

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1311 (Delegate Impallaria)
Economic Matters

Motor Vehicle Insurance - Aftermarket Parts - Warranty Requirements

This bill requires an insurer to provide a specified express written warranty for aftermarket parts used to repair a motor vehicle covered under a motor vehicle insurance policy, if the policy requires aftermarket parts to be used in the repair. The duration of the warranty must be the longer of (1) one year after the repair of the motor vehicle is completed or (2) the length of ownership of the motor vehicle.

The bill also specifies the liability of a repair facility related to the use of aftermarket parts and to the warranty, as well as the conditions under which an insurer must cover the cost of repairs using genuine parts.

Fiscal Summary

State Effect: Minimal increase in Maryland Insurance Administration (MIA) special fund revenues in FY 2015 due to \$125 rate and form filing fees. General fund revenues increase minimally due to the 2% tax collected on premiums in the State, to the extent that the bill results in increased premiums for motor vehicle insurance policyholders. Review of the filings can be handled with existing resources.

Maryland Automobile Insurance Fund (MAIF) Effect: The bill does not affect MAIF finances or operations because it is currently MAIF's practice to warrant all aftermarket parts used to repair a motor vehicle for as long as the insured owns the motor vehicle.

Local Effect: The bill does not directly impact local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines “aftermarket part” to mean a part (1) that is not manufactured by the original manufacturer of the motor vehicle being repaired and (2) for which the original manufacturer *has not* authorized the use of its name or trademark. The bill defines “genuine part” to mean a part that is (1) manufactured by the original manufacturer of the motor vehicle being repaired; (2) authorized to carry the name or trademark of the original manufacturer; and (3) available for purchase to repair a motor vehicle.

If a motor vehicle insurance policy requires that aftermarket parts be used to repair the motor vehicle covered under the policy, the insurer must provide to the insured an express written warranty that any aftermarket parts used are merchantable. The warranty must include labor provided by an automotive repair facility to install the aftermarket parts to repair the vehicle.

An automotive repair facility that is required by an insurance policy to repair a motor vehicle using aftermarket parts is not liable for any breach of the express warranty; however, the repair facility may be held liable for negligence or omissions in installing the aftermarket parts.

If an aftermarket part does not conform to the express warranty required by the bill, the insurer must cover the cost of a replacement part and any labor required to install the part. If the replacement part installed is an aftermarket part and does not conform to the express warranty, the insurer must cover the cost of a genuine part to replace the aftermarket part, as well as any labor to install the genuine part.

Current Law: The owner of a motor vehicle that is required to be registered in the State must maintain insurance for the vehicle during the registration period. The Motor Vehicle Administration may not issue or transfer the registration of a motor vehicle unless the owner or prospective owner of the vehicle furnishes evidence satisfactory to MVA that the required insurance is in effect. Maryland drivers are not required to carry proof of insurance. The security required must provide at least the payment of claims:

- for bodily injury or death arising from an accident of up to \$30,000 for any one person and up to \$60,000 for any two or more persons;
- for property of others damaged or destroyed in an accident of up to \$15,000;
- unless waived, for personal injury protection of \$2,500 per person; and
- for uninsured motorist coverage in the same amounts as required for bodily injury or death.

Insurance adjusters, appraisers, producers, and employees of insurers for a motor vehicle insurance policy may not (1) recommend the use of a specific repair service or source for repair or replacement of motor vehicle damage without informing the claimant or insured that he or she does not have to use the recommended service; (2) require that an appraisal or repair be made in a specific repair shop; (3) require that a claimant or insured use a specific contractor or repair shop for a repair service or repair product; or (4) intimidate, coerce, or threaten a claimant or insured to use a specific contractor or repair shop for a repair service or product. An adjuster or appraiser may not accept a gratuity or other form of remuneration from a repair service for recommending that repair service to a claimant or insured. Intentional violation of these prohibitions can result in a penalty of up to \$1,000 per violation, as well as denial, suspension, or revocation of an insurance license.

An automotive repair facility must prepare an invoice for all work done, including all warranty work, and all parts supplied by the facility. If the parts used by an automotive repair facility are aftermarket crash parts, the facility must include with its estimate a specified written statement to inform the customer that aftermarket parts were used. An automotive repair facility must, on request of the customer, provide a copy of the warranty for the aftermarket crash parts used in the repair of a vehicle, if available. An insurer must also, on request of the insured, provide a copy of the warranty for any aftermarket crash parts used in the repair of a vehicle, if available.

Generally, under the Commercial Law Article, goods that are “merchantable” must (1) pass without objection in a trade under a contract description; (2) in the case of fungible goods, be of fair average quality within the description; (3) be fit for the ordinary purposes for which such goods are used; (4) run similarly to other units of the same type; (5) be adequately contained, packaged, and labeled; and (6) conform to the promises or affirmations of fact made on the container or packaging.

Under the Commercial Law Article, any affirmation of fact or promise made by the seller to the buyer, including any sample or model, creates an “express warranty” if the statement, description of the goods, sample, or model is part of the basis of the bargain – *i.e.*, did the buyer rely upon it when entering into the contract. The seller does not have to use formal words such as “warrant” or “guarantee” or even specifically intend to create an express warranty. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods conform to the seller’s description.

Background: According to the Automotive Service Association, in the United States, 44 states have laws governing the use of replacement crash parts. Of these 44 states, 36 require notice to consumers when aftermarket crash parts are used, and 7 states require notice and consent on the part of the consumer.

MAIF advises that, under its current practices, it does not write estimates using aftermarket parts unless the vehicle is more than two years old or has more than 25,000 miles on its odometer. MAIF advises that, when it does write estimates for aftermarket parts, the parts used are certified to match the original equipment manufacturer's standards, and it warrants the repairs it pays for as long as the insured continues to own the car.

State Revenues: General fund revenues increase to the extent that the bill results in increased premiums for policyholders of motor vehicle insurance in the State due to the 2% tax collected on all insurance premiums paid in the State. Because the bill requires insurers to provide warranties for aftermarket parts, costs increase for insurers that do not currently warranty the parts as required by the bill, and these insurers may pass the costs on to policyholders through increased premiums. Any increase in general fund revenues depends on how insurance premium rates are altered by insurers as a result of the bill and, thus, cannot be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Insurance Administration, Maryland Automobile Insurance Fund, Maryland Department of Transportation, Automotive Service Association, Department of Legislative Services

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