

Department of Legislative Services  
 Maryland General Assembly  
 2007 Session

FISCAL AND POLICY NOTE

House Bill 888 (Delegate Kaiser)  
 Economic Matters

Consumer Protection - Used Motor Vehicle Warranty Enforcement Act

This bill requires a dealer of used motor vehicles to give a consumer a written warranty under specified circumstances.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act.

Fiscal Summary

**State Effect:** Transportation Trust Fund (TTF) expenditures could increase by approximately \$41,000 in FY 2008 to process complaints. Out-years reflect annualization and inflation. Revenues would not be affected.

| (in dollars)   | FY 2008    | FY 2009    | FY 2010    | FY 2011    | FY 2012    |
|----------------|------------|------------|------------|------------|------------|
| Revenues       | \$0        | \$0        | \$0        | \$0        | \$0        |
| SF Expenditure | 41,000     | 49,600     | 52,300     | 55,200     | 58,300     |
| Net Effect     | (\$41,000) | (\$49,600) | (\$52,300) | (\$55,200) | (\$58,300) |

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** The bill would not affect the finances or operations of local government.

**Small Business Effect:** Potential meaningful. Small business dealers could experience increased costs associated with vehicles returned for repair or refund.

Analysis

**Bill Summary:** A dealer may not sell a used motor vehicle to a consumer without giving the consumer a written warranty for at least: • the first to occur of 90 days or 3,000 miles

if the vehicle has 24,000 miles or less on it; • the first to occur of 60 days or 2,000 miles if the vehicle has more than 24,000 but less than 60,000 miles on it; or • the first to occur of 30 days or 1,000 miles if the vehicle has between 60,000 and 100,000 miles on it.

The bill does not apply to a used motor vehicle that is sold for less than \$3,000, is more than seven years old, has been declared a total loss by an insurance company, or has more than 100,000 miles on it. The bill does apply to a lessor who is a dealer under specified conditions.

A warranty must provide that: (1) if the vehicle does not conform to applicable warranties during the warranty period, the consumer must report the nonconformity, defect, or condition to the dealer during the warranty period; (2) the consumer must provide an opportunity for the dealer to correct the nonconformity, defect, or condition subject to a \$50 deductible for each covered repair; and (3) specified repairs are not covered.

If a dealer is unable to make repairs after a reasonable number of attempts, the dealer has to repurchase the vehicle or refund the repurchase price, including license fees, registration fees, and any similar governmental charges, less specified allowances. It is an affirmative defense that the nonconformity, defect, or condition does not substantially impair the use, value, or safety of the vehicle or is the result of abuse, neglect, or unauthorized modification of alterations.

The warranty's term is extended by the length of time during which the consumer is waiting for the dealer or dealer's agent to begin repairs.

Notwithstanding any other provision of the bill, a purchaser of a vehicle with more than 60,000 miles may elect to waive the warranty under specified conditions. If the dealer fails to provide a consumer with a written warranty, it is presumed that the dealer did so as a matter of law, unless the consumer has signed a waiver.

The Motor Vehicle Administration (MVA) must: (1) develop a notice that meets specified standards and make it available to used motor vehicle dealers; and (2) adopt regulations to carry out the notification requirements. A used motor vehicle dealer must provide the notice to a purchaser at the time of sale or delivery.

A dealer may not:

- misrepresent a used motor vehicle's mechanical condition;
- fail to disclose specified information prior to sale;

- represent that a used motor vehicle, or any component thereof, is free of nonconformities, defects, or conditions at the time of sale, unless the dealer has a reasonable basis for the representation at the time it was made;
- misrepresent the terms of specified warranty, service, or repair insurance;
- represent, prior to sale that a used motor vehicle is sold with a warranty, service contract, or repair insurance when it is not; or
- fail to provide, prior to sale, a clearly written explanation of the meaning the term “as is” if the vehicle is sold as is.

In addition to any other remedies under the bill, a court may award damages of up to \$10,000 to a consumer if a dealer is found to have acted in bad faith. The bill does not limit any other rights or remedies that a consumer may have available.

**Current Law:** Used motor vehicle dealers are not required to offer a warranty.

Under Maryland’s Uniform Commercial Code, there is an implied warranty in a sales contract that goods are merchantable, unless the warranty is waived. To be merchantable, goods must be fit for the ordinary purposes for which the goods are used.

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 ● civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and ● criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or up to one year’s imprisonment.

**State Expenditures:** The MVA advises that there were approximately 697,000 used vehicles sold in the State during calendar 2006. If even 3% of the used vehicle purchasers called MVA to complain about a transaction, the MVA’s call volume could go up by almost 21,000 calls annually. TTF expenditures could increase by an estimated \$41,005 in fiscal 2008, which accounts for the bill’s October 1, 2007 effective date. This estimate reflects the cost of hiring one customer agent to process complaints under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

|   |                 |
|---|-----------------|
| Salaries and Fringe Benefits            | \$35,997        |
| Other Operating Expenses                | <u>5,008</u>    |
| <b>Total FY 2008 State Expenditures</b> | <b>\$41,005</b> |
| Positions                               | 1               |

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Assuming that the Consumer Protection Division receives fewer than 50 complaints per year stemming from this bill, any additional workload on the division's part could be handled with existing resources.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Maryland Department of Transportation (Motor Vehicle Administration), Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

**Fiscal Note History:** First Reader - February 21, 2007  
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