

SENATE BILL 414

R4

6lr1926
CF HB 675

By: **Senator Brochin**

Introduced and read first time: January 29, 2016

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 15, 2016

CHAPTER _____

1 AN ACT concerning

2 **Vehicle Laws – Mechanical Repair Contracts**

3 FOR the purpose of altering the definition of “mechanical repair contract”; authorizing ~~a~~
4 ~~designated~~ an agent of an and a registered obligor under a mechanical repair
5 contract to offer, sell, or negotiate a mechanical repair contract; establishing that an
6 obligor or a vehicle dealer is liable for the actions of its agent under certain
7 circumstances; establishing a civil penalty for an agent or an agent’s employee that
8 violates certain provisions of this Act; requiring an obligor or a licensed vehicle
9 dealer that uses an agent to sell a mechanical repair contract to maintain a certain
10 list and, on request, make the list available to the Insurance Commissioner;
11 requiring an agent to maintain a certain list and, on request, make the list available
12 to the agent’s obligor or licensed vehicle dealer within a certain period of time;
13 providing that a list maintained under this Act may be stored in an electronic format;
14 increasing the penalty for a violation of certain provisions of this Act; making
15 conforming changes; and generally relating to mechanical repair contracts.

16 BY repealing and reenacting, with amendments,
17 Article – Transportation
18 Section 15–311.2(a) and (c) and 27–101(ff)
19 Annotated Code of Maryland
20 (2012 Replacement Volume and 2015 Supplement)

21 BY renumbering
22 Article – Transportation
23 Section 15–311.2(d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), respectively

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 to be Section 15–311.2(e), (f), (g), (h), (i), (j), (k), (l), (m), (n), and (o), respectively
 2 Annotated Code of Maryland
 3 (2012 Replacement Volume and 2015 Supplement)

4 BY adding to

5 Article – Transportation
 6 Section 15–311.2(d)
 7 Annotated Code of Maryland
 8 (2012 Replacement Volume and 2015 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 10 That Section(s) 15–311.2(d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), respectively, of
 11 Article – Transportation of the Annotated Code of Maryland be renumbered to be Section(s)
 12 15–311.2(e), (f), (g), (h), (i), (j), (k), (l), (m), (n), and (o), respectively.

13 SECTION ~~1~~ 2. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article – Transportation**

16 15–311.2.

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

18 (2) **“AGENT” MEANS A BUSINESS ENTITY THAT IS AUTHORIZED BY AN**
 19 **OBLIGOR OR A LICENSED VEHICLE DEALER TO SELL A MECHANICAL REPAIR**
 20 **CONTRACT.**

21 **(3)** (i) “Mechanical repair contract” means any agreement or contract
 22 sold by a licensed vehicle dealer [or], an obligor, ~~OR A DESIGNATED AN AGENT OF AN~~
 23 ~~OBLIGOR~~ under which the obligor agrees to perform over a fixed period of time, for a
 24 specific duration, and for a specific identifiable price, provided that the purchase of the
 25 contract is optional to the purchaser, any of the following services:

26 1. The repair, replacement, or maintenance of a motor
 27 vehicle, or the indemnification for the repair, replacement, or maintenance of a motor
 28 vehicle, for the operational or structural failure of the motor vehicle due to a defect in
 29 materials, workmanship, or normal wear and tear, with or without additional provisions
 30 for incidental payment of indemnity for services including towing, rental and emergency
 31 road service, and road hazard protection;

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

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

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

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

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

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

12 (ii) “Mechanical repair contract” includes extended warranties and
13 extended service contracts.

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

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

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

18 3. An agreement between a motor club, as defined in
19 § 26–101 of the Insurance Article, and a member or subscriber of the motor club.

20 ~~(3)~~ **(4)** (i) “Obligor” means the person specified in a mechanical repair
21 contract that is contractually obligated to perform the services set forth in the mechanical
22 repair contract.

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

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

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

28 (i) The name, corporate address, and telephone number of the
29 obligor;

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

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

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

5 (4) An obligor that is required to register under this section shall pay an
6 annual registration fee as provided in § 2-112(a)(11) of the Insurance Article.

7 (5) (i) ~~Other than a licensed vehicle dealer OR A DESIGNATED AGENT~~
8 ~~OF AN OBLIGOR, a person that is not a registered obligor under this subtitle may not~~ **ONLY**
9 **A LICENSED VEHICLE DEALER, AN AGENT, A REGISTERED OBLIGOR, AN EMPLOYEE**
10 **OF A LICENSED VEHICLE DEALER, AN AGENT, OR A REGISTERED OBLIGOR MAY** offer,
11 sell, or negotiate a mechanical repair contract.

12 (ii) **AN OBLIGOR OR A LICENSED VEHICLE DEALER IS LIABLE**
13 **FOR THE ACTIONS OF ITS AGENT WHEN THE AGENT IS OFFERING OR SELLING A**
14 **MECHANICAL REPAIR CONTRACT ON BEHALF OF THE OBLIGOR OR VEHICLE DEALER.**

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

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

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

23 (i) Makes a material misstatement or misrepresentation in an
24 application for registration;

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

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

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

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

1 (8) Instead of, or in addition to, suspending or revoking a registration, the
2 Commissioner may impose on the registrant a civil penalty of ~~not~~:

3 (I) NOT less than \$100 but not exceeding \$1,000 for each violation
4 of this section; AND

5 (II) NOT LESS THAN \$100 BUT NOT EXCEEDING \$5,000 FOR
6 EACH VIOLATION OF THIS SECTION COMMITTED BY AN AGENT OR THE AGENT'S
7 EMPLOYEE WHILE OFFERING OR SELLING A MECHANICAL REPAIR CONTRACT ON
8 BEHALF OF THE REGISTRANT.

9 (D) (1) AN OBLIGOR OR A LICENSED VEHICLE DEALER THAT USES AN
10 AGENT TO SELL A MECHANICAL REPAIR CONTRACT SHALL:

11 (I) MAINTAIN A LIST OF ITS AGENTS; AND

12 (II) MAKE THE LIST AVAILABLE TO THE INSURANCE
13 COMMISSIONER ON REQUEST.

14 (2) AN AGENT SHALL:

15 (I) MAINTAIN A LIST CONTAINING THE NAMES OF EACH
16 EMPLOYEE WHO IS AUTHORIZED TO SELL A MECHANICAL REPAIR CONTRACT; AND

17 (II) ON REQUEST, PROVIDE THE LIST TO ITS OBLIGOR OR
18 LICENSED VEHICLE DEALER WITHIN 10 BUSINESS DAYS FROM RECEIPT OF THE
19 REQUEST.

20 (3) A LIST MAINTAINED UNDER THIS SUBSECTION MAY BE STORED IN
21 AN ELECTRONIC FORMAT.

22 27-101.

23 (ff) A person that is convicted of a violation of § 15-311.2(c)(5) of this article:

24 (1) Is subject to a fine of not more than [\$1,000] \$5,000 or imprisonment
25 for not more than 1 year or both; and

26 (2) May be required to pay restitution.

27 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2016.