Car Law requires used car dealers to post Buyers Guides on used cars. The Federal Automobile Information Disclosure Act requires new car dealerships to put a sticker on the windshield or side window of the car. This sticker must list the base price of the car, the options added and their costs, as well as the dealer's cost for transportation and the number of miles per gallon the car uses.

Dealers are not required by law to give used car buyers a three-day right to cancel. The right to return the car in a few days for a refund exists only if the dealer grants this privilege to buyers. The Federal Trade Commission's Used Car Rule requires dealers to post a Buyers Guide in every used vehicle they offer for sale. This includes light-duty vans, light-duty trucks, demonstrators, and program cars. Demonstrators are new cars that have not been owned, leased, or used as rentals, but have been driven by dealer staff. Program cars are low-mileage, current-model-year vehicles returned from short-term leases or rentals. Buyers Guides do not have to be posted on motorcycles and most recreational vehicles, nor by any seller that sells less than six vehicles a year. The Buyers Guide becomes part of the sales contract and overrides all contrary provisions. Dealers who offer a written warranty must complete the warranty section of the Buyers Guide. Dealers may offer a full or limited warranty on all or some of a vehicle's systems or components. Most used car warranties are limited and their coverage varies. A full or limited warranty is not required to cover the entire vehicle. The dealer may specify that only certain systems are covered. Some parts or systems may be covered by a full warranty; others by a limited warranty. The dealer must check the appropriate box on the Buyers Guide if a service contract is offered, except in states where service contracts are regulated by insurance laws.

Lemon Laws

So-called LEMON LAWS vary from state to state. Typically, a defect covered by the Lemon Law must be a major defect which substantially impairs the use, value, or safety of the vehicle. Lemon laws generally impose time or mileage limitations regarding when the defect must be presented to the manufacturer or dealer in order to be covered under the Lemon Law. The manufacturer must repair the defect within a reasonable number of repair attempts. If the manufacturer fails to repair the defect or defects in the vehicle within a reasonable number of repair attempts, the consumer is entitled to a repurchase or replacement of the vehicle. In some states if the defect is of such a character that there is a substantial risk of death or serious bodily injury if the vehicle is driven, the vehicle is presumed to be a lemon if the defect continues to exist after even one repair attempt. If the defect does not fall into this category, additional repair attempts are normally required. In some states, three repair attempts for a defect is enough to [WARRANT](#) a buy back or replacement. Other states require four repair attempts or more.

Federal Agencies

While many states have enacted comprehensive products liability statutes, there is no federal products liability law. There are, however, a number of federal entities responsible for maintaining and enforcing regulation of consumer products.

Consumer Product Safety Commission

The U.S. Consumer Product Safety Commission (CPSC) is an independent federal regulatory agency created to protect the public from unreasonable risks of injuries and deaths associated with some 15,000 types of consumer products. Defective product law, commonly known as products liability, refers to the liability of parties along the chain of manufacture of any product for damage caused by that product. A defective product

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is one that causes some injury or damage to person because of some defect in the product or its labeling or the way the product was used. Those responsible for the defect can include the manufacturers of component parts, assembling manufacturers, wholesalers, and retail stores. The CPSC uses various means to inform the public about potential risks. These include local and national media coverage, publication of numerous booklets and product alerts, a web site, a telephone Hotline, the National Injury Information Clearinghouse, CPSC's Public Information Center and responses to **FREEDOM OF INFORMATION ACT (FOIA)** requests. For nearly 30 years the U.S. Consumer Product Safety Commission (CPSC) has operated a statistically valid injury surveillance and follow-back system known as the National Electronic Injury Surveillance System (NEISS). The primary purpose of NEISS has been to provide timely data on consumer product-related injuries occurring in the United States. NEISS injury data are gathered from the emergency departments of 100 hospitals selected as a probability sample of all U.S. hospitals with emergency departments. The system's foundation rests on emergency department surveillance data, but the system also has the flexibility to gather additional data at either the surveillance or the investigation level. Surveillance data enable CPSC analysts to make timely national estimates of the number of injuries associated with (not necessarily caused by) specific consumer products. These data also provide [EVIDENCE](#) of the need for further study of particular products. Subsequent follow-back studies yield important clues to the cause and likely prevention of injuries.

Office of Consumer Litigation

When a client agency refers a case to the Department of Justice, the Office of Consumer LITIGATION (OCL) generally receives the referral and will either retain it or ask a United States Attorney's Office (USAO) to handle the case. Frequently, OCL and the USAO work jointly on these matters. Established in 1971, the OCL enforces and defends the consumer protection programs of the Food and Drug Administration (FDA), the Federal Trade Commission (FTC), the Consumer Product Safety Commission (CPSC), and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA). OCL has responsibility for litigation under federal consumer protection laws. These include the Federal Food, Drug, and Cosmetic Act; the odometer tampering prohibitions of the Motor Vehicle Information and Cost Savings Act; the Consumer Product Safety Act; and a variety of laws administered by the Federal Trade Commission, such as the Fair Debt Collection Practices Act.

Internet Fraud Complaint Center

The mission of the Internet FRAUD Complaint Center is to combat fraud committed over the Internet. The IFCC Web site allows consumers nationwide to report Internet fraud; enables the development of educational programs aimed at preventing Internet fraud; offers local, state, and federal law enforcement agencies training in Internet fraud; and allows for the sharing of fraud data by all law enforcement and regulatory authorities.

U. S. Food and Drug Administration

The U.S. Food and Drug Administration (FDA) monitors food, cosmetics, medicines and medical devices, and ensures the safety of radiation-emitting consumer products such as microwave ovens. FDA also oversees feed and drugs for pets and farm animals. Authorized by Congress to enforce the Federal Food, Drug, and Cosmetic Act and several other public health laws, the agency monitors the manufacture, import, transport, storage, and sale of \$1 trillion worth of goods annually.

Center for Biologics Evaluation and Research

A biological product subject to licensure under the Public Health Service Act is any virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product, applicable to the prevention, treatment, or cure of diseases or injuries to humans. Biological products include, but are not limited to, bacterial and viral vaccines, human blood and plasma and their derivatives, and certain

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products produced by biotechnology, such as interferons and erythropoietins. The Center for Biologics Evaluation and Research (CBER) is responsible for ensuring the safety and efficacy of blood and blood products, vaccines, allergenics, and biological therapeutics. CBER's regulation of biological products has expanded in recent years to include a wide variety of new products such as biotechnology products, somatic cell therapy and gene therapy, and banked human tissues.

Federal Trade Commission

The Federal Trade Commission (FTC) works to ensure that the nation's markets are efficient and free of practices which might harm consumers. To ensure the smooth operation of our free market system, the FTC enforces federal consumer protection laws that prevent fraud, deception and unfair business practices. The Commission also enforces federal antitrust laws that prohibit anticompetitive mergers and other business practices that restrict competition and harm consumers.

National Highway Traffic Safety Administration

The National Highway Traffic Safety Administration (NHTSA), within the U.S. Department of Transportation, was established by the Highway Safety Act of 1970, to carry out safety programs under the National Traffic and Motor Vehicle Safety Act of 1966 and the Highway Safety Act of 1966. NHTSA also carries out consumer programs established by the Motor Vehicle Information and Cost Savings Act of 1972. NHTSA has consumer information on motor vehicle safety, crash worthiness, and recalls among other areas. OCL works with NHTSA to enforce the provisions of the federal odometer tampering [STATUTE](#).

Additional Resources

Product Liability Entering the 21st Century: The U.S. Perspective. Moore, Michael J., Brookings Institution Press, 2001.

Why Lawsuits Are Good for America: Disciplined Democracy, Big Business, and the Common Law. Bogus, Carl, NYU Press, 2001.

Organizations

Consumer Action

717 Market Street, Suite 310
San Francisco, CA 94103 USA
Phone: (415) 777-9635
Fax: (415) 777-5267
URL: <http://www.consumer-action.org>

Federal Trade Commission

600 Pennsylvania Avenue, NW Washington, DC 20580 USA
Phone: (877) FTC-HELP
URL: <http://www.ftc.gov>

National Consumers League

1701 K Street, NW, Suite 1200
Washington, DC 20006 USA

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