

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1038
Economic Matters

(Delegates Cox and Boteler)

Insurance - Guaranteed Automobile Protection - Liability

This bill applies the Maryland Consumer Protection Act (MCPA) to the professional services of an insurance company or insurance producer that relate to a “guaranteed automobile protection (GAP) insurance policy.” In addition to any other sanctions under MCPA, an insurer that knowingly violates certain unfair trade practice prohibitions with respect to a GAP policy is liable to the first named insured for (1) reasonable attorney’s fees and (2) three times the difference between the actual cash value of the damaged or stolen vehicle, before any damage incurred at the time of the motor vehicle accident, and the amount owed on the motor vehicle under the loan or lease.

Fiscal Summary

State Effect: The bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General (OAG) and the Maryland Insurance Administration (MIA) can enforce the bill with existing resources.

Maryland Automobile Insurance Fund Effect: The bill does not affect the Maryland Automobile Insurance Fund’s (MAIF) operations or finances because MAIF does not issue GAP insurance policies.

Local Effect: The bill does not directly affect local governmental operations or finances.

Small Business Effect: Minimal.

Analysis

Current Law: Title 27 of the Insurance Article expressly prohibits certain insurer practices and activities as unfair trade practices. The Insurance Commissioner has general enforcement authority to issue a cease and desist order when a violation is discovered, and penalties are prescribed for different types of violations. Certain activities carry more severe penalties; for example, an insurer may be fined up to \$125,000 for each violation when it fails to act in good faith when settling a first-party claim under a policy of property and casualty insurance.

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

OAG's Consumer Protection Division (CPD) is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: GAP insurance is an optional type of insurance that covers the difference (or gap) between the amount owed on an automobile loan and what insurance pays if the vehicle is stolen, damaged, or totaled. The coverage is useful to consumers due to how quickly a vehicle's value depreciates after it is purchased. Specifically, if a car is totaled shortly after a purchase, the vehicle's owner may discover that the insurance payment is less than what is owed on the vehicle. GAP insurance provides coverage for this difference.

MIA advises that it already has broad authority to enforce laws and regulations regarding the handling of claims (including those related to GAP coverage); for example, MIA may direct the payment of restitution and/or interest as well as assess an administrative penalty. MIA further advises that it receives very few complaints related to GAP coverage. Moreover, according to MIA, the most common type of GAP insurance

(a debt-cancellation agreement sold when a consumer purchases a vehicle) is already subject to MCPA; MIA currently forwards those complaints to CPD.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Maryland Insurance Administration; Maryland Automobile Insurance Fund; Consumer Financial Protection Bureau; Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2019
mm/jc

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