

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 744
Finance

(Senator Colburn)

**Commercial Law - Unfair or Deceptive Trade Practices - Disclosure of Prior
Vehicle Use**

This bill requires a vehicle dealer who must disclose to a consumer the prior use of a vehicle to make a reasonable inquiry as to whether the vehicle formerly was used other than primarily for personal, household, or family purposes. If the dealer cannot determine the prior use of the vehicle, the dealer must disclose to the consumer that the prior use of the vehicle is unknown. A dealer may comply with the bill's provisions by providing a consumer with a vehicle history report prepared by an independent third party. Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's imposition of existing penalty provisions. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's imposition of existing penalty provisions.

Small Business Effect: Potential minimal.

Analysis

Current Law: A "dealer" generally means a person who is in the business of buying, selling, or exchanging vehicles, including a person who offers to sell at least three

vehicles during any 12-month period after acquiring the vehicles primarily for resale purposes. The Maryland Vehicle Law defines “vehicle” generally to mean any device in, on, or by which any individual or property might be transported or towed on a highway. It includes low-speed vehicles but excludes electric personal assistive mobility devices. Under regulations promulgated by the Motor Vehicle Administration within the Maryland Department of Transportation, a vehicle dealer may not advertise in any manner that is false, deceptive, or misleading, or that misrepresents any vehicle offered for sale. Certain vehicles formerly used for a purpose other than a consumer good must be clearly and conspicuously identified as to their former use, including vehicles formerly used:

- for public or governmental purposes and normally driven by multiple drivers;
- as executive driven vehicles;
- as demonstrators;
- for driver training;
- as taxicabs; or
- as short-term rental vehicles.

An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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ncs/kdm

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