Department of Legislative Services

Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 587 (Delegate Carey)
Economic Matters

Motor Vehicle Financial Protection Product Agreements Act

This bill establishes a regulatory framework for the sale and provision of motor vehicle financial protection product agreements in the State. A motor vehicle financial protection product agreement may only be offered, sold, or given to a consumer in accordance with the bill.

Fiscal Summary

State Effect: Special fund expenditures for the Maryland Insurance Administration (MIA) increase by $64,600 in FY 2023; future years reflect annualization, inflation, and ongoing operating costs. The Office of the Commissioner of Financial Regulation (OCFR) can assist MIA as necessary and appropriate using existing budgeted resources. The bill's penalty provisions are not anticipated to materially affect State operations or finances.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	$0	$0	$0	$0	$0
SF Expenditure	64,600	76,000	78,200	80,200	82,400
Net Effect	($64,600)	($76,000)	($78,200)	($80,200)	($82,400)

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

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

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Definitions

The bill establishes various definitions related to motor vehicle financial protection product agreements and the persons that sell, administer, finance, or purchase the agreements. "Motor vehicle financial protection product agreement" includes a debt waiver agreement and vehicle value protection agreement.

"Debt waiver agreement" means a debt cancellation agreement (which is defined and regulated under current law) or an excess wear and use agreement (which is established by the bill). "Excess wear and use agreement" means an agreement that is part of a lease or an addendum to a lease under which a lessor, with or without a separate charge, agrees to cancel or waive all or part of any amount that may become due under the lease as a result of excessive wear and use of the motor vehicle, including amounts due for excess mileage.

"Vehicle value protection agreement" means an agreement to reduce, on the occurrence of a covered event, all or a portion of a contract holder's finance agreement deficiency balance at the time of the covered event, including a credit toward the purchase or lease of a replacement motor vehicle or for motor vehicle services. A vehicle value protection agreement does not include a debt waiver agreement or a mechanical repair contract.

"Creditor" means a seller under an installment sale agreement, credit grantor under a loan, as specified, lessor under a lease, or assignee of one of these individuals to whom a credit obligation is payable. "Provider" means a person that is obligated to provide a benefit under a vehicle value protection agreement and may act as an administrator or retain the services of a third-party administrator. "Administrator" means (1) with respect to a debt waiver agreement, a person other than an insurer or a creditor that performs administrative or operational functions under the agreement or (2) with respect to a vehicle value protection agreement, the person who is responsible for the administrative or operational functions of the agreement, including the adjudication of claims or benefit requests by a contract holder.

General Requirements for All Motor Vehicle Financial Protection Product Agreements

A motor vehicle financial protection product agreement may only be offered, sold, or given to a consumer in accordance with the bill, and any such agreement is not insurance. The amount charged or financed for an agreement is an authorized charge that must be for a separately stated consideration and is not a finance charge or interest. For a debt waiver agreement, specified information must be disclosed in the finance agreement or lease. Unless the agreement is discounted or given at no charge in connection with the purchase of other noncredit related goods and services, the purchase, lease, or extension of credit for the purchase or lease of a motor vehicle may not be conditioned on the purchase of a motor vehicle protection product agreement.

Except for an agreement for a motor vehicle that will primarily be used for business purposes, an agreement must contain specified written disclosures in plain language, including, among other things, contact information for specified entities involved in the transaction, the purchase price of the agreement, specified information about the free look period and cancellation of the agreement, and the procedure a consumer must follow to obtain a benefit under the agreement.

Each motor vehicle financial protection product agreement must include a free look period during which a consumer may cancel the agreement without penalty, fees, or costs, and receive a full refund. The free look period must be at least 30 days; however, the agreement is no longer valid if a consumer receives a benefit under the agreement during the period.

The bill establishes the circumstances under which a motor vehicle financial protection product agreement may be canceled by a consumer or provider and related requirements, including the processes that must be followed by a consumer and/or provider, required disclosures and notices, and how any applicable refunds must be calculated.

Additional Requirements for Debt Waiver Agreements

Except for specified circumstances, a creditor may insure its obligations under a debt waiver agreement. The insurance policy must meet specified requirements, including being issued by an authorized insurer and stating the obligations of the insurer to reimburse the retail seller for any sums the retail seller is required to waive under the agreement.

A debt waiver agreement must remain a part of the finance agreement upon assignment, sale, or transfer of the finance agreement by the creditor. A creditor that offers a debt waiver agreement for assignment, sale, or transfer must report the assignment, sale, or transfer of the agreement and forward any funds due to the designated party or parties.

Additional Requirements for Vehicle Value Protection Agreements

To ensure the faithful performance of its obligations to its contract holders, a provider of a vehicle value protection agreement must either (1) insure its agreements under an insurance policy issued by an insurer authorized to do business in Maryland that meets specified surplus and filing requirements; (2) meet specified funded reserve account requirements subject to review of the Insurance Commissioner and place in trust with the Commissioner a specified financial security deposit, as specified; or (3) maintain on the provider’s own or together with the provider’s parent company, a net worth or stockholder’s equity of

$100 million, and provide related documents and information to the Commissioner on request.

Penalties

Subject to existing notice and hearing requirements, the Commissioner may (1) order a creditor, provider, administrator, or any other person not in compliance with the bill to cease and desist from product-related operations that violate the bill and (2) impose a civil penalty of up to $500 per violation and $10,000 in the aggregate for all violations of a similar nature.

Limitations

The bill's requirements do not apply to a federal or State bank, trust company, credit union, or savings and loan association, or a subsidiary or affiliate of such an institution. The bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any motor vehicle financial protection product agreements offered, sold, or given in the State before January 1, 2023.

Current Law: The sale and lease of motor vehicles, associated financial agreements, and the entities involved in those sales, leases, and agreements, are generally regulated through both the Commercial Law Article and the Transportation Article. For example, the Vehicle Protection Products Act regulates vehicle protection devices, systems, and services sold with a written warranty, installed or applied to a vehicle, and designed to prevent loss or damage to a vehicle from a specific cause, while the Automotive Warranty Enforcement Act regulates the sale and provision of warranties on motor vehicles. In addition, there are various rules, requirements, and procedures that must be followed by creditors, lessors, and borrowers when a loan is issued to a consumer and as the loan is repaid. Various agencies, including the Office of the Attorney General and OCFR, have responsibilities related to the regulation of these financial agreements.

OCFR supervises the activities of the financial services industry through periodic on-site examinations and off-site monitoring programs. The mission of OCFR is to ensure that the citizens of Maryland can conduct their financial transactions through safe, sound, and well-managed institutions that comply with Maryland law, while providing a flexible yet sound regulatory environment that promotes fair competition, encourages innovative business development, and supports the economy of Maryland.

Insurance in the State is regulated by MIA, an independent agency headed by the Maryland Insurance Commissioner, whom the Governor appoints with the advice and consent of the Senate. The two primary types of insurance regulated by MIA are property and casualty insurance (including homeowner's insurance) and health insurance.

State Expenditures: MIA does not currently regulate the bill's financial products, and existing staff do not have experience with the products. Therefore, MIA special fund expenditures increase by $64,591 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of hiring one full-time analyst with the expertise necessary to review vehicle value protection agreements and assure compliance with the bill's requirements. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. MIA advises that it plans to enforce the bill using its existing compliance review and market conduct examination processes.

Position	1.0
Salary and Fringe Benefits	$57,248
Operating Expenses	7,343
Total FY 2023 State Expenditures	**$64,591**

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Small Business Effect: Small business car dealerships, lenders, and creditors must follow the bill's requirements for the sale of motor vehicle financial protection product agreements. Adherence to the requirements could positively or negatively affect these small businesses, depending on their current business practices.

Additional Comments: The Department of Legislative Services advises that MIA generally funds its operations through fees on the entities it regulates; however, the bill does not grant any new fee authority related to the regulation of vehicle value protection agreements. While the Insurance Article establishes various fees that must be charged by MIA, these fees generally apply specifically to insurers and insurance professionals. As such, it is unlikely that MIA can charge fees to the entities regulated under the bill to recoup the cost of enforcing the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 573 (Senator Klausmeier) - Finance.

Information Source(s): Maryland Insurance Administration; Office of the Attorney General (Consumer Protection Division); Maryland Department of Labor; Maryland Department of Transportation; Department of Legislative Services

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rh/jc

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