

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 148
Finance

(Senator Klausmeier, *et al.*)

Consumer Protection - Vessel Warranty Enforcement Act

This bill establishes the Vessel Warranty Enforcement Act. The bill applies prospectively and does not apply to a vessel purchased or delivered before October 1, 2006.

Fiscal Summary

State Effect: Special fund revenues could decrease minimally beginning in FY 2007 due to vessels returned under the bill. Any additional workload could be handled with existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: If a new vessel does not conform to all applicable warranties during the warranty period, the consumer must report the problem by giving written notice to the manufacturer and its agent by certified mail, return receipt requested. The consumer must provide an opportunity for the manufacturer or its agent to cure the problem; and the manufacturer, its agent, or its authorized dealer must correct the problem, at no cost to the consumer, within 30 days. If the problem cannot be corrected after a reasonable number of attempts, the manufacturer must replace the vessel or accept its return for a refund, less specified allowances. It is presumed that a reasonable number of attempts have been undertaken under specified circumstances.

It is an affirmative defense to a claim that the problem: (1) does not substantially impair the use and market value of the vessel; or (2) is a result of abuse, neglect or unauthorized modifications or alterations. A dealer must notify a manufacturer of a claimed problem as specified under the bill.

If a vessel is returned to a manufacturer, the manufacturer must disclose this information to a dealer. If the returned vessel is made available for resale, this must be disclosed.

The bill does not limit a consumer's rights or remedies under any other law. If a manufacturer has established an informal dispute settlement procedure, a consumer may resort to that procedure under specified circumstances. Any agreement for the purchase of a new vessel that waives, limits, or disclaims the rights and remedies under the bill is void.

The Department of Natural Resources (DNR) is required to develop a notice that describes a consumer's rights under the bill and adopt regulations to carry out the bill's provisions.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act. Additionally, a court may award damages of up to \$10,000 to a consumer if a manufacturer or dealer is found to have acted in bad faith.

Current Law: No provisions expressly regulate vessel warranties. However, under the Maryland Uniform Commercial Code (UCC), an express warranty by the seller of goods to the buyer becomes part of the bargain that the goods conform to the promise or affirmation. A warranty that goods are merchantable is implied in a contract for their sale if the seller is a merchant for that type of goods. For consumer goods, any language in the contract that attempts to exclude or modify any implied warranties of merchantability and fitness for a particular purpose or to exclude or modify the consumer's remedies for breach of those warranties, is unenforceable. Generally, a party seeking redress under the UCC may receive monetary damages.

Background: The Automotive Warranty Enforcement Act requires motor vehicle manufacturers to repair defects or, if a vehicle cannot be repaired, replace the motor vehicle or accept its return on terms similar to this bill. Violation is an unfair or deceptive trade practice under the Maryland Consumer Protection Act.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine

whether there are “reasonable grounds” to believe that a violation of the Act has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of the Act are subject to: (1) civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and (2) criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or up to one year’s imprisonment.

State Revenues: Except under specified conditions, an excise tax is levied at the rate of 5% of the fair market value of a vessel on the issuance of every original certificate of title required for a vessel and on subsequent title exchanges. Except for \$225,000, which is credited to the general fund, revenues from the excise tax are generally paid into the Waterway Improvement Fund within DNR. When a vessel is returned for a refund under the bill, the vessel excise tax would also be refunded. Revenues for the Waterway Improvement Fund would decrease to the extent individuals: (1) returned vessels under the bill; and (2) did not purchase a replacement vessel of equal or greater value. Although the number cannot be accurately estimated, it is assumed that very few individuals would meet both of these criteria.

Additional Information

Prior Introductions: Similar bills were introduced during the 1991 and 1992 sessions. HB 809 of 1991 and HB 1137 of 1992 both received unfavorable reports from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Department of Natural Resources, Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

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