

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 863

(Delegate La Vay, *et al.*)

Economic Matters

Finance

Maryland Service Contracts and Consumer Products Guaranty Act

This bill applies to a provider of a service contract the legal regime applicable to a guarantor of a consumer product guaranty. The bill changes the name of the “Maryland Consumer Products Guaranty Act” to the “Maryland Service Contracts and Consumer Product Guaranty Act.”

Fiscal Summary

State Effect: Assuming that the Consumer Protection Division receives fewer than 50 complaints per year stemming from this bill, any additional workload could be handled with existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill requires a service contract to be in writing and to specify: (1) the contract’s duration, measured in time or product usage; (2) any reasonable and necessary maintenance required to be performed by the person guaranteed as a contract condition; (3) the contract’s purchase price and terms, including the provider’s obligations; (4) the merchandise and services to be provided; (5) the procedures to follow to obtain services under the contract or to file a claim under the contract; (6) limitations, exceptions, or inclusions under the contract; (7) the terms, restrictions, or conditions

governing cancellation of the contract before its stated termination date; and (8) any means established by the provider for quick informal settlement of a dispute.

The bill requires a service contract provider to fulfill the obligations under the contract according to its terms: (1) for the contract's stated duration; and (2) within the contractually stated period or, if none is stated, a reasonable period. A service contract is extended automatically if the provider fails to perform the services as required. The contract does not terminate until the services are provided. The bill requires a service contract provider to provide the person guaranteed under the contract a brief written explanation if the provider is unable to fulfill the terms of the service contract within ten days after the services should have been performed under the contract. These duties may not be imposed on a service contract provider if the provider shows that while the product was in the possession of any other person, damage or unreasonable use, including failure to provide any reasonable and necessary maintenance, caused the product to malfunction or caused the inability of the provider to provide any service under the contract.

The bill authorizes the person guaranteed under the contract to cancel the contract within specified time frames and requires the contract provider to refund the full amount paid if the contract is cancelled before a claim is made under the contract. If the provider does not grant the refund within the bill's required 45-day period, the provider must pay 10% of the value of the amount paid for the contract for each month that the refund is not paid.

If a provider violates a provision of the bill, the Attorney General may obtain a court order prohibiting the provider from further violations. The Attorney General must give appropriate notice to the provider stating generally the relief sought at least seven days before filing an action. If a provider has established informal dispute settlement procedures, the provider may elect to settle disputes in cooperation with any private agency or the Consumer Protection Division within the Office of the Attorney General.

A service contract provider is liable to the person guaranteed for any wrongful breach and is under a duty to perform the contract as required and compensate the person for all reasonable incidental expenses incurred as a result of the breach.

A person guaranteed may file an action in any court of competent jurisdiction if the contract is breached. If the person guaranteed prevails, the court must include the person's reasonably incurred costs and expenses including, unless they are inappropriate, attorney's fees. The person guaranteed is not entitled to costs and expenses if the person failed to settle the claim informally in accordance with the service contract provider's dispute resolution mechanism.

Except for the Maryland Consumer Protection Act, the bill provides the exclusive remedy by which a person guaranteed may recover damages for a breach of a service contract or may enforce a service contract. Guarantors, administrators, and other persons marketing, selling, or offering to issue guarantees that comply with the terms of the bill need not comply with provisions of the Insurance Article. The bill excludes licensed master plumbers; licensed heating, ventilation, air-conditioning, or refrigeration service providers; and licensed contractors whose contractually provided services are: (1) within the scope of the licensee's license; or (2) any applicable provision of the Insurance Article.

Current Law: Generally, service contract providers are not regulated by the State. Service contracts are generally governed by the common law of contracts. A licensed vehicle dealer must offer a mechanical repair contract in addition to any express warranty originally included as part of the contract for the sale of a new motor vehicle. The provisions of the Maryland Consumer Products Guaranty Act apply to mechanical repair contracts entered into by licensed vehicle dealers.

Some service contracts may be governed as contracts of insurance under the Insurance Article. Under the insurance article, insurance is a contract to indemnify or pay or provide a specified or determinable amount or benefit on the occurrence of a determinable contingency. The Attorney General has opined that there are five elements to determine whether a contract is an insurance contract: (1) the insured possesses an insurable interest; (2) the insured is subject to a risk of loss; (3) the insurer assumes that risk of loss; (4) the assumption of the risk is part of a general scheme to distribute actual losses among a large group of persons bearing somewhat similar risks; and (5) as consideration for the insurer's promise, the insured makes a ratable contribution, called a premium, to a general insurance fund.

Background: Merchants enter into service contracts in connection with a wide range of goods such as appliances, electronic goods such as stereos and televisions, lawn and garden equipment, and computers.

Additional Information

Prior Introductions: Similar bills were introduced in the 2000 and 2001 sessions. SB 745 from 2000 was withdrawn, and SB 698 of 2001 received an unfavorable report from the Senate Finance Committee.

Cross File: Although not identified as a cross file, SB 543 is identical.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

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