

## HOUSE BILL NO. 248

INTRODUCED BY D. KOTTEL

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING NOTICES REGARDING SERVICE TIME ON CERTAIN SERVICE WARRANTIES; PROVIDING RELIEF FOR CONSUMERS IF NOTICE IS NOT PROVIDED; PROVIDING DEFINITIONS; AND AMENDING SECTION 30-14-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Notice on service warranty -- refund.** (1) A service warranty sold in this state must include, in the same type as the rest of the written agreement provided to the consumer at the time of sale, a notice that describes the average length of time to obtain service in the service area in the preceding 6 months.

(2) The consumer may cancel the service warranty and receive a refund equal to twice the contract cost if:

(a) a service warranty does not contain the notice described in subsection (1); or

(b) the service delay was more than twice what was represented as the average length of time to obtain service as provided in subsection (1).

(3) Other penalties provided under Title 30, chapter 14, part 1, may also apply.

(4) Except for the notice and refund provisions of this section, the provisions of Title 28 applying to contracts also apply to service warranties.

**Section 2.** Section 30-14-102, MCA, is amended to read:

**"30-14-102. Definitions.** As used in this part, the following definitions apply:

(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

(2) "Department" means the department of justice created in 2-15-2001.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording.

(4) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

(5) (a) "Gift certificate" means a record, including a gift card, that is provided for paid consideration and that indicates a promise by the issuer or seller of the record that goods or services will be provided to the possessor of the record for the value that is shown on the record or contained within the record by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage device. The consideration provided for the gift certificate must be made in advance. The value of the gift certificate is reduced by the amount spent with each use. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate. The value represented by the gift certificate belongs to the possessor, to the extent provided by law, and not to the issuer or seller.

(b) The term does not mean:

(i) prepaid telecommunications and technology cards, including but not limited to prepaid telephone calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed to or purchased by a consumer;

(ii) a coupon provided to a consumer pursuant to any award, loyalty, or promotion program without any money or consideration being given in exchange for the card; or

(iii) a gift certificate usable with multiple sellers of goods or services.

(6) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(7) "Possessor" means a natural person who has physical control over a gift certificate.

(8) "Service area" means an area within a circumference centered on the seller's service location.

(9) (a) "Service warranty" means any time-limited warranty entered into by a consumer and a seller in return for payment by the consumer of a segregated charge and under which the seller agrees to repair or replace a consumer product.

(b) The term does not include service contracts that are between a consumer and a nonprofit cooperative or a nonprofit organization that provides repairs in units of a condominium association or in a condominium.

~~(8)~~(10) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this

1 state."

2

3 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
4 integral part of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply to [section 1].

5 - END -