

**Department of Legislative Services**  
**Maryland General Assembly**  
**2007 Session**

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 449  
Economic Matters

(Delegate Feldman)

Finance

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**Commercial Law - Consumer Protection - Vehicle Protection Products Act**

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This bill provides for the regulation of “vehicle protection products.” The seller and warrantor of a “vehicle protection product,” and the warrantor’s administrator, must comply with the bill in order to sell or offer these products for sale in the State. A warrantor of a vehicle protection product has to register with the Consumer Protection Division within the Office of the Attorney General.

The bill takes effect January 1, 2008.

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**Fiscal Summary**

**State Effect:** General fund expenditures could increase by approximately \$41,300 in FY 2008 to process registrations and complaints. Out-years reflect annualization and inflation. General fund revenues would increase annually (up to \$500 for each registrant) beginning in FY 2008 from registrations. A reliable estimate of the number of potential registrants is not readily available.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
GF Revenue	-	-	-	-	-
GF Expenditure	41,300	75,000	78,800	82,900	87,200
Net Effect	(\$41,300)	(\$75,000)	(\$78,800)	(\$82,900)	(\$87,200)

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

**Local Effect:** None.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** A vehicle protection product means a vehicle protection device, system, or service that: (1) is sold with a written warranty; (2) is installed or applied to a vehicle; and (3) is designed to prevent loss or damage to a vehicle from a specific cause. A “warrantor” is a person that is contractually obligated to pay specified incidental costs to the warranty holder under the terms of the vehicle protection product agreement if the product fails to perform as provided in the warranty.

Warrantors must register with the Consumer Protection Division and pay a registration fee, and on January 1 of each year following the initial registration, a renewal fee. The Consumer Protection Division is required to set the fees, up to a maximum of \$500. An administrator, or a person other than a warrantor that sells or solicits a sale of a vehicle protection product, is not required to register. With limited exceptions, the information provided to the division under the bill must be made available to the public, subject to the Maryland Public Information Act.

A warrantor of a vehicle protection product must keep accurate books, accounts, and records relating to vehicle protection product warranties, which must include specified information. A warrantor that discontinues business in the State must maintain its books, accounts, and records until it can prove that it has discharged all obligations to warranty holders in the State.

A warrantor of a vehicle protection product must be insured under a warranty reimbursement insurance policy or maintain a net worth or stockholders’ equity of at least \$50 million. The bill specifies how the standards can be met. The vehicle protection product warranty must state specified information about the warranty and include a statement that the agreement is a product warranty and is not insurance.

The seller or warrantor must provide the purchaser with a written copy of the vehicle protection product warranty or a receipt or other written evidence of the purchase at the time of the sale. Within 30 days after the purchase, the seller or warrantor must furnish a copy of the warranty. The warrantor may negotiate with the consumer about the purchase price and terms of the warranty at the time of purchase.

The warranty may provide for reimbursement of a consumer’s “incidental costs,” as defined under the bill, in a specified fixed amount or according to a formula itemizing specific incidental costs incurred by the warranty holder.

Unless the warrantor is authorized to engage in the business of insurance in Maryland, the warrantor may not use words in its name, contracts, or literature that are:

(1) descriptive of the insurance, casualty, or surety business; or (2) deceptively similar to the name or description of an insurer, a surety corporation, or another warrantor.

A seller or warrantor may not require a purchaser, as a condition of sale or financing, to buy a product that is not installed at the time of sale. A warrantor that establishes an informal dispute settlement procedure may elect to settle disputes in coordination with a private mediation services provider or the Consumer Protection Division.

A warrantor is liable to the warranty holder for any wrongful breach of the warranty. The warrantor is also under a duty to comply with the bill's requirements and to compensate the warranty holder for all reasonable expenses incurred as a result of a wrongful breach.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act. Violators are subject to the Act's enforcement and penalty provisions except for the civil penalty provisions. A warrantor that violates a provision of the bill is subject to a fine of up to \$500 for each violation, up to a maximum of \$10,000. Each individual failure to comply is a separate violation.

The bill does not apply to: (1) a service contract provider that does not sell vehicle protection products; or (2) a warranty, indemnity agreement, or guarantee that is not provided in connection with the sale of a vehicle protection product.

A seller or warrantor of a vehicle protection product, or a warrantor's administrator, that complies with the bill is not subject to any provisions of the Insurance Article.

The bill does not apply to vehicle protection products sold or warranted before the bill's January 1, 2008 effective date. The bill may not be interpreted to mean that a vehicle protection product warranty issued before January 1, 2008 was an insurance policy.

**Current Law:** Vehicle protection products are not specifically regulated by statute.

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.

The Maryland Service Contracts and Consumer Products Guaranty Act requires a person who makes a “guaranty” about a “consumer product” to provide written information at the time of sale to the consumer about: (1) the duration of the guaranty period measured by time or some other measure of usage, such as mileage; (2) any maintenance that a consumer must undertake to be entitled to repairs or replacement under the guaranty; (3) the guarantor’s obligation during the guaranty period; (4) the procedure the consumer must follow to have the defective product repaired or replaced; and (5) any means established by the guarantor for quick informal settlement of a guaranty dispute.

Under this Act, a guaranty means any of the following when made at the time of the sale of a consumer product to a person guaranteed and that is part of the basis of the bargain between them: (1) a written affirmation of fact or promise that related to the nature of the material or workmanship and promises that the material or workmanship is defect free or meets a specified level of performance; or (2) a written undertaking to refund, repair, replace, or take other remedial action respecting the consumer product if it proves defective or fails to meet a specified level of performance. A guaranty includes a warranty. Consumer product means goods or services used for personal, family, or household purposes whose actual cash sales price exceeded \$10.

The Act also requires a service contract for the repair, replacement, or maintenance of a product to be in writing and include specified information about the rights and obligations of the parties to the contract.

**State Expenditures:** The number of registrants under the bill is not known but is assumed to be small. However, the products being marketed are of the type that could lead to a large number of complaints being filed with the Consumer Protection Division. Accordingly, general fund expenditures could increase by an estimated \$41,287 in fiscal 2008, which accounts for the bill’s January 1, 2008 effective date. This estimate reflects the cost of hiring one administrator to process registrations and complaints under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salary and Fringe Benefits	\$36,507
Other Operating Expenses	<u>4,780</u>
<b>Total FY 2008 State Expenditures</b>	<b>\$41,287</b>
Positions	1

Future year expenditures reflect • a full salary with 4.5% annual increases and 3% employee turnover; and • 1% annual increases in ongoing operating expenses.

## **Additional Information**

**Prior Introductions:** Similar bills were introduced in the 2006 session. HB 1705 passed the House and was referred to the Senate Finance Committee, where no further action was taken. HB 1544 was withdrawn before receiving a hearing.

**Cross File:** SB 502 (Senator Astle) – Finance.

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

**Fiscal Note History:** First Reader - February 21, 2007  
mll/jr Revised - House Third Reader - March 21, 2007  
Revised - Enrolled Bill - April 25, 2007

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