

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE DRS35325-TB-7B\* (03/01)

Short Title: Vehicle Protection Product Act. (Public)

Sponsors: Senator Weinstein.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE VEHICLE PROTECTION PRODUCT ACT.  
3 The General Assembly of North Carolina enacts:  
4 SECTION 1. Chapter 58 of the General Statutes is amended by adding a  
5 new Article to read:

6 "Article 92.

7 "Vehicle Protection Product Act.

8 "**§ 58-92-1. Short title.**

9 This Article shall be known and may be cited as the "Vehicle Protection Product  
10 Act."

11 "**§ 58-92-5. Definitions.**

12 As used in this Article, the following terms mean:

- 13 (1) Administrator. – A third party other than the warrantor who is  
14 designated by the warrantor to be responsible for the administration of  
15 vehicle protection product warranties.
- 16 (2) Incidental costs. – Expenses specified in the warranty incurred by the  
17 warranty holder related to the failure of the vehicle protection product  
18 to perform as provided in the warranty. Incidental costs may include  
19 insurance policy deductibles, rental vehicle charges, the difference  
20 between the actual value of the stolen vehicle at the time of theft and  
21 the cost of a replacement vehicle, sales taxes, registration fees,  
22 transaction fees, and mechanical inspection fees.
- 23 (3) Motor vehicle service agreement. – As the term is defined in  
24 G.S. 58-1-25.
- 25 (4) Vehicle protection product. – A vehicle protection device, system, or  
26 service that is (i) installed on or applied to a vehicle, (ii) is designed to  
27 prevent loss or damage to a vehicle from a specific cause, and (iii)

1 includes a written warranty. For purposes of this subdivision, the term  
2 "vehicle protection product" shall include alarm systems, body part  
3 marking products, steering locks, window etch products, pedal and  
4 ignition locks, fuel and ignition kill switches, and electronic, radio, and  
5 satellite tracking devices.

6 (5) Vehicle protection product warranty or warranty. – A written  
7 agreement by a warrantor that provides if the vehicle protection  
8 product fails to prevent loss or damage to a vehicle from a specific  
9 cause, that the warranty holder shall be paid specified incidental costs  
10 by the warrantor as a result of the failure of the vehicle protection  
11 product to perform pursuant to the terms of the warranty. Incidental  
12 costs may be reimbursed under the provisions of the warranty in either  
13 a fixed amount specified in the warranty or sales agreement or by the  
14 use of a formula itemizing specific incidental costs incurred by the  
15 warranty holder.

16 (6) Vehicle protection product warrantor or warrantor. – A person who is  
17 contractually obligated to the warranty holder under the terms of the  
18 vehicle protection product warranty agreement. Warrantor does not  
19 include an authorized insurer providing a warranty reimbursement  
20 insurance policy.

21 (7) Warranty holder. – A person who purchases a vehicle protection  
22 product or who is a permitted transferee.

23 (8) Warranty reimbursement insurance policy. – A policy of insurance that  
24 is issued to the vehicle protection product warrantor to provide  
25 reimbursement to the warrantor or to pay on behalf of the warrantor all  
26 covered contractual obligations incurred by the warrantor under the  
27 terms and conditions of the insured vehicle protection product  
28 warranties issued by the warrantor.

29 **§ 58-92-10. Scope and exemptions.**

30 (a) No vehicle protection product may be sold or offered for sale in this State  
31 unless the seller, warrantor, and administrator, if any, comply with the provisions of this  
32 Article.

33 (b) Except as provided in this Article, vehicle protection product warrantors and  
34 related vehicle protection product sellers and warranty administrators complying with  
35 this Article are not required to comply with and are not subject to any other provision of  
36 this Chapter.

37 (c) Motor vehicle service agreement providers who do not sell vehicle protection  
38 products are not subject to the requirements of this Article.

39 (d) Warranties, indemnity agreements, and guarantees that are not provided as a  
40 part of a vehicle protection product are not subject to the provisions of this Article.

41 **§ 58-92-15. Registration and filing requirements of warrantors.**

42 (a) A person shall not operate as a warrantor or represent to the public that the  
43 person is a warrantor unless the person is registered with the Department on a form  
44 prescribed by the Commissioner.

1       (b) Warrantor registration records shall be filed annually and shall be updated  
2 within 30 days of any change. The registration records shall contain the following  
3 information:

- 4           (1) The warrantor's name, any fictitious names under which the warrantor  
5 does business in the State, principal office address, and telephone  
6 number.  
7           (2) The name and address of the warrantor's agent for service of process in  
8 the State if other than the warrantor.  
9           (3) The names of the warrantor's executive officer or officers directly  
10 responsible for the warrantor's vehicle protection product business.  
11           (4) The name, address, and telephone number of any administrators  
12 designated by the warrantor to be responsible for the administration of  
13 vehicle protection product warranties in this State.  
14           (5) A copy of the warranty reimbursement insurance policy or policies or  
15 other financial information required by G.S. 58-92-20.  
16           (6) A copy of each warranty the warrantor proposes to use in this State.  
17           (7) A statement indicating under which provision of G.S. 58-92-20 the  
18 warrantor qualifies to do business in this State as a warrantor.

19       (c) The Commissioner may charge each registrant a reasonable fee to offset the  
20 cost of processing the registration and maintaining the records in an amount not to  
21 exceed five hundred dollars (\$500.00) annually. The fee shall be credited to the  
22 Insurance Regulatory Fund under G.S. 58-6-25.

23       (d) If a registrant fails to register by the renewal deadline, the Commissioner  
24 shall give the registrant written notice of the failure, and the registrant shall have 30  
25 days to complete the renewal of the registration before the registrant's registration is  
26 suspended in this State.

27       (e) An administrator or person who sells or solicits a sale of a vehicle protection  
28 product but who is not a warrantor shall not be required to register as a warrantor or be  
29 licensed under this Chapter to sell vehicle protection products.

30 **"§ 58-92-20. Financial responsibility.**

31       No vehicle protection product shall be sold or offered for sale in this State unless the  
32 warrantor meets one of the following conditions in order to ensure adequate  
33 performance under the warranty:

- 34           (1) The vehicle protection product warrantor is insured under a warranty  
35 reimbursement insurance policy issued by an insurer authorized to do  
36 business in this State which provides all of the following:  
37           a. The insurer shall pay to, or on behalf of, the warrantor one  
38 hundred percent (100%) of all sums that the warrantor is legally  
39 obligated to pay according to the warrantor's contractual  
40 obligations under the warrantor's vehicle protection product  
41 warranty.  
42           b. A true and correct copy of the warranty reimbursement  
43 insurance policy has been filed with the Commissioner by the  
44 warrantor.

1           c.     The policy complies with G.S. 58-92-25.

- 2           (2)   The vehicle protection product warrantor, or its parent company,  
3           maintains a net worth of fifty million dollars (\$50,000,000), and the  
4           warrantor provides the Commissioner with a copy of the warrantor's or  
5           the warrantor's parent company's most recent Form 10-K or Form 20-F  
6           filed with the Securities and Exchange Commission within the last  
7           calendar year or, if the warrantor does not file with the Securities and  
8           Exchange Commission, a copy of the warrantor's or the warrantor's  
9           parent company's audited financial statements that shows a net worth  
10           of the warrantor or its parent company of at least fifty million dollars  
11           (\$50,000,000). If the warrantor's parent company's Form 10-K, Form  
12           20-F, or audited financial statements are filed to meet the warrantor's  
13           financial stability requirement, then the parent company shall agree to  
14           guarantee the obligations of the warrantor relating to warranties issued  
15           by the warrantor in this State. Nonpublic financial information for  
16           privately held companies should be protected as a trade secret if  
17           possible.

18           No other financial security requirements or financial standards for warrantors shall  
19           be required.

20           **"§ 58-92-25. Warranty reimbursement policy requirements.**

21           No warranty reimbursement insurance policy shall be issued, sold, or offered for sale  
22           in this State, unless the policy meets all of the following conditions:

- 23           (1)   The policy states that the issuer of the policy will reimburse or pay on  
24           behalf of the vehicle protection product warrantor all covered sums  
25           which the warrantor is legally obligated to pay or will provide all  
26           service that the warrantor is legally obligated to perform according to  
27           the warrantor's contractual obligations under the provisions of the  
28           insured warranties issued by the warrantor.
- 29           (2)   The policy states that in the event payment due under the terms of the  
30           warranty is not provided by the warrantor within 60 days after proof of  
31           loss has been filed according to the terms of the warranty by the  
32           warranty holder, the warranty holder may file directly with the  
33           warranty reimbursement insurance company for reimbursement.
- 34           (3)   The policy provides that a warranty reimbursement insurance company  
35           that insures a warranty shall be deemed to have received payment of  
36           the premium if the warranty holder paid for the vehicle protection  
37           product and the insurer's liability under the policy shall not be reduced  
38           or relieved by a failure of the warrantor, for any reason, to report the  
39           issuance of a warranty to the insurer.
- 40           (4)   The policy has the following provisions regarding cancellation of the  
41           policy:
- 42           a.     The issuer of a reimbursement insurance policy shall not cancel  
43           the policy until a notice of cancellation in writing has been

1 mailed or delivered to the Commissioner and each insured  
2 warrantor.

3 b. The cancellation of a reimbursement insurance policy shall not  
4 reduce the issuer's responsibility for vehicle protection products  
5 sold prior to the date of cancellation.

6 c. In the event an insurer cancels a policy that a warrantor has  
7 filed with the Commissioner, the warrantor shall do either of the  
8 following:

9 1. File a copy of a new policy with the Commissioner,  
10 before the termination of the prior policy, providing no  
11 lapse in coverage following the termination of the prior  
12 policy.

13 2. Discontinue offering warranties as of the termination  
14 date of the policy until a new policy becomes effective  
15 and is accepted by the Commissioner.

16 (5) The policy and the premium rates for the policy have been filed with  
17 and approved by the Commissioner.

18 **§ 58-92-30. Disclosure to warranty holder.**

19 Every vehicle protection product warranty shall not be sold or offered for sale in this  
20 State unless the warranty contains all of the following:

21 (1) One of the following statements:

22 a. "The obligations of the warrantor to the warranty holder are  
23 guaranteed under a warranty reimbursement insurance policy"  
24 if the warrantor elects to meet its financial responsibility  
25 obligations under G.S. 58-92-20(1).

26 b. "The obligations of the warrantor under this warranty are  
27 backed by the full faith and credit of the warrantor" if the  
28 warrantor elects to meet its financial obligations under  
29 G.S. 58-92-20(2).

30 (2) A statement that in the event a warranty holder must make a claim  
31 against a party other than the warranty reimbursement insurance policy  
32 issuer, the warranty holder is entitled to make a direct claim against the  
33 insurer upon the failure of the warrantor to pay any claim or meet any  
34 obligation under the terms of the warranty within 60 days after proof  
35 of loss has been filed with the warrantor, if the warrantor elects to  
36 meet its financial responsibility obligations under G.S. 58-92-20(1).

37 (3) The name and address of the issuer of the warranty reimbursement  
38 insurance policy. The information need not be preprinted on the  
39 warranty form, but may be added to or stamped on the warranty, if the  
40 warrantor elects to meet its financial responsibility obligations under  
41 G.S. 58-92-20(1).

42 (4) The identity of the warrantor, the seller, and the warranty holder.

1           (5) The total purchase price and the terms under which it is to be paid;  
2           however, the purchase price is not required to be preprinted on the  
3           vehicle protection product warranty.

4           (6) The procedure for making a claim, including a telephone number.

5           (7) A disclosure that reads substantially as follows: "This agreement is a  
6           product warranty and is not insurance".

7 **"§ 58-92-35. Prohibited acts.**

8           (a) Unless licensed as an insurance company, a vehicle protection product  
9           warrantor shall not use in its name, contracts, or literature any of the words "insurance,"  
10           "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty,  
11           or surety business or deceptively similar to the name or description of any insurance or  
12           surety corporation, or any other vehicle protection product warrantor. A warrantor may  
13           use the term "guaranty" or similar word in the warrantor's name.

14           (b) A vehicle protection product seller or warrantor shall not require as a  
15           condition of financing that a retail purchaser of a motor vehicle purchase a vehicle  
16           protection product.

17           (c) Vehicle protection product warrantors and their administrators shall be  
18           subject to Article 63 of this Chapter.

19 **"§ 58-92-40. Record keeping.**

20           (a) All vehicle protection product warrantors shall keep accurate accounts,  
21           books, and records concerning transactions regulated under this Article.

22           (b) A vehicle protection product warrantor's accounts, books, and records shall  
23           include all of the following:

24                   (1) Copies of all vehicle protection product warranties.

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

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

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

33           (d) Vehicle protection product warrantors shall make all accounts, books, and  
34           records concerning transactions regulated under this act available to the Commissioner  
35           for examination.

36           (e) Vehicle protection product warrantors and their administrators shall be  
37           subject to the same provisions of Article 2 of this Chapter that apply to insurance  
38           companies.

39 **"§ 58-92-45. Rule-making power.**

40           The Commissioner may adopt rules consistent with the provisions of this Article that  
41           are necessary to implement this Article. The rules shall include disclosures for the  
42           benefit of the warranty holder, record keeping, and procedures for public complaints.  
43           The rules shall also include the conditions under which surplus lines insurers may be

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

3 **SECTION 2.** G.S. 58-6-25(d) reads as rewritten:

4 "(d) Use of Proceeds. – The Insurance Regulatory Fund is created in the State  
5 treasury, under the control of the Office of State Budget and Management. The proceeds  
6 of the charge levied in this section and all fees collected under Articles 69 through 71  
7 and Article 92 of this Chapter and under Articles 9 and 9C of Chapter 143 of the  
8 General Statutes shall be credited to the Fund. The Fund shall be placed in an  
9 interest-bearing account and any interest or other income derived from the Fund shall be  
10 credited to the Fund. Moneys in the Fund may be spent only pursuant to appropriation  
11 by the General Assembly and in accordance with the line item budget enacted by the  
12 General Assembly. The Fund is subject to the provisions of the Executive Budget Act,  
13 except that no unexpended surplus of the Fund shall revert to the General Fund. All  
14 money credited to the Fund shall be used to reimburse the General Fund for the  
15 following:

16 ...

17 (10) Money appropriated to the Department to pay its expenses incurred in  
18 regulating vehicle protection product warrantors and administrators  
19 under Article 92 of this Chapter."

20 **SECTION 3.(a)** There is appropriated from the General Fund to the  
21 Department of Insurance for fiscal year 2007-2008 the sum of two hundred thousand  
22 dollars (\$200,000) for the regulation by the Department of vehicle protection product  
23 warrantors and administrators under Article 92 of Chapter 58 of the General Statutes.

24 **SECTION 3.(b)** There is appropriated from the Insurance Regulatory Fund  
25 created under G.S. 58-6-25 to the General Fund for fiscal year 2007-2008 the sum of  
26 two hundred thousand dollars (\$200,000) for the regulation by the Department of  
27 vehicle protection product warrantors and administrators under Article 92 of Chapter 58  
28 of the General Statutes.

29 **SECTION 4.(a)** Section 1 of this act becomes effective January 1, 2008, and  
30 applies to contracts and agreements entered into on or after that date and to vehicle  
31 protection products sold or offered for sale on or after that date. The remainder of this  
32 act becomes effective July 1, 2007.

33 **SECTION 4.(b)** This act applies to all vehicle protection products sold or  
34 offered for sale on or after the effective date of this act. The failure of any person to  
35 comply with this act prior to its effective date shall not be admissible in any court  
36 proceeding, administrative proceeding, arbitration, or alternative dispute resolution  
37 proceeding and may not otherwise be used to prove that the action of any person or the  
38 affected vehicle protection product was unlawful or otherwise improper. The adoption  
39 of this act does not imply that a vehicle protection product warranty was insurance prior  
40 to the effective date of this act. Nothing in this subsection shall be construed to require  
41 the application of the penalty provisions where this subsection is not applicable.