

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1448 Session of
2008

INTRODUCED BY REGOLA, D. WHITE, CORMAN, GREENLEAF, LOGAN,
WASHINGTON AND WAUGH, JUNE 11, 2008

REFERRED TO BANKING AND INSURANCE, JUNE 11, 2008

AN ACT

1 Relating to vehicle protection products; providing for
2 registration, for filing, for financial responsibility, for
3 warranty reimbursement policy requirements, for disclosure,
4 for prohibited acts, for recordkeeping, for sanctions and
5 administrative penalty and for duties of the Insurance
6 Department.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 CHAPTER 1

10 PRELIMINARY PROVISIONS

11 Section 101. Short title.

12 This act shall be known and may be cited as the Vehicle
13 Protection Product Act.

14 Section 102. Definitions.

15 The following words and phrases when used in this act shall
16 have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Administrator." A third party other than the warrantor who
19 is designated by the warrantor to be responsible for the

1 administration of vehicle protection product warranties.

2 "Department." The Insurance Department of the Commonwealth.

3 "Incidental costs." Expenses specified in the warranty
4 incurred by the warranty holder related to the failure of the
5 vehicle protection product to perform as provided in the
6 warranty. The term includes, without limitation, insurance
7 policy deductibles, rental vehicle charges, the difference
8 between the actual value of the stolen vehicle at the time of
9 theft and the cost of a replacement vehicle, sales taxes,
10 registration fees, transaction fees and mechanical inspection
11 fees.

12 "Vehicle protection product."

13 (1) A vehicle protection device, system or service that:

14 (i) is installed on or applied to a vehicle;

15 (ii) is designed to prevent loss or damage to a
16 vehicle from a specific cause; and

17 (iii) includes a written warranty.

18 (2) The term includes, without limitation, alarm
19 systems, body part marking products, steering locks, window
20 etch products, pedal and ignition locks, fuel and ignition
21 kill switches and electronic, radio and satellite tracking
22 devices.

23 "Vehicle protection product warrantor" or "warrantor." A
24 person who is contractually obligated to the warranty holder
25 under the terms of the vehicle protection product warranty
26 agreement. The term does not include an authorized insurer
27 providing a warranty reimbursement insurance policy.

28 "Vehicle protection product warranty" or "warranty." A
29 written agreement by a warrantor that provides, if the vehicle
30 protection product fails to prevent loss or damage to a vehicle

1 from a specific cause, that the warrantor will pay to or on
2 behalf of the warranty holder specified incidental costs as a
3 result of the failure of the vehicle protection product to
4 perform pursuant to the terms of the warranty.

5 "Warranty holder." A person who purchases a vehicle
6 protection product or who is a permitted transferee.

7 "Warranty reimbursement insurance policy." A policy of
8 insurance that is issued to the vehicle protection product
9 warrantor to provide reimbursement to the warrantor or to pay on
10 behalf of the warrantor all covered contractual obligations
11 incurred by the warrantor under the terms and conditions of the
12 insured vehicle protection product warranties issued by the
13 warrantor.

14 Section 103. Scope.

15 No vehicle protection product may be sold or offered for sale
16 in this Commonwealth unless the seller, warrantor and
17 administrator, if any, comply with the provisions of this act.
18 Vehicle protection products, warranties, warrantors and related
19 vehicle protection product sellers and warranty administrators
20 complying with this act are not required to comply with and are
21 not subject to any other provision of the act of May 17, 1921
22 (P.L.682, No.284), known as The Insurance Company Law of 1921,
23 or the act of June 28, 1947 (P.L.1110, No.476), known as the
24 Motor Vehicle Sales Finance Act. Warranties, indemnity
25 agreements and guarantees that are not provided as a part of a
26 vehicle protection product are not subject to the provisions of
27 this act.

28 CHAPTER 3

29 WARRANTOR REQUIREMENTS

30 Section 301. Registration and filing requirements of

1 warrantors.

2 (a) General rule.--A person may not operate as a warrantor
3 or represent to the public that the person is a warrantor unless
4 the person is registered with the department on a form
5 prescribed by the department.

6 (b) Registration records.--Warrantor registration records
7 shall be filed annually and shall be updated within 30 days of
8 any change. The registration records shall contain the following
9 information:

10 (1) The warrantor's name, any fictitious names under
11 which the warrantor does business in this Commonwealth and
12 the warrantor's principal office address and telephone
13 number.

14 (2) The name and address of the warrantor's agent for
15 service of process in this Commonwealth if other than the
16 warrantor.

17 (3) The names of the warrantor's executive officer or
18 officers directly responsible for the warrantor's vehicle
19 protection product business.

20 (4) The name, address and telephone number of any
21 administrators designated by the warrantor to be responsible
22 for the administration of vehicle protection product
23 warranties in this Commonwealth.

24 (5) A copy of the warranty reimbursement insurance
25 policy or policies or other financial information required
26 under section 302.

27 (6) A copy of each warranty the warrantor proposes to
28 use in this Commonwealth.

29 (7) A statement indicating under which provision of
30 section 302 the warrantor qualifies to do business in this

Commonwealth as a warrantor.

(c) Registration fee.--The department may charge each registrant a reasonable fee to offset the cost of processing the registration and maintaining the records in an amount not to exceed \$250 annually. The information in subsection (b)(1) and (2) shall be made available to the public.

(d) Renewal.--If a registrant fails to register by the renewal deadline, the department shall give the registrant written notice of the failure and the registrant shall have 30 days to complete the renewal of the registration before the registrant is suspended from being registered in this Commonwealth.

(e) Exception.--An administrator or person who sells or solicits a sale of a vehicle protection product but who is not a warrantor shall not be required to register as a warrantor or be licensed under the insurance laws of this Commonwealth to sell vehicle protection products.

Section 302. Financial responsibility.

No vehicle protection product shall be sold or offered for sale in this Commonwealth unless the warrantor meets one of the conditions in this section in order to ensure adequate performance under the warranty. No other financial security requirements or financial standards for warrantors shall be required. Conditions are as follows:

(1) The vehicle protection product warrantor is insured under a warranty reimbursement insurance policy issued by an insurer authorized to do business in this Commonwealth which provides that:

(i) the insurer will pay to, or on behalf of, the warrantor 100% of all sums that the warrantor is legally

1 obligated to pay according to the warrantor's contractual
2 obligations under the warrantor's vehicle protection
3 product warranty;

4 (ii) a true and correct copy of the warranty
5 reimbursement insurance policy has been filed with the
6 department by the warrantor; and

7 (iii) the policy contains the provision required
8 under section 303.

9 (2) (i) The vehicle protection product warrantor or its
10 parent company, in accordance with subparagraph (ii),
11 maintains a net worth or stockholder's equity of
12 \$50,000,000; and

13 (ii) the warrantor provides the department with a
14 copy of the warrantor's or the warrantor's parent
15 company's most recent Form 10-K or Form 20-F filed with
16 the Securities and Exchange Commission within the last
17 calendar year or, if the warrantor does not file with the
18 Securities and Exchange Commission, a copy of the
19 warrantor or the warrantor's parent company's audited
20 financial statements that show a net worth of the
21 warrantor or its parent company of at least \$50,000,000.
22 If the warrantor's parent company's Form 10-K, Form 20-F
23 or audited financial statements are filed to meet the
24 warrantor's financial stability requirement, then the
25 parent company shall agree to guarantee the obligations
26 of the warrantor relating to warranties issued by the
27 warrantor in this Commonwealth. The financial information
28 filed under this subparagraph shall be confidential as a
29 trade secret of the entity filing the information and not
30 subject to public disclosure.

1 Section 303. Warranty reimbursement policy requirements.

2 No warranty reimbursement insurance policy shall be issued,
3 sold or offered for sale in this Commonwealth unless the policy
4 meets the following conditions:

5 (1) The policy states that the issuer of the policy will
6 reimburse or pay on behalf of the vehicle protection product
7 warrantor all covered sums which the warrantor is legally
8 obligated to pay or will provide all service that the
9 warrantor is legally obligated to perform according to the
10 warrantor's contractual obligations under the provisions of
11 the insured warranties issued by the warrantor.

12 (2) The policy states that, in the event payment due
13 under the terms of the warranty is not provided by the
14 warrantor within 60 days after proof of loss has been filed
15 according to the terms of the warranty by the warranty
16 holder, the warranty holder may file directly with the
17 warranty reimbursement insurance company for reimbursement.

18 (3) The policy provides that a warranty reimbursement
19 insurance company that insures a warranty shall be deemed to
20 have received payment of the premium if the warranty holder
21 paid for the vehicle protection product and the insurer's
22 liability under the policy shall not be reduced or relieved
23 by a failure of the warrantor, for any reason, to report the
24 issuance of a warranty to the insurer.

25 (4) The policy has the following provisions regarding
26 cancellation of the policy:

27 (i) The issuer of a reimbursement insurance policy
28 shall not cancel the policy until a notice of
29 cancellation in writing has been mailed or delivered to
30 the department and each insured warrantor.

(ii) The cancellation of a reimbursement insurance policy shall not reduce the issuer's responsibility for vehicle protection products sold prior to the date of cancellation.

(iii) In the event an insurer cancels a policy that a warrantor has filed with the department, the warrantor shall do either of the following:

(A) File a copy of a new policy with the department before the termination of the prior policy, providing no lapse in coverage following the termination of the prior policy.

(B) Discontinue offering warranties as of the termination date of the policy until a new policy becomes effective and is accepted by the department.

Section 304. Disclosure to warranty holder.

(a) Requirements.--A vehicle protection product warranty shall not be sold or offered for sale in this Commonwealth unless the warranty:

(1) States in substantially similar language that the obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy if the warrantor elects to meet its financial responsibility obligations under section 302(1), or states in substantially similar language that the obligations of the warrantor under the warranty are backed by the full faith and credit of the warrantor if the warrantor elects to meet its financial responsibility obligations under section 302(2).

(2) States in substantially similar language that in the event a warranty holder must make a claim against a party other than the warranty reimbursement insurance policy

1 issuer, the warranty holder is entitled to make a direct
2 claim against the insurer upon the failure of the warrantor
3 to pay any claim or meet any obligation under the terms of
4 the warranty within 60 days after proof of loss has been
5 filed with the warrantor, if the warrantor elects to meet its
6 financial responsibility obligations under section 302(1).

7 (3) States the name and address of the issuer of the
8 warranty reimbursement insurance policy. This information
9 need not be preprinted on the warranty form, but may be added
10 to or stamped on the warranty, if the warrantor elects to
11 meet its financial responsibility obligations under section
12 302(1).

13 (4) Identifies the warrantor, the seller and the
14 warranty holder.

15 (5) Sets forth the total purchase price and the terms
16 under which it is to be paid. However, the purchase price is
17 not required to be preprinted on the vehicle protection
18 product warranty and may be negotiated with the consumer at
19 the time of sale.

20 (6) Sets forth the procedure for making a claim,
21 including a telephone number.

22 (7) Specifies the payments or performance to be provided
23 under the warranty, including payments for incidental costs,
24 the manner of calculation or determination of payments or
25 performance and any limitations, exceptions or exclusions.

26 (8) Sets forth all of the obligations and duties of the
27 warranty holder, such as the duty to protect against any
28 further damage to the vehicle, the obligation to notify the
29 warrantor in advance of any repair or other similar
30 requirements, if any.

1 (9) Sets forth any terms, restrictions or conditions
2 governing transferability and cancellation of the warranty,
3 if any.

4 (10) Contains a disclosure that reads substantially as
5 follows:

6 This agreement is a product warranty and is not
7 insurance.

8 (b) Incidental costs.--Incidental costs may be reimbursed
9 under the provisions of the warranty in either a fixed amount
10 specified in the warranty or sales agreement or by the use of a
11 formula itemizing specific incidental costs incurred by the
12 warranty holder.

13 Section 305. Prohibited acts.

14 (a) Use of terms.--Unless licensed as an insurance company,
15 a vehicle protection product warrantor shall not use in its
16 name, contracts or literature any of the words "insurance,"
17 "casualty," "surety," "mutual," or any other words descriptive
18 of the insurance, casualty or surety business or deceptively
19 similar to the name or description of any insurance or surety
20 corporation or any other vehicle protection product warrantor. A
21 warrantor may use the term "guaranty" or similar word in the
22 warrantor's name.

23 (b) Purchase not required.--A vehicle protection product
24 seller or warrantor may not require as a condition of financing
25 that a retail purchaser of a motor vehicle purchase a vehicle
26 protection product.

27 Section 306. Recordkeeping.

28 (a) General rule.--All vehicle protection product warrantors
29 shall keep accurate accounts, books and records concerning
30 transactions regulated under this act.

(b) Contents.--A vehicle protection product warrantor's accounts, books and records shall include:

(1) Copies of all vehicle protection product warranties.

(2) The name and address of each warranty holder.

(3) The dates, amounts and descriptions of all receipts, claims and expenditures.

(c) Retention.--A vehicle protection product warrantor shall retain all required accounts, books and records pertaining to each warranty holder for at least two years after the specified period of coverage has expired. A warrantor discontinuing business in this Commonwealth shall maintain its records until it furnishes the department satisfactory proof that it has discharged all obligations to warranty holders in this Commonwealth.

(d) Examination by department.--Vehicle protection product warrantors shall make all accounts, books and records concerning transactions regulated under this act available to the department for examination.

CHAPTER 5

ENFORCEMENT AND ADMINISTRATION

Section 501. Sanctions and administrative penalty.

(a) Examination.--The department may conduct examinations of warrantors, administrators or other persons to enforce this act and protect warranty holders in this Commonwealth. Upon request of the department, a warrantor shall make available to the department all accounts, books and records concerning vehicle protection products sold by the warrantor that are necessary to enable the department to reasonably determine compliance or noncompliance with this act.

(b) Department action.--The department may take action that

1 is necessary or appropriate to enforce the provisions of this
2 act and the department's rules and orders and to protect
3 warranty holders in this Commonwealth. If a warrantor engages in
4 a pattern or practice of conduct that violates this act and that
5 the department reasonably believes threatens to render the
6 warrantor insolvent or cause irreparable loss or injury to the
7 property or business of any person or company located in this
8 Commonwealth, the department may:

9 (1) Issue an order directed to that warrantor to cease
10 and desist from engaging in further acts, practices or
11 transactions that are causing the conduct.

12 (2) Issue an order prohibiting that warrantor from
13 selling or offering for sale vehicle protection products in
14 violation of this act.

15 (3) Issue an order imposing a civil penalty on that
16 warrantor.

17 (4) Issue any combination of the foregoing, as
18 applicable.

19 (c) Notice and hearing.--Prior to the effective date of any
20 order issued pursuant to this subsection, the department must
21 provide written notice of the order to the warrantor and the
22 opportunity for a hearing to be held within ten business days
23 after receipt of the notice, except prior notice and hearing
24 shall not be required if the department reasonably believes that
25 the warrantor has become, or is about to become, insolvent.

26 (d) Time frame.--A person aggrieved by an order issued under
27 this section may request a hearing before the department. The
28 hearing request shall be filed with the department within 20
29 days after the date the department's order is effective, and the
30 department must hold the hearing within 15 days after receipt of

1 the hearing request.

2 (e) Procedure.--At the hearing, the burden shall be on the
3 department to show why the order issued pursuant to this section
4 is justified. The provisions of 2 Pa.C.S. (relating to
5 administrative law and procedure) shall apply to a hearing
6 request under this section.

7 (f) Injunction.--The department may bring an action in any
8 court of competent jurisdiction for an injunction or other
9 appropriate relief to enjoin threatened or existing violations
10 of this act or of the department's orders or rules. An action
11 filed under this section also may seek restitution on behalf of
12 persons aggrieved by a violation of this act or orders or rules
13 of the department.

14 (g) Civil penalty.--A person who is found to have violated
15 this act or orders or rules of the department may be ordered to
16 pay to the department a civil penalty in an amount, determined
17 by the department, of not more than \$500 per violation and not
18 more than \$10,000 in the aggregate for all violations of a
19 similar nature. For purposes of this section, violations shall
20 be of a similar nature if the violation consists of the same or
21 similar course of conduct, action or practice, irrespective of
22 the number of times the conduct, action or practice that is
23 determined to be a violation of this act occurred.

24 Section 502. Regulations.

25 The department may adopt rules and regulations consistent
26 with the provisions of this act as are necessary to implement
27 this act. Rules and regulations shall include disclosures for
28 the benefit of the warranty holder, recordkeeping and procedures
29 for public complaints. Rules and regulations shall also include
30 the conditions under which surplus lines insurers may be

1 rejected for the purpose of underwriting vehicle protection
2 product warranty agreements.

3 CHAPTER 21

4 MISCELLANEOUS PROVISIONS

5 Section 2101. Applicability.

6 This act applies to all vehicle protection products sold or
7 offered for sale on or after the effective date of this act. The
8 failure of any person to comply with this act prior to its
9 effective date shall not be admissible in any court proceeding,
10 administrative proceeding, arbitration or alternative dispute
11 resolution proceeding and may not otherwise be used to prove
12 that the action of any person or the affected vehicle protection
13 product was unlawful or otherwise improper. The adoption of this
14 act does not imply that a vehicle protection product warranty
15 was insurance prior to the effective date of this act.

16 Section 2102. Effective date.

17 This act shall take effect January 1, 2009.