

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 414

(Senator Brochin)

Judicial Proceedings

Economic Matters

Vehicle Laws - Mechanical Repair Contracts

This bill alters the definition of “mechanical repair contract” to encompass any agreement or contract sold by an “agent” (of a licensed vehicle dealer or an obligor). The bill also makes a clarifying and conforming change to allow an agent – as well as an employee of a licensed vehicle dealer, agent, or registered obligor – to offer, sell, or negotiate a mechanical repair contract (in addition to the current authorization for only a licensed vehicle dealer or an obligor to do so). An obligor or a licensed vehicle dealer is liable for the actions of its agent when the agent is offering or selling a mechanical repair contract on its behalf.

The bill increases the maximum misdemeanor fine that may be imposed for unauthorized sales of mechanical repair contracts from \$1,000 to \$5,000. The bill also authorizes the Insurance Commissioner to impose a civil penalty of at least \$100 but no more than \$5,000 for each violation of provisions relating to mechanical repair contracts committed by an agent (or the agent’s employee) while offering or selling a repair contract on behalf of a registered obligor.

Fiscal Summary

State Effect: The bill’s imposition of new and existing penalty provisions does not have a material effect on State finances or operations. Agents of obligors are not subject to existing registration requirements for obligors.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An “agent” is defined as a business entity that is authorized by an obligor or a licensed vehicle dealer to sell a mechanical repair contract.

An obligor or a licensed vehicle dealer that uses an agent to sell mechanical repair contracts must maintain a list of its agents and make the list available to the Insurance Commissioner on request. Likewise, an agent must maintain a list of the names of each employee authorized to sell mechanical repair contracts and, on request, provide this list to its obligor or licensed vehicle dealer within 10 business days from receipt of the request.

Current Law: Chapter 444 of 2015 altered the definition of “mechanical repair contract” to encompass an obligor and additional services. Specifically, a “mechanical repair contract” is defined as an agreement or contract sold by a licensed vehicle dealer or an obligor under which the dealer or obligor agrees to perform specified services. The services generally pertain to the repair, replacement, or maintenance of a vehicle, including, among other things, towing, rental and emergency road service, and road hazard protection. A mechanical repair contract may not provide indemnification for a loss caused by “perils that are commonly covered by comprehensive or collision provisions” of an auto insurance policy.

An “obligor” is defined as the person specified in a mechanical repair contract that is contractually obligated to perform the services set forth in the contract. At least 45 days before selling a mechanical repair contract, an obligor has to file the contract with the Insurance Commissioner. Each obligor also has to register with the Commissioner on an annual basis; that registration must include specified information – including the name and address of a designated agent authorized to accept service on behalf of the obligor in the State. The Commissioner may deny a registration to an applicant or refuse to renew, suspend, or revoke the registration of a registrant for specified misrepresentations and fraudulent activities – of the applicant, registrant, or an officer, director, or employee of the applicant or registrant. Instead of, or in addition to, suspending or revoking a registration, the Commissioner may impose on the obligor registrant a civil penalty of at least \$100 but no more than \$1,000 for each violation.

Unless the person is a licensed vehicle dealer, a person that is not a registered obligor may not offer, sell, or negotiate a mechanical repair contract. The Insurance Commissioner may pursue an action against an unregistered person that offers a mechanical repair contract. Such a violator is guilty of a misdemeanor under the Maryland Vehicle Law and subject to a maximum penalty of a \$1,000 fine, one year imprisonment, or both; payment of restitution may also be imposed. Even so, the prepayment penalty set by the District Court is \$290.

Other Prohibitions on Sellers of Mechanical Repair Contracts

A person that is not a vehicle manufacturer (or subsidiary), distributor, factory branch, or dealer and who sells a mechanical repair contract is prohibited from making a false, deceptive, or misleading statement with respect to (1) the person's affiliation or possession of specified information; (2) the expiration of a manufacturer's original equipment warranty; or (3) a requirement that the vehicle owner register for a new mechanical repair contract in order to maintain coverage under the owner's current mechanical repair contract or the manufacturer's original equipment warranty.

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

Small Business Effect: An agent that is a small business may lawfully sell mechanical repair contracts but is subject to the bill's expanded penalty provisions. Likewise, an obligor or a licensed vehicle dealer that is a small business may legally use an agent to sell mechanical repair contracts but may also incur higher legal costs under the bill. The bill makes an obligor or a licensed vehicle dealer liable for the actions of its agent when the agent offers or sells a mechanical repair contract on its behalf.

Additional Information

Prior Introductions: None.

Cross File: HB 675 (Delegate Branch) - Economic Matters.

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

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