

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 630
Economic Matters

(Delegate Jameson)

Finance

Mechanical Repair Contracts - Requirements

This bill alters the definition of a “service contract” under the Maryland Service Contracts and Consumer Products Guaranty Act to include mechanical repair contracts and alters the definition of a “mechanical repair contract” in various ways. The bill also requires that any mechanical repair contract used by an obligor include specified information and be filed with the Insurance Commissioner, along with evidence that the obligor maintains adequate insurance reserves, at least 45 days before the obligor sells a mechanical repair contract. Such a filing is generally not subject to the approval of the Commissioner, but the Commissioner may suspend the use of a contract under specified circumstances. Furthermore, an obligor must register with the Commissioner on an annual basis. The registration must include specified information and a \$25 fee. The Commissioner must register each obligor that meets the bill’s requirements but may deny a registration under specified circumstances. Finally, the bill prohibits a person that sells a mechanical repair contract from making certain false, deceptive, or misleading statements.

Fiscal Summary

State Effect: Special fund revenues increase minimally beginning in FY 2016 as the Maryland Insurance Administration (MIA) collects additional filing fees (\$125) associated with the filing of mechanical repair contracts and new registration fees (\$25) established by the bill. General fund revenues may increase minimally from the application of existing penalties under the Maryland Vehicle Law to the bill’s new prohibitions and from the collection of the new penalties established by the bill. Expenditures are likely not affected as MIA can handle the currently projected volume of filings and registrations with existing staff.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Alterations to Service Contracts and Mechanical Repair Contracts

The bill defines an “obligor” as the person specified in a mechanical repair contract that is contractually obligated to perform the services set forth in the mechanical repair contract. The bill also establishes consistency between the Transportation Article and the Commercial Law Article by altering the definition of a “service contract” under the Maryland Service Contracts and Consumer Products Guaranty Act to include mechanical repair contracts.

Additionally, the bill alters the definition of a “mechanical repair contract” to include an agreement or contract sold by an obligor under which the obligor agrees to perform any of several services enumerated in the bill. The services generally pertain to the repair, replacement, or maintenance of a vehicle (current law applies to “services relating to the maintenance or repair of a motor vehicle”), including, among other things, towing, rental and emergency road service, and road hazard protection.

Additionally, the bill specifies that a mechanical repair contract may not provide indemnification for a loss caused by “perils that are commonly covered by comprehensive or collision provisions” of an auto insurance policy.

Obligor Registration and Filing of Contracts

At least 45 days before selling a mechanical repair contract, the obligor must file the contract with the Insurance Commissioner along with evidence that the obligor maintains adequate insurance reserves. The bill explicitly states that an obligor must pay a \$125 filing fee with such a filing. Although the filing is generally not subject to the approval of the Commissioner, the Commissioner may suspend use of a contract after an investigation and hearing that finds the contract is not in compliance with the bill’s requirements.

Furthermore, each obligor must register with the Commissioner on an annual basis. The registration must include a \$25 fee and specified information including the obligor’s name, corporate address, and telephone number and the name and address of a designated agent authorized to accept service on behalf of the obligor in the State. Unless the person is a licensed vehicle dealer, a person that is not a registered obligor may not offer, sell, or

negotiate a mechanical repair contract. The bill authorizes the Insurance Commissioner to pursue an action against an unregistered person that offers a mechanical repair contract; for the same offense, it establishes a misdemeanor penalty of up to \$1,000, up to one year imprisonment, or both, not including the payment of restitution, which may also be imposed.

The Commissioner must register each qualified obligor but may deny a registration under circumstances specified by the bill. Instead of, or in addition to, suspending or revoking a registration, the Commissioner may impose a civil penalty of between \$100 and \$1,000 for each violation.

The bill requires the obligor of a mechanical repair contract executed on or before October 1, 2015, to register with the Commissioner within 90 days of the date that the registration application is made available. It requires a person that is not engaging in mechanical repair contract transactions on October 1, 2015, to register with the Commissioner before a mechanical repair contract is offered.

Prohibitions on Sellers of Mechanical Repair Contracts

The bill also prohibits a person that is not a vehicle manufacturer (or subsidiary), distributor, factory branch, or dealer and that sells a mechanical repair contract from making a false, deceptive, or misleading statement with respect to (1) the person's affiliation or possession of specified information; (2) the expiration of a manufacturer's original equipment warranty; or (3) a requirement that the vehicle owner register for a new mechanical repair contract in order to maintain coverage under the owner's current mechanical repair contract or the manufacturer's original equipment warranty.

Required Disclosures

In addition to any other applicable disclosure requirements, each mechanical repair contract must include (1) the name, corporate address, and telephone number of the obligor and the mechanical repair contract seller and (2) the right of the purchaser to make a direct claim against the insurer issuing a policy of insurance upon the failure of the obligor to pay a claim or make a refund or consideration due within 60 days after the proof is filed with the obligor.

Current Law/Background: A mechanical repair contract is defined as any agreement or contract sold by a *licensed vehicle dealer* under which a provider agrees to perform, over a fixed period, for a specific duration, and for an identifiable price, (any) services relating to the maintenance or repair (but not replacement) of a motor vehicle, provided that the purchase of the contract is optional to the purchaser.

The Maryland Vehicle Law establishes several requirements governing mechanical repair contracts. Among other things, a mechanical repair contract must only be offered in addition to any express warranty originally included as part of the contract for sale of a new motor vehicle. A provider of services under a mechanical repair contract must maintain adequate insurance reserves, as defined by the Insurance Commissioner, for each contract for the protection of the purchasing consumer. The provisions of the Maryland Service Contracts and Consumer Products Guaranty Act also apply to a mechanical repair contract sold by a licensed vehicle dealer.

The Maryland Service Contracts and Consumer Products Guaranty Act requires a service contract to include specified information in writing, including the duration of the contract, the purchase price, the services to be provided, requirements for cancellation, and procedures for contract dispute resolution. Additionally, under the Act, a service contract is automatically extended when the provider fails to perform the services under the contract; the contract does not terminate until the services are provided. If a provider is unable to fulfill the terms of the contract within 10 days after the date specified in the contract, the provider must, on request of the person guaranteed under the service contract, provide a written explanation for the delay. If a provider violates the Act, the Office of the Attorney General may obtain a court order to prohibit the provider from further violations. A court may also issue an order to restore money or property to a person damaged by a violation.

The federal Magnuson-Moss Warranty Act requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage. The Act only governs written warranties on consumer products sold at retail. Under the Act, a warrantor or seller must:

- designate or title the written warranty as “full” or “limited”;
- state certain specified information about the warranty coverage in a single, concise document; and
- ensure that the warranties are available where warranted consumer products are sold.

State Fiscal Effect: Special fund revenues increase minimally beginning in fiscal 2016 as MIA collects additional \$125 filing fees from mechanical repair contract providers as well as from the collection of \$25 annual registration fees established by the bill. MIA advises that 29 mechanical repair contracts were filed in 2014. Thus, special fund revenues may only increase by several thousand dollars annually under the bill.

General fund revenues may increase minimally from the collection of any penalties established by the bill, including the civil penalty imposed by the Insurance Commissioner and the new misdemeanor fine, and from the application of existing penalties under the Maryland Vehicle Law to the bill's prohibitions. Generally, a violation of the Maryland Vehicle Law is a misdemeanor and carries a maximum penalty of \$500. Violators may also prepay a civil fine instead of contesting the violation in court; currently, the prepaid fine for licensed dealers that violate provisions related to mechanical repair contracts is \$290.

Additional administrative fines apply to a dealer licensed by the Motor Vehicle Administration (MVA) that violates any provision relating to mechanical repair contracts, but other businesses that would be authorized to sell mechanical repair contracts under the bill are not licensed by MVA and not subject to these additional license-related penalties.

District Court data indicates that, in fiscal 2014, there were no such violations of the provisions relating to mechanical repair contracts (by licensed vehicle dealers), although, as noted above, administrative fines may be levied by MVA instead of pursuing civil penalties.

The bill's incarceration penalty is not anticipated to materially affect State finances.

Small Business Effect: Small businesses engaged in providing (or brokering the sale of) mechanical repair contracts may realize a meaningful increase in revenues or profits to the extent that the bill allows additional business opportunities related to the sale of such contracts and the expanded scope of services that may be sold under a contract. However, the bill also establishes a registration requirement, new penalties, and several prohibitions, which may subject providers to additional penalties under the Maryland Vehicle Law.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Insurance Administration, Maryland Department of Transportation, Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Legislative Services

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