

HOUSE BILL 630

R4

5lr2261

By: **Delegate Jameson**

Introduced and read first time: February 12, 2015

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 19, 2015

CHAPTER _____

1 AN ACT concerning

2 **Transportation – Mechanical Repair Contracts**

3 FOR the purpose of altering the definition of “mechanical repair contract” and defining
4 “obligor” for purposes of certain provisions of law establishing requirements for
5 mechanical repair contracts and persons who sell or offer them; establishing that an
6 agreement or contract sold by ~~the person obligated under the agreement or contract~~
7 a certain obligor may be a mechanical repair contract under certain circumstances;
8 specifying services that may be offered under a mechanical repair contract;
9 establishing that certain warranties under a certain federal law ~~and~~, agreements for
10 regular maintenance, and agreements between certain motor clubs and their
11 members or subscribers are not mechanical repair contracts; establishing requiring
12 that a mechanical repair contract is not required to be filed for approval with the
13 Insurance Commissioner; broadening the application of a certain provision of law to
14 establish that certain consumer protection laws apply to any mechanical repair
15 contract sold in the State, not just those sold by a licensed vehicle dealer; establishing
16 that a certain obligor has the same obligation as a seller under a certain provision of
17 law; requiring a certain obligor to file a certain mechanical repair contract with the
18 Commissioner and to provide certain evidence with the filing; establishing that a
19 certain filing is not subject to approval by the Commissioner; providing for a certain
20 cease and desist order; requiring that certain persons that sell mechanical repair
21 contracts register with the Commissioner and provide certain information as part of
22 the registration; requiring an obligor to provide a certain notice under certain
23 circumstances; establishing a certain annual registration fee; prohibiting a person
24 who is not a registered obligor under this Act from offering, selling, or negotiating a
25 mechanical repair contract; authorizing the Commissioner to pursue a certain action;

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 establishing that a mechanical repair contract may not provide certain
 2 indemnification under certain circumstances; establishing that certain persons that
 3 comply with this Act and certain provisions of law are not required to comply with
 4 certain provisions of law relating to insurance; establishing certain requirements
 5 relating to registering with the Commissioner; establishing certain penalties;
 6 prohibiting certain persons ~~who~~ that sell mechanical repair contracts from making
 7 certain false, deceptive, or misleading statements; making stylistic and conforming
 8 changes; and generally relating to mechanical repair contracts.

9 BY repealing and reenacting, with amendments,
 10 Article – Transportation
 11 Section 15–311.2
 12 Annotated Code of Maryland
 13 (2012 Replacement Volume and 2014 Supplement)

14 BY adding to
 15 Article – Transportation
 16 Section 27–101(ff)
 17 Annotated Code of Maryland
 18 (2012 Replacement Volume and 2014 Supplement)

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

21 **Article – Transportation**

22 15–311.2.

23 (a) (1) [For the purposes of] **IN this section, THE FOLLOWING WORDS HAVE**
 24 **THE MEANINGS INDICATED.**

25 **(2) (1)** [the term] ~~“mechanical”~~ **“MECHANICAL repair contract”** means
 26 any agreement or contract sold by a licensed vehicle dealer **OR ~~THE AN PERSON~~**
 27 **~~OBLIGATED UNDER THE AGREEMENT OR CONTRACT OBLIGOR~~** under which a
 28 ~~specified provider~~ **THE OBLIGOR** agrees to perform over a fixed period of time, for a
 29 specific duration, and for a specific identifiable price, [services relating to the maintenance
 30 or repair of a motor vehicle,] provided that the purchase of the contract is optional to the
 31 purchaser, **ANY OF THE FOLLOWING SERVICES:**

32 **(+) 1. THE REPAIR, REPLACEMENT, OR MAINTENANCE OF A**
 33 **MOTOR VEHICLE, OR THE INDEMNIFICATION FOR THE REPAIR, REPLACEMENT, OR**
 34 **MAINTENANCE OF A MOTOR VEHICLE, FOR THE OPERATIONAL OR STRUCTURAL**
 35 **FAILURE OF THE MOTOR VEHICLE DUE TO A DEFECT IN MATERIALS, WORKMANSHIP,**
 36 **OR NORMAL WEAR AND TEAR, WITH OR WITHOUT ADDITIONAL PROVISIONS FOR**
 37 **INCIDENTAL PAYMENT OF INDEMNITY FOR SERVICES INCLUDING TOWING, RENTAL**
 38 **AND EMERGENCY ROAD SERVICE, AND ROAD HAZARD PROTECTION;**

1 ~~(II)~~ 2. THE REPAIR, REPLACEMENT, OR MAINTENANCE OF A
 2 MOTOR VEHICLE FOR THE OPERATIONAL OR STRUCTURAL FAILURE OF ONE OR
 3 MORE PARTS OR SYSTEMS OF THE MOTOR VEHICLE BROUGHT ABOUT BY THE
 4 FAILURE OF AN ADDITIVE PRODUCT TO PERFORM AS REPRESENTED;

5 ~~(III)~~ 3. THE REPAIR OR REPLACEMENT OF TIRES OR WHEELS
 6 ON A MOTOR VEHICLE DAMAGED AS A RESULT OF COMING INTO CONTACT WITH
 7 ROAD HAZARDS, INCLUDING POTHOLES, ROCKS, WOOD DEBRIS, METAL PARTS,
 8 GLASS, PLASTIC, CURBS, OR COMPOSITE SCRAPS;

9 ~~(IV)~~ 4. THE REMOVAL AND REPAIR OF DENTS, DINGS, OR
 10 CREASES ON A MOTOR VEHICLE USING THE PROCESS OF PAINLESS DENT REMOVAL;

11 ~~(V)~~ 5. THE REPAIR OF CHIPS OR CRACKS IN, OR THE
 12 REPLACEMENT OF, MOTOR VEHICLE WINDSHIELDS AS A RESULT OF DAMAGE
 13 CAUSED BY ROAD HAZARDS;

14 ~~(VI)~~ 6. THE REPLACEMENT OF A MOTOR VEHICLE KEY OR
 15 KEY FOB IF THE KEY OR KEY FOB BECOMES INOPERABLE OR IS LOST OR STOLEN; OR

16 ~~(VII)~~ 7. OTHER SERVICES OR PRODUCTS THAT MAY BE
 17 APPROVED BY THE INSURANCE COMMISSIONER IF CONSISTENT WITH THE
 18 PROVISIONS OF THIS SECTION.

19 ~~(2)~~ (II) [The term “mechanical] “MECHANICAL repair contract”
 20 includes[, but is not limited to,] extended warranties and extended service contracts.

21 ~~(3)~~ (III) “MECHANICAL REPAIR CONTRACT” DOES NOT INCLUDE
 22 WARRANTIES;

23 (I) WARRANTIES UNDER THE MAGNUSON–MOSS WARRANTY
 24 ACT, 15 U.S.C. § 2301, ET SEQ., OR CONTRACTS;

25 (II) CONTRACTS OR AGREEMENTS FOR REGULAR
 26 MAINTENANCE; OR

27 (III) AN AGREEMENT BETWEEN A MOTOR CLUB, AS DEFINED IN §
 28 26–101 OF THE INSURANCE ARTICLE, AND A MEMBER OR SUBSCRIBER OF THE
 29 MOTOR CLUB.

30 (3) (I) “OBLIGOR” MEANS THE PERSON SPECIFIED IN A
 31 MECHANICAL REPAIR CONTRACT THAT IS CONTRACTUALLY OBLIGATED TO
 32 PERFORM THE SERVICES SET FORTH IN THE MECHANICAL REPAIR CONTRACT.

1 **(II) "OBLIGOR" DOES NOT INCLUDE AN INSURER THAT**
 2 **PROVIDES INSURANCE COVERAGE IN ACCORDANCE WITH SUBSECTION (B) OF THIS**
 3 **SECTION.**

4 (b) (1) ~~(I) A provider of services~~ **AN OBLIGOR** under a mechanical repair
 5 contract shall maintain adequate insurance reserves, as defined by the Insurance
 6 Commissioner, for each such contract for the protection of the purchasing consumer.

7 **(II)** A policy of insurance providing coverage for all obligations and
 8 liabilities incurred by ~~a provider~~ **AN OBLIGOR** under the terms of a mechanical repair
 9 contract shall constitute adequate insurance reserves.

10 (2) The reserves shall be maintained with an insurer authorized to do
 11 business in Maryland on an admitted or surplus lines basis.

12 (3) A purchaser of a mechanical repair contract shall be entitled to make a
 13 direct claim against the insurer issuing a policy of insurance under this subsection upon
 14 failure of the ~~specified provider~~ **OBLIGOR** to pay any claim or make any refund or
 15 consideration due within 60 days after the proof is filed with the ~~provider~~ **OBLIGOR**.

16 ~~**(4) A MECHANICAL REPAIR CONTRACT IS NOT REQUIRED TO BE FILED**~~
 17 ~~**FOR APPROVAL WITH THE INSURANCE COMMISSIONER.**~~

18 **(4) (I) BEFORE SELLING A MECHANICAL REPAIR CONTRACT, THE**
 19 **OBLIGOR SHALL FILE THE CONTRACT WITH THE INSURANCE COMMISSIONER ALONG**
 20 **WITH EVIDENCE THAT THE OBLIGOR MAINTAINS ADEQUATE INSURANCE RESERVES**
 21 **AS REQUIRED UNDER THIS SECTION.**

22 **(II) A FILING REQUIRED UNDER THIS SUBSECTION IS NOT**
 23 **SUBJECT TO THE APPROVAL OF THE INSURANCE COMMISSIONER.**

24 **(III) THE COMMISSIONER MAY ORDER AN OBLIGOR TO CEASE**
 25 **AND DESIST FROM ALL SALES OF:**

26 **1. MECHANICAL REPAIR CONTRACTS IF THE OBLIGOR**
 27 **FAILS TO DEMONSTRATE THAT THE OBLIGOR MAINTAINS ADEQUATE INSURANCE**
 28 **RESERVES;**

29 **2. A SPECIFIED MECHANICAL REPAIR CONTRACT IF**
 30 **THAT CONTRACT FAILS TO DISCLOSE THE RIGHT OF THE PURCHASER TO MAKE A**
 31 **DIRECT CLAIM AGAINST THE INSURER AS REQUIRED UNDER THIS SUBSECTION; AND**

32 **3. A SPECIFIED MECHANICAL REPAIR CONTRACT IF**
 33 **THAT CONTRACT OTHERWISE VIOLATES THIS SECTION.**

1 **(IV) A CEASE AND DESIST ORDER ISSUED UNDER THIS SECTION**
2 **SHALL MEET THE PROCEDURAL REQUIREMENTS FOR THE ISSUANCE OF A CEASE**
3 **AND DESIST ORDER UNDER § 27-103 OF THE INSURANCE ARTICLE.**

4 **(C) (1) AN OBLIGOR SHALL REGISTER WITH THE INSURANCE**
5 **COMMISSIONER.**

6 **(2) AS PART OF REGISTRATION, AN OBLIGOR SHALL PROVIDE THE**
7 **FOLLOWING INFORMATION FOR REGISTRATION WITH THE COMMISSIONER:**

8 **(I) THE NAME, CORPORATE ADDRESS, AND TELEPHONE**
9 **NUMBER OF THE OBLIGOR;**

10 **(II) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF AN**
11 **INDIVIDUAL DESIGNATED TO RECEIVE CORRESPONDENCE ON BEHALF OF THE**
12 **OBLIGOR; AND**

13 **(III) THE NAME AND ADDRESS OF A DESIGNATED AGENT**
14 **AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF THE OBLIGOR IN THE STATE.**

15 **(3) AN OBLIGOR SHALL NOTIFY THE COMMISSIONER WITHIN 30 DAYS**
16 **OF ANY CHANGE TO THE REGISTRATION INFORMATION REQUIRED UNDER THIS**
17 **SUBSECTION.**

18 **(4) AN OBLIGOR THAT IS REQUIRED TO REGISTER UNDER THIS**
19 **SECTION SHALL PAY AN ANNUAL REGISTRATION FEE OF \$25.**

20 **(5) (I) OTHER THAN A LICENSED VEHICLE DEALER, A PERSON**
21 **THAT IS NOT A REGISTERED OBLIGOR UNDER THIS SUBTITLE MAY NOT OFFER, SELL,**
22 **OR NEGOTIATE A MECHANICAL REPAIR CONTRACT.**

23 **(II) THE COMMISSIONER MAY PURSUE AN ACTION AGAINST A**
24 **PERSON THAT VIOLATES THIS PARAGRAPH.**

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

27 ~~(E)~~ **(E)** A mechanical repair contract shall clearly and conspicuously set forth the
28 date when the warranty begins.

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

1 ~~(G)~~ **(G)** The repair of a malfunction or defect covered under a mechanical repair
2 contract shall include the cost of the teardown and diagnosing the malfunction or defect.

3 ~~(H)~~ **(H)** The provisions of the Maryland Consumer Products Guaranty Act, Title 14,
4 Subtitle 4 of the Commercial Law Article, apply to a mechanical repair contract sold ~~by a~~
5 ~~licensed vehicle dealer~~ **IN THE STATE.**

6 ~~(I)~~ **(I)** The provisions of this section do not apply to mechanical repair contracts
7 issued by the motor vehicle manufacturer or the distributor or a wholly owned subsidiary
8 of the manufacturer or the distributor as defined in § 15-201 of this title.

9 ~~(J)~~ **(J)** Notwithstanding subsection ~~(I)~~ **(I)** of this section, licensed vehicle dealers
10 **AND OBLIGORS** who sell mechanical repair contracts shall have the same obligations as a
11 seller under § 2-314 of the Commercial Law Article.

12 ~~(K)~~ **(K)** **A PERSON WHO THAT IS NOT A MANUFACTURER, MANUFACTURER'S**
13 **SUBSIDIARY, DISTRIBUTOR, FACTORY BRANCH, OR DEALER AND WHO SELLS A**
14 **MECHANICAL REPAIR CONTRACT MAY NOT, DIRECTLY OR INDIRECTLY, MAKE A**
15 **FALSE, DECEPTIVE, OR MISLEADING STATEMENT WITH RESPECT TO:**

16 **(1) THE PERSON'S AFFILIATION WITH A MOTOR VEHICLE**
17 **MANUFACTURER, MANUFACTURER'S SUBSIDIARY, DISTRIBUTOR, FACTORY**
18 **BRANCH, OR DEALER;**

19 **(2) THE PERSON'S POSSESSION OF INFORMATION REGARDING THE**
20 **MANUFACTURER'S ORIGINAL EQUIPMENT WARRANTY FOR A MOTOR VEHICLE;**

21 **(3) THE EXPIRATION OF A MANUFACTURER'S ORIGINAL EQUIPMENT**
22 **WARRANTY FOR A MOTOR VEHICLE; OR**

23 **(4) A REQUIREMENT THAT A MOTOR VEHICLE OWNER REGISTER FOR**
24 **A NEW MECHANICAL REPAIR CONTRACT WITH THE PERSON IN ORDER TO MAINTAIN**
25 **COVERAGE UNDER THE OWNER'S CURRENT MECHANICAL REPAIR CONTRACT OR**
26 **THE MANUFACTURER'S ORIGINAL EQUIPMENT WARRANTY.**

27 **(L) EXCEPT AS EXPRESSLY PROVIDED UNDER THIS SECTION, AN OBLIGOR**
28 **THAT COMPLIES WITH THIS SECTION IS NOT REQUIRED TO COMPLY WITH ANY OTHER**
29 **PROVISIONS OF THE INSURANCE ARTICLE.**

30 **(M) UNLESS SPECIFICALLY DESCRIBED IN SUBSECTION (A)(1) OF THIS**
31 **SECTION, A MECHANICAL REPAIR CONTRACT MAY NOT PROVIDE INDEMNIFICATION**
32 **FOR A LOSS CAUSED BY COLLISION OR BY PERILS THAT ARE COMMONLY COVERED**
33 **BY COMPREHENSIVE OR COLLISION PROVISIONS OF A MOTOR VEHICLE INSURANCE**
34 **POLICY.**

1 27-101.

2 **(FF) A PERSON THAT IS CONVICTED OF A VIOLATION OF § 15-311.2(C)(5) OF**
3 **THIS ARTICLE:**

4 **(1) IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 OR**
5 **IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR BOTH; AND**

6 **(2) MAY BE REQUIRED TO PAY RESTITUTION.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That:

8 (a) An obligor engaging in mechanical repair contract transactions on or before
9 the effective date of this Act must register with the Insurance Commissioner within 90 days
10 after the registration application is made available.

11 (b) A person not engaging in mechanical repair contract transactions on the
12 effective date of this Act must register with the Insurance Commissioner under this Act
13 before offering a mechanical repair contract for sale.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2015.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.