

HOUSE BILL REPORT

HB 1797

As Reported by House Committee On:
Financial Institutions & Insurance

Title: An act relating to the vehicle protection product act.

Brief Description: Creating the vehicle protection product act.

Sponsors: Representatives Kirby and Roach.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/15/05, 2/22/05 [DP].

Brief Summary of Bill

- Defines and sets forth rules with respect to vehicle protection product warranties.
- Exempts vehicle protection product warranties and the warrantors, sellers, and administrators of such warranties from other provisions of the insurance code.
- Gives enforcement and rule making authority to the Office of the Insurance Commissioner and provides for monetary penalties, hearings, and court proceedings.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 11 members: Representatives Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, Santos, Schual-Berke, Serben, Simpson, Strow and Williams.

Staff: Cece Clynch (786-7168).

Background:

Vehicle protection products are devices, systems, or services which are installed or applied on a vehicle to thwart theft or damage to that vehicle. Such products include, among other things, steering wheel clubs, tracking devices, and window and panel etching. Many, if not all, of these products come with a warranty which provides for the payment of certain specified expenses in the event that the product fails to perform as provided in the warranty. For example, a vehicle protection product warranty might provide for payment of rental costs or an automobile insurance policy deductible if the "protected" vehicle is stolen or damaged.

"Insurance" is defined as "a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies." Insurance and insurance transactions are governed by Title 48 RCW. Among other things, this title requires: (1) that insurers meet certain financial requirements; and (2) that agents, solicitors, and brokers of insurance comply with specified licensing standards. Financial and criminal penalties may result from noncompliance.

Several states, including Colorado, Arizona, and Wisconsin, have recently enacted legislation specifically exempting vehicle protection product warranties from regulation as insurance so long as these warranties meet certain statutory conditions with respect to registration, financial standards, disclosure, and the like.

Summary of Bill:

"Vehicle protection product" is defined as a system, device, or service installed or applied on a vehicle to prevent loss or damage to that vehicle from a specific cause *and* which is included with a written warranty. A "vehicle protection product warranty" means a written agreement providing that if the product fails the warranty holder shall be paid specified incidental costs such as insurance policy deductibles, rental vehicle charges, sales taxes, and registration fees.

Sellers, warrantors, and administrators of vehicle protection products are not required to comply with and are not subject to any other provisions of the state insurance code.

Warrantors must, however, register with the Office of the Insurance Commissioner (OIC) and provide requisite information, including name, address, name and address of agent, a copy of the warranty which the warrantor proposes to use, and specified financial information regarding the warrantor and the warrantor's warranty insurance policy, if any.

The warrantor must (1) be insured under a warranty reimbursement insurance policy issued by an insurer authorized to do business in this state or (2) maintain a net worth or stockholders' equity of \$50 million. If the former, the policy must meet conditions such as stating that the issuer of the policy will reimburse the warrantor for all covered sums which the warrantor is legally obligated to pay and that cancellation of a reimbursement insurance policy shall not reduce the issuer's responsibility for products sold prior to the date of cancellation. If the latter, there are specific financial forms which must be filed with the OIC by the warrantor.

Conditions are imposed requiring that the warranty be written in clear, understandable language and be printed in easy to read type. The warranty must include information identifying the warrantor, the seller, and the warranty holder, specifying the procedure for making a claim, and indicating the amount of the deductible, if any. The warranty must also state "This agreement is a product warranty and is not insurance."

Only in certain circumstances may the warrantor cancel the warranty:

1. if the holder fails to pay;
2. if the holder makes a material misrepresentation;
3. if the holder commits fraud; and

4. if the holder substantially breaches the holder's duties under the warranty.

Warrantors are prohibited from certain conduct:

1. using words such as "insurance," "casualty," "surety," and "mutual" in its names, contracts, or literature;
2. making false or misleading statements;
3. omitting material statements; and
4. requiring, as a condition of sale or financing, that a retail purchaser buy a protection product that is not installed on the vehicle at the time of sale.

The OIC may conduct examinations of persons and records, take enforcement action, issue cease and desist orders, impose civil penalties, and bring court action to enforce violations and seek restitution. Civil penalties are capped at \$500 per violation and \$10,000 in the aggregate for all violations of a similar nature. The OIC may also adopt administrative rules.

Failure to comply with any of the above provisions *prior* to their effective date is not admissible in any legal proceeding and may not be used to prove unlawful or improper conduct.

Sales of vehicle protection products are specifically distinguished from "service contracts" and exempt from the requirements imposed relative to service contracts.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect August 1, 2005.

Testimony For: These warranties should not be viewed as insurance but as a statement of confidence in the effectiveness of the protection devices. These are express warranties. Similar warranties come with items like bicycle locks and surge protectors. Other states have exempted or distinguished vehicle protection product warranties from insurance requirements. If vehicle protection product warranties are treated as insurance, automobile dealers and salespersons will have to be licensed as insurance agents and brokers. The result may be that vehicle protection products will not be sold in Washington.

Testimony With Concerns: The OIC sees these as insurance products and does not favor creating loopholes which leave consumers vulnerable. "Service contracts" which are exempt under an existing chapter within the insurance code require \$100 million net worth while this would only require the warrantor to have a \$50 million net worth. The definition of "incidental" is very broad. The fines which the OIC could impose are low. It is not known whether the OIC has received any specific complaints about vehicle protection product warranties or whether the National Association of Insurance Commissioners has taken a position as to whether these warranties should be treated as insurance.

Persons Testifying: (In support) Mel Sorensen and Victor Smith, Natural Vehicle Protection Association.

(With concerns) Mary Clogston, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying: None.