

SENATE BILL 697

R4

2lr2278
CF HB 926

By: **Senator Beidle**

Introduced and read first time: February 4, 2022

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 2, 2022

CHAPTER _____

1 AN ACT concerning

2 **Vehicle Laws – Mechanical Repair Contracts – ~~Insurance Reserves~~ Policies of**
3 **Insurance**

4 FOR the purpose of requiring an insurance policy of an obligor under a mechanical repair
5 contract to provide certain coverage for contract nonperformance; authorizing
6 certain policies of insurance ~~reserves~~ for mechanical repair contracts to be
7 ~~maintained with~~ issued by certain risk retention groups; and generally relating to
8 policies of insurance ~~reserves~~ maintained by obligors under a mechanical repair
9 contract.

10 BY repealing and reenacting, with amendments,
11 Article – Transportation
12 Section 15–311.2
13 Annotated Code of Maryland
14 (2020 Replacement Volume and 2021 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
16 That the Laws of Maryland read as follows:

17 **Article – Transportation**

18 15–311.2.

19 (a) (1) In this section the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2) “Agent” means a business entity that is authorized by an obligor or a
2 licensed vehicle dealer to sell a mechanical repair contract.

3 (3) (i) “Mechanical repair contract” means any agreement or contract
4 sold by a licensed vehicle dealer, an obligor, or an agent under which the obligor agrees to
5 perform over a fixed period of time, for a specific duration, and for a specific identifiable
6 price, provided that the purchase of the contract is optional to the purchaser, any of the
7 following services:

8 1. The repair, replacement, or maintenance of a motor
9 vehicle, or the indemnification for the repair, replacement, or maintenance of a motor
10 vehicle, for the operational or structural failure of the motor vehicle due to a defect in
11 materials, workmanship, or normal wear and tear, with or without additional provisions
12 for incidental payment of indemnity for services including towing, rental and emergency
13 road service, and road hazard protection;

14 2. The repair, replacement, or maintenance of a motor
15 vehicle for the operational or structural failure of one or more parts or systems of the motor
16 vehicle brought about by the failure of an additive product to perform as represented;

17 3. The repair or replacement of tires or wheels on a motor
18 vehicle damaged as a result of coming into contact with road hazards, including potholes,
19 rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps;

20 4. The removal and repair of dents, dings, or creases on a
21 motor vehicle using the process of paintless dent removal;

22 5. The repair of chips or cracks in, or the replacement of,
23 motor vehicle windshields as a result of damage caused by road hazards;

24 6. The replacement of a motor vehicle key or key fob if the
25 key or key fob becomes inoperable or is lost or stolen; or

26 7. Other services or products that may be approved by the
27 Insurance Commissioner if consistent with the provisions of this section.

28 (ii) “Mechanical repair contract” includes extended warranties and
29 extended service contracts.

30 (iii) “Mechanical repair contract” does not include:

31 1. Warranties under the Magnuson–Moss Warranty Act, 15
32 U.S.C. § 2301, et seq.;

33 2. Contracts or agreements for regular maintenance only; or

1 3. An agreement between a motor club, as defined in §
2 26–101 of the Insurance Article, and a member or subscriber of the motor club.

3 (4) (i) “Obligor” means the person specified in a mechanical repair
4 contract that is contractually obligated to perform the services set forth in the mechanical
5 repair contract.

6 (ii) “Obligor” does not include an insurer that provides insurance
7 coverage in accordance with subsection (b) of this section.

8 (b) (1) (i) An obligor under a mechanical repair contract shall maintain
9 adequate insurance reserves, as defined by the Insurance Commissioner, for each such
10 contract for the protection of the purchasing consumer.

11 (ii) A policy **OR POLICIES** of insurance providing coverage for all
12 obligations and liabilities incurred by an obligor under the terms of a mechanical repair
13 contract **OR, IN THE EVENT OF THE OBLIGOR’S NONPERFORMANCE, PROVIDING**
14 **PERFORMANCE OR PAYMENT ON BEHALF OF THE OBLIGOR FOR ALL COVERED**
15 **CONTRACTUAL OBLIGATIONS INCURRED BY AN OBLIGOR UNDER A MECHANICAL**
16 **REPAIR CONTRACT** shall constitute adequate insurance reserves.

17 (2) ~~The reserves shall~~ **EACH POLICY OF INSURANCE USED TO SATISFY**
18 **PARAGRAPH (1) OF THIS SUBSECTION MUST** be ~~maintained with~~ **ISSUED BY [an]:**

19 **(I) AN** insurer authorized to do business in Maryland on an
20 admitted or surplus lines basis; **OR**

21 **(II) A RISK RETENTION GROUP, AS DEFINED IN § 25–101 OF THE**
22 **INSURANCE ARTICLE, IF THAT RISK RETENTION GROUP IS:**

- 23 1. **IN FULL COMPLIANCE WITH FEDERAL LAW;**
- 24 2. **IN GOOD STANDING IN ITS DOMICILIARY**
25 **JURISDICTION; AND**
- 26 3. **PROPERLY REGISTERED UNDER STATE LAW.**

27 (3) A purchaser of a mechanical repair contract shall be entitled to make a
28 direct claim against the insurer **OR RISK RETENTION GROUP** issuing a policy **OR**
29 **POLICIES** of insurance under this subsection upon failure of the obligor to pay any claim
30 or make any refund or consideration due within 60 days after the proof is filed with the
31 obligor.

32 (4) (i) At least 45 days before selling a mechanical repair contract, the
33 obligor shall file the contract with the Insurance Commissioner along with evidence that
34 the obligor maintains adequate insurance reserves as required under this section.

1 (ii) Except as provided in subparagraphs (iv) through (vii) of this
2 paragraph, a filing required under this subsection is not subject to the approval of the
3 Insurance Commissioner.

4 (iii) An obligor that is required to file a mechanical repair contract
5 under this subsection shall pay a filing fee as provided in § 2-112(a)(10) of the Insurance
6 Article.

7 (iv) The Commissioner may investigate and determine whether a
8 mechanical repair contract filed under this paragraph is in compliance with this section.

9 (v) If, after a hearing, the Commissioner finds that a mechanical
10 repair contract is not in compliance with this section, the Commissioner shall issue an order
11 that requires that use of the mechanical repair contract be discontinued after a date
12 specified in the order.

13 (vi) Pending a hearing, the Commissioner may issue an order that
14 suspends use of a mechanical repair contract filed by an obligor if the Commissioner has
15 reasonable cause to believe that:

16 1. The mechanical repair contract is in violation of this
17 section;

18 2. Unless the order of suspension is issued, purchasers of the
19 mechanical repair contract will suffer irreparable harm;

20 3. The harm that purchasers of the mechanical repair
21 contract will suffer in the absence of the order of suspension outweighs the harm that the
22 obligor would suffer if the order of suspension were issued; and

23 4. The order of suspension will not cause substantial harm to
24 the public.

25 (vii) Unless the obligor waives a hearing, the Commissioner:

26 1. Shall hold a hearing within 15 business days after issuing
27 the order of suspension; and

28 2. Within 15 business days after the conclusion of the
29 hearing, shall make a determination and issue an order as to whether the mechanical
30 repair contract should be disapproved.

31 (c) (1) An obligor shall register with the Insurance Commissioner each year.

32 (2) As part of registration, an obligor shall provide the following
33 information for registration with the Commissioner:

1 (i) The name, corporate address, and telephone number of the
2 obligor;

3 (ii) The name, address, and telephone number of an individual
4 designated to receive correspondence on behalf of the obligor; and

5 (iii) The name and address of a designated agent authorized to accept
6 service on behalf of the obligor in the State.

7 (3) An obligor shall notify the Commissioner within 30 days of any change
8 to the registration information required under this subsection.

9 (4) An obligor that is required to register under this section shall pay an
10 annual registration fee as provided in § 2-112(a)(12) of the Insurance Article.

11 (5) (i) Only a licensed vehicle dealer, an agent, or a registered obligor,
12 or an employee of a licensed vehicle dealer, an agent, or a registered obligor may offer, sell,
13 or negotiate a mechanical repair contract.

14 (ii) An obligor or a licensed vehicle dealer is liable for the actions of
15 its agent when the agent is offering or selling a mechanical repair contract on behalf of the
16 obligor or vehicle dealer.

17 (iii) The Commissioner may pursue an action against a person that
18 violates this paragraph.

19 (6) Subject to paragraph (7) of this subsection, the Commissioner shall
20 register each obligor that meets the requirements of this section.

21 (7) The Commissioner may deny a registration to an applicant or refuse to
22 renew, suspend, or revoke the registration of a registrant, after notice and an opportunity
23 for a hearing under §§ 2-210 through 2-214 of the Insurance Article, if the applicant or
24 registrant, or an officer, director, or employee of the applicant or registrant:

25 (i) Makes a material misstatement or misrepresentation in an
26 application for registration;

27 (ii) Fraudulently or deceptively obtains or attempts to obtain a
28 registration for the applicant, the registrant, or another person;

29 (iii) Has been convicted of a felony or of a misdemeanor involving
30 moral turpitude in connection with the sale, solicitation, negotiation, or administration of
31 a mechanical repair contract;

32 (iv) Commits fraud or engages in illegal or dishonest activities in
33 connection with the administration of a mechanical repair contract; or

1 (v) Has violated any provision of this section or a regulation adopted
2 under this section.

3 (8) Instead of, or in addition to, suspending or revoking a registration, the
4 Commissioner may impose on the registrant a civil penalty of:

5 (i) Not less than \$100 but not exceeding \$1,000 for each violation of
6 this section; and

7 (ii) Not less than \$100 but not exceeding \$5,000 for each violation of
8 this section committed by an agent or the agent's employee while offering or selling a
9 mechanical repair contract on behalf of the registrant.

10 (d) (1) An obligor or a licensed vehicle dealer that uses an agent to sell a
11 mechanical repair contract shall:

12 (i) Maintain a list of its agents; and

13 (ii) Make the list available to the Insurance Commissioner on
14 request.

15 (2) An agent shall:

16 (i) Maintain a list containing the names of each employee who is
17 authorized to sell a mechanical repair contract; and

18 (ii) On request, provide the list to its obligor or licensed vehicle
19 dealer within 10 business days from receipt of the request.

20 (3) A list maintained under this subsection may be stored in an electronic
21 format.

22 (e) A mechanical repair contract shall be offered in addition to any express
23 warranty originally included as part of the contract for sale of a new motor vehicle.

24 (f) A mechanical repair contract shall clearly and conspicuously set forth the date
25 when the warranty begins.

26 (g) A mechanical repair contract shall clearly and conspicuously set forth the date
27 or the odometer reading at which the warranty expires and the name and address of the
28 insurer issuing the policy of insurance as described in subsection (b) of this section.

29 (h) The repair of a malfunction or defect covered under a mechanical repair
30 contract shall include the cost of the teardown and diagnosing the malfunction or defect.

1 (i) The provisions of the Maryland Consumer Products Guaranty Act, Title 14,
2 Subtitle 4 of the Commercial Law Article, apply to a mechanical repair contract sold in the
3 State.

4 (j) The provisions of this section do not apply to mechanical repair contracts
5 issued by the motor vehicle manufacturer or the distributor or a wholly owned subsidiary
6 of the manufacturer or the distributor as defined in § 15–201 of this title.

7 (k) Notwithstanding subsection (j) of this section, licensed vehicle dealers and
8 obligors who sell mechanical repair contracts shall have the same obligations as a seller
9 under § 2–314 of the Commercial Law Article.

10 (l) A person that sells a mechanical repair contract may not, directly or indirectly,
11 make a false, deceptive, or misleading statement with respect to:

12 (1) The person's affiliation with a motor vehicle manufacturer,
13 manufacturer's subsidiary, distributor, factory branch, or dealer;

14 (2) The person's possession of information regarding the manufacturer's
15 original equipment warranty for a motor vehicle;

16 (3) The expiration of a manufacturer's original equipment warranty for a
17 motor vehicle; or

18 (4) A requirement that a motor vehicle owner register for a new mechanical
19 repair contract with the person in order to maintain coverage under the owner's current
20 mechanical repair contract or the manufacturer's original equipment warranty.

21 (m) Except as expressly provided under this section, an obligor that complies with
22 this section is not required to comply with any other provisions of the Insurance Article.

23 (n) Unless specifically described in subsection (a)(3) of this section, a mechanical
24 repair contract may not provide indemnification for a loss caused by collision or by perils
25 that are commonly covered by comprehensive or collision provisions of a motor vehicle
26 insurance policy.

27 (o) In addition to any applicable disclosures required by the Maryland Consumer
28 Products Guaranty Act, (Title 14, Subtitle 4 of the Commercial Law Article), a mechanical
29 repair contract shall include the following disclosures:

30 (1) The name, corporate address, and telephone number of the obligor and
31 the mechanical repair contract seller; and

32 (2) The right of the purchaser of the mechanical repair contract to make a
33 direct claim against the insurer **OR RISK RETENTION GROUP** issuing a policy **OR**
34 **POLICIES** of insurance as provided in subsection (b)(3) of this section.

1 (p) A person convicted of a violation of subsection (c)(5) of this section:

2 (1) Is subject to imprisonment not exceeding 1 year or a fine not exceeding
3 \$5,000 or both; and

4 (2) May be required to pay restitution.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2022.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.