
HOUSE BILL 1797

State of Washington

59th Legislature

2005 Regular Session

By Representatives Kirby and Roach

Read first time 02/07/2005. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to the vehicle protection product act; adding a new
2 chapter to Title 48 RCW; prescribing penalties; and providing an
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** This act may be cited as the vehicle
6 protection product act.

7 NEW SECTION. **Sec. 2.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Administrator" means a third party other than the warrantor
10 who is designated by the warrantor to be responsible for the
11 administration of vehicle protection product warranties.

12 (2) "Office" means the office of the insurance commissioner.

13 (3) "Commissioner" means the insurance commissioner.

14 (4) "Service contract" means a contract or agreement as defined
15 under chapter 48.110 RCW.

16 (5) "Incidental costs" means expenses specified in the warranty
17 incurred by the warranty holder related to the failure of the vehicle
18 protection product to perform as provided in the warranty. "Incidental

1 costs" may include, without limitation, insurance policy deductibles,
2 rental vehicle charges, the difference between the actual value of the
3 stolen vehicle at the time of theft and the cost of a replacement
4 vehicle, sales taxes, registration fees, transaction fees, and
5 mechanical inspection fees.

6 (6) "Vehicle protection product" means a vehicle protection device,
7 system, or service that is: (a) Installed on or applied to a vehicle;
8 (b) designed to prevent loss or damage to a vehicle from a specific
9 cause; and (c) included with a written warranty. For purposes of this
10 section, "vehicle protection product" includes, without limitation,
11 alarm systems, body part marking products, steering locks, window etch
12 products, pedal and ignition locks, fuel and ignition kill switches,
13 and electronic, radio, and satellite tracking devices.

14 (7) "Vehicle protection product warranty" or "warranty" means a
15 written agreement by a warrantor that provides if the vehicle
16 protection product fails to prevent loss or damage to a vehicle from a
17 specific cause, that the warranty holder shall be paid specified
18 incidental costs by the warrantor as a result of the failure of the
19 vehicle protection product to perform pursuant to the terms of the
20 warranty.

21 (8) "Vehicle protection product warrantor" or "warrantor" means a
22 person who is contractually obligated to the warranty holder under the
23 terms of the vehicle protection product warranty agreement.
24 "Warrantor" does not include an authorized insurer.

25 (9) "Warranty holder" means the person who purchases a vehicle
26 protection product or who is a permitted transferee.

27 (10) "Warranty reimbursement insurance policy" means a policy of
28 insurance that is issued to the vehicle protection product warrantor to
29 provide reimbursement to the warrantor or to pay on behalf of the
30 warrantor all covered contractual obligations incurred by the warrantor
31 under the terms and conditions of the insured vehicle protection
32 product warranties sold by the warrantor.

33 NEW SECTION. **Sec. 3.** (1) No vehicle protection product may be
34 sold or offered for sale in this state unless the seller, warrantor,
35 and administrator, if any, comply with the provisions of this chapter.

36 (2) Vehicle protection product warrantors and related vehicle

1 protection product sellers and warranty administrators complying with
2 this chapter are not required to comply with and are not subject to any
3 other provision of the state insurance code.

4 (3) Service contract providers who do not sell vehicle protection
5 products are not subject to the requirements of this chapter and sales
6 of vehicle protection products are exempt from the requirements of
7 chapter 48.110 RCW.

8 (4) Warranties, indemnity agreements, and guarantees that are not
9 provided as a part of a vehicle protection product are not subject to
10 the provisions of this chapter.

11 NEW SECTION. **Sec. 4.** (1) A person may not operate as a warrantor
12 or represent to the public that the person is a warrantor unless the
13 person is registered with the office on a form prescribed by the
14 commissioner.

15 (2) Warrantor registration records shall be filed annually and
16 shall be updated within thirty days of any change. The registration
17 records shall contain the following information:

18 (a) The warrantor's name, any fictitious names under which the
19 warrantor does business in the state, principal office address, and
20 telephone number;

21 (b) The name and address of the warrantor's agent for service of
22 process in the state if other than the warrantor;

23 (c) The names of the warrantor's executive officer or officers
24 directly responsible for the warrantor's vehicle protection product
25 business;

26 (d) The name, address, and telephone number of any administrators
27 designated by the warrantor to be responsible for the administration of
28 vehicle protection product warranties in this state;

29 (e) A copy of the warranty reimbursement insurance policy or
30 policies or other financial information required by section 5 of this
31 act;

32 (f) A copy of each warranty the warrantor proposes to use in this
33 state;

34 (g) A statement indicating under which provision of section 5 of
35 this act the warrantor qualifies to do business in this state as a
36 warrantor.

1 (3) The office may charge each registrant a reasonable fee to
2 offset the cost of processing the registration and maintaining the
3 records in an amount not to exceed two hundred fifty dollars annually.
4 The information in subsection (2)(a) and (b) of this section shall be
5 made available to the public.

6 (4) If a registrant fails to register by the renewal deadline, the
7 commissioner shall give the registrant written notice of the failure
8 and the registrant will have thirty days to complete the renewal of
9 their registration before they are suspended from being registered in
10 this state.

11 (5) An administrator or person who sells or solicits a sale of a
12 vehicle protection product, but who is not a warrantor, is not required
13 to register as a warrantor or be licensed under the insurance laws of
14 this state to sell vehicle protection products.

15 NEW SECTION. **Sec. 5.** No vehicle protection product shall be sold,
16 or offered for sale in this state unless the warrantor meets the
17 conditions in subsection (1) or (2) of this section. No other
18 financial security requirements or financial standards for warrantors
19 are required.

20 (1) The vehicle protection product warrantor is insured under a
21 warranty reimbursement insurance policy issued by an insurer authorized
22 to do business in this state which provides that the insurer will pay
23 to, or on behalf of, the warrantor one hundred percent of all sums that
24 the warrantor is legally obligated to pay according to the warrantor's
25 contractual obligations under the warrantor's vehicle protection
26 product warranty. A true and correct copy of the warranty
27 reimbursement insurance policy must be filed with the office by the
28 warrantor, and the policy must contain the provisions required in
29 section 6 of this act.

30 (2)(a) The vehicle protection product warrantor, or its parent
31 company, in accordance with (b) of this subsection, maintains a net
32 worth or stockholders' equity of fifty million dollars; and

33 (b) The warrantor provides the commissioner with a copy of the
34 warrantor's or the warrantor's parent company's most recent form 10-K
35 or form 20-F filed with the securities and exchange commission within
36 the last calendar year, or if the warrantor does not file with the
37 securities and exchange commission, a copy of the warrantor's or the

1 warrantor's parent company's audited financial statements that shows a
2 net worth of the warrantor or its parent company of at least fifty
3 million dollars. If the warrantor's parent company's form 10-K, form
4 20-F, or audited financial statements are filed to meet the warrantor's
5 financial stability requirement, then the parent company shall agree to
6 guarantee the obligations of the warrantor relating to warranties
7 issued by the warrantor in this state. The financial information filed
8 under this subsection is confidential as a trade secret of the entity
9 filing the information and not subject to public disclosure.

10 NEW SECTION. **Sec. 6.** No warranty reimbursement insurance policy
11 shall be issued, sold, or offered for sale in this state unless the
12 policy meets the conditions set forth in this section.

13 (1) The policy states that the issuer of the policy will reimburse
14 or pay on behalf of the vehicle protection product warrantor all
15 covered sums which the warrantor is legally obligated to pay or will
16 provide all service that the warrantor is legally obligated to perform
17 according to the warrantor's contractual obligations under the
18 provisions of the insured warranties sold by the warrantor.

19 (2) The policy states that in the event payment due under the terms
20 of the warranty is not provided by the warrantor within sixty days
21 after proof of loss has been filed according to the terms of the
22 warranty by the warranty holder, the warranty holder may file directly
23 with the warranty reimbursement insurance company for reimbursement.

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

30 (4) The policy has the following provisions regarding cancellation
31 of the policy:

32 (a) The issuer of a reimbursement insurance policy shall not cancel
33 the policy until a notice of cancellation in writing has been mailed or
34 delivered to the office and each insured warrantor.

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

1 (c) In the event an insurer cancels a policy that a warrantor has
2 filed with the office, the warrantor shall do either of the following:

3 (i) File a copy of a new policy with the office, before the
4 termination of the prior policy, providing no lapse in coverage
5 following the termination of the prior policy; or

6 (ii) Discontinue acting as a warrantor as of the termination date
7 of the policy until a new policy becomes effective and is accepted by
8 the office.

9 NEW SECTION. **Sec. 7.** (1) Every vehicle protection product
10 warranty shall be written in clear, understandable language and shall
11 be printed or typed in an easy-to-read type, size, and style, and shall
12 not be sold or offered for sale in this state unless the warranty:

13 (a) Conspicuously states that the obligations of the warrantor to
14 the warranty holder are guaranteed under a warranty reimbursement
15 insurance policy, if the warrantor elects to meet its financial
16 responsibility obligations under section 5(1) of this act;

17 (b) Conspicuously states that in the event a warranty holder must
18 make a claim against a party other than the warranty reimbursement
19 insurance policy issuer, the warranty holder is entitled to make a
20 direct claim against the insurer upon the failure of the warrantor to
21 pay any claim or meet any obligation under the terms of the warranty
22 within sixty days after proof of loss has been filed with the
23 warrantor, if the warrantor elects to meet its financial responsibility
24 obligations under section 5(1) of this act;

25 (c) Conspicuously states the name and address of the issuer of the
26 warranty reimbursement insurance policy. This information does not
27 need to be preprinted on the warranty form, but may be stamped on the
28 warranty, if the warrantor elects to meet its financial responsibility
29 obligations under section 5(1) of this act;

30 (d) Identifies the warrantor, the seller, and the warranty holder;

31 (e) Sets forth the total purchase price and the terms under which
32 it is to be paid. However, the purchase price is not required to be
33 preprinted on the vehicle protection product warranty and may be
34 negotiated with the consumer at the time of sale;

35 (f) Sets forth the procedure for making a claim, including a
36 telephone number;

1 (g) Conspicuously states the existence of a deductible amount, if
2 any;

3 (h) Specifies the payments or performance to be provided under the
4 warranty, including payments for incidental costs, the manner of
5 calculation or determination of payments or performance, and any
6 limitations, exceptions, or exclusions;

7 (i) Sets forth the conditions on which substitution will be
8 allowed;

9 (j) Conspicuously sets forth all of the obligations and duties of
10 the warranty holder such as the duty to protect against any further
11 damage to the vehicle, the obligation to notify the warrantor in
12 advance of any repair, or other similar requirements, if any;

13 (k) Sets forth any terms, restrictions, or conditions governing
14 transferability of the warranty, if any;

15 (1) Contains a disclosure that reads substantially as follows:
16 "This agreement is a product warranty and is not insurance."

17 (2) At the time of sale, the seller or warrantor shall provide to
18 the purchaser:

- 19 (a) A copy of the vehicle protection product warranty; or
- 20 (b) A receipt or other written evidence of the purchase of the
- 21 vehicle protection product and a copy of the warranty within thirty
- 22 days of the date of purchase.

23 NEW SECTION. **Sec. 8.** (1) No vehicle protection product may be
24 sold or offered for sale in this state unless the vehicle protection
25 product warranty clearly states the terms and conditions governing the
26 cancellation of the sale and warranty, if any.

27 (2) The warrantor may only cancel the warranty if the warranty
28 holder:

- 29 (a) Fails to pay for the vehicle protection product;
- 30 (b) Makes a material misrepresentation to the seller or warrantor;
- 31 (c) Commits fraud; or
- 32 (d) Substantially breaches the warranty holder's duties under the
- 33 warranty.

34 (3) A warrantor canceling a warranty shall mail written notice of
35 cancellation to the warranty holder at the last address of the warranty
36 holder in the warrantor's records at least thirty days prior to the

1 effective date of the cancellation. The notice shall state the
2 effective date of the cancellation and the reason for the cancellation.

3 NEW SECTION. **Sec. 9.** (1) Unless licensed as an insurance company,
4 a vehicle protection product warrantor shall not use in its name,
5 contracts, or literature, the words: "Insurance," "casualty,"
6 "surety," "mutual," or any other words descriptive of the insurance,
7 casualty, or surety business or deceptively similar to the name or
8 description of any insurance or surety corporation, or any other
9 vehicle protection product warrantor. A warrantor may use the term
10 "guaranty" or similar word in the warrantor's name.

11 (2) A vehicle protection product warrantor shall not make, permit,
12 or cause any false or misleading statements, either oral or written, in
13 connection with the sale, offer to sell, or advertisement of a vehicle
14 protection product.

15 (3) A vehicle protection product warrantor shall not permit or
16 cause the omission of any material statement in connection with the
17 sale, offer to sell, or advertisement of a vehicle protection product,
18 which under the circumstances should have been made in order to make
19 the statements that were made not misleading.

20 (4) A vehicle protection product warrantor shall not make, permit,
21 or cause any false or misleading statements, either oral or written,
22 about the performance required or payments that may be available under
23 the vehicle protection product warranty.

24 (5) A vehicle protection product warrantor shall not make, permit,
25 or cause any statement or practice that has the effect of creating or
26 maintaining a fraud.

27 (6) A vehicle protection product seller or warrantor may not
28 require as a condition of sale or financing that a retail purchaser of
29 a motor vehicle purchase a vehicle protection product that is not
30 installed on the motor vehicle at the time of sale.

31 NEW SECTION. **Sec. 10.** (1) All vehicle protection product
32 warrantors shall keep accurate accounts, books, and records concerning
33 transactions regulated under this chapter.

34 (2) A vehicle protection product warrantor's accounts, books, and
35 records shall include:

36 (a) Copies of all vehicle protection product warranties;

1 (b) The name and address of each warranty holder;

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

4 (3) A vehicle protection product warrantor shall retain all
5 required accounts, books, and records pertaining to each warranty
6 holder for at least two years after the specified period of coverage
7 has expired. A warrantor discontinuing business in this state shall
8 maintain its records until it furnishes the office satisfactory proof
9 that it has discharged all obligations to warranty holders in this
10 state.

11 (4) Vehicle protection product warrantors shall make all accounts,
12 books, and records concerning transactions regulated under this chapter
13 available to the office for the purpose of examination.

14 NEW SECTION. **Sec. 11.** (1) The office may conduct examinations of
15 warrantors, administrators, or other persons to enforce this chapter
16 and protect warranty holders in this state. Upon request of the
17 office, a warrantor shall make available to the office all accounts,
18 books, and records concerning vehicle protection products sold by the
19 warrantor that are necessary to enable the office to reasonably
20 determine compliance or noncompliance with this chapter.

21 (2) The office may take action that is necessary or appropriate to
22 enforce the provisions of this chapter, including the adoption of rules
23 and orders, to protect warranty holders. If a warrantor engages in a
24 pattern or practice of conduct that violates this chapter and that the
25 office reasonably believes threatens to render the warrantor insolvent
26 or cause irreparable loss or injury to the property or business of any
27 person or company located in this state, the office may:

28 (a) Issue an order directed to that warrantor to cease and desist
29 from engaging in further acts, practices, or transactions that are
30 causing the conduct;

31 (b) Issue an order prohibiting that warrantor from selling or
32 offering for sale vehicle protection products in violation of this
33 chapter;

34 (c) Issue an order imposing a civil penalty on that warrantor; or

35 (d) Issue any combination of the foregoing, as applicable.

36 (3) Prior to the effective date of any order issued pursuant to
37 this section, the office must provide written notice of the order to

1 the warrantor and the opportunity for a hearing to be held within ten
2 business days after receipt of the notice, except prior notice and
3 hearing shall not be required if the office reasonably believes that
4 the warrantor has become, or is about to become, insolvent.

5 (4) A person aggrieved by an order issued under this section may
6 request a hearing before the office. The hearing request shall be
7 filed with the office within twenty days after the date the office's
8 order is effective, and the office must hold the hearing within fifteen
9 days after receipt of the hearing request.

10 (5) At the hearing, the burden shall be on the office to show why
11 the order issued pursuant to this section is justified. The provisions
12 of chapter 34.05 RCW apply to a hearing request under this section.

13 (6) The office may bring an action in any court of competent
14 jurisdiction for an injunction or other appropriate relief to enjoin
15 threatened or existing violations of this chapter or of the office's
16 orders or rules. An action filed under this section also may seek
17 restitution on behalf of persons aggrieved by a violation of this
18 chapter or orders or rules of the office.

19 (7) A person who is found to have violated this chapter or orders
20 or rules of the office may be ordered to pay a civil penalty in an
21 amount, determined by the office, of not more than five hundred dollars
22 per violation and not more than ten thousand dollars in the aggregate
23 for all violations of a similar nature. For purposes of this section,
24 violations shall be of a similar nature if the violation consists of
25 the same or similar course of conduct, action, or practice,
26 irrespective of the number of times the conduct, action, or practice
27 that is determined to be a violation of this chapter occurred.

28 NEW SECTION. **Sec. 12.** The office may adopt administrative rules
29 consistent with the provisions of this chapter. Rules shall include
30 disclosures for the benefit of the warranty holder, recordkeeping, and
31 procedures for public complaints. Rules shall also include the
32 conditions under which surplus lines insurers may be rejected for the
33 purpose of underwriting vehicle protection product warranty agreements.

34 NEW SECTION. **Sec. 13.** This chapter applies to all vehicle
35 protection products sold or offered for sale on or after the effective
36 date of this act. The failure of any person to comply with this

1 chapter prior to the effective date of this act shall not be admissible
2 in any court proceeding, administrative proceeding, arbitration, or
3 alternative dispute resolution proceeding and may not otherwise be used
4 to prove that the action of any person or the affected vehicle
5 protection product was unlawful or otherwise improper.

6 NEW SECTION. **Sec. 14.** This act takes effect August 1, 2005.

7 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act
8 constitute a new chapter in Title 48 RCW.

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