

Chapter 587

(Senate Bill 697)

AN ACT concerning

Vehicle Laws – Mechanical Repair Contracts – ~~Insurance Reserves~~ Policies of Insurance

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

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

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

Article – Transportation

15–311.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Contracts or agreements for regular maintenance only; or

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

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

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

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

(ii) A policy **OR POLICIES** of insurance providing coverage for all obligations and liabilities incurred by an obligor under the terms of a mechanical repair

contract **OR, IN THE EVENT OF THE OBLIGOR'S NONPERFORMANCE, PROVIDING PERFORMANCE OR PAYMENT ON BEHALF OF THE OBLIGOR FOR ALL COVERED CONTRACTUAL OBLIGATIONS INCURRED BY AN OBLIGOR UNDER A MECHANICAL REPAIR CONTRACT** shall constitute adequate insurance reserves.

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

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

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

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

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

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

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

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

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

(v) If, after a hearing, the Commissioner finds that a mechanical repair contract is not in compliance with this section, the Commissioner shall issue an order

that requires that use of the mechanical repair contract be discontinued after a date specified in the order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) 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 behalf of the obligor or vehicle dealer.

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

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

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

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

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

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

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

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

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

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

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

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

(i) Maintain a list of its agents; and

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

(2) An agent shall:

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

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

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

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

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

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

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

(i) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) May be required to pay restitution.

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

Enacted under Article II, § 17(c) of the Maryland Constitution, May 29, 2022.