

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1416*

Short Title: Vehicle Protection Product Act. (Public)

Sponsors: Senator Weinstein.

Referred to: Commerce, Small Business and Entrepreneurship.

March 26, 2007

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)
28 includes a written warranty. For purposes of this subdivision, the term
29 "vehicle protection product" shall include alarm systems, body part

1 marking products, steering locks, window etch products, pedal and
2 ignition locks, fuel and ignition kill switches, and electronic, radio, and
3 satellite tracking devices.

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

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

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

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

27 **§ 58-92-10. Scope and exemptions.**

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

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

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

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

39 **§ 58-92-15. Registration and filing requirements of warrantors.**

40 (a) A person shall not operate as a warrantor or represent to the public that the
41 person is a warrantor unless the person is registered with the Department on a form
42 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.