

1 ENGROSSED SENATE
2 BILL NO. 2117

By: Sparks of the Senate
and
Hickman of the House

3
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5
6
7 [insurance - Vehicle Protection Product Act -
8 codification -

9 effective date]
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11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 6650 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 This act shall be known and may be cited as the "Vehicle
16 Protection Product Act".

17 SECTION 2. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 6651 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

20 As used in the Vehicle Protection Product Act:

21 1. "Administrator" means a third party other than the warrantor
22 who is designated by the warrantor to be responsible for the
23 administration of vehicle protection product warranties;

24 2. "Commissioner" means the Insurance Commissioner;

1 3. "Department" means the Insurance Department;

2 4. "Incidental costs" means expenses specified in the warranty
3 incurred by the warranty holder related to the failure of the
4 vehicle protection product to perform as provided in the warranty.
5 Incidental costs may include insurance policy deductibles, rental
6 vehicle charges, the difference between the actual value of the
7 stolen vehicle at the time of theft and the cost of a replacement
8 vehicle, vehicle excise taxes, vehicle registration fees,
9 certificate of title fees, transaction fees and mechanical
10 inspection fees;

11 5. "Service contract" means a contract or agreement as defined
12 under the Service Warranty Insurance Act in Sections 6601 through
13 6639 of Title 36 of the Oklahoma Statutes;

14 6. "Vehicle protection product" means a vehicle protection
15 device, system, or service that:

- 16 a. is installed on or applied to a vehicle,
- 17 b. is designed to prevent loss or damage to a vehicle
18 from a specific cause, and
- 19 c. includes a written warranty.

20 For purposes of this section, the term vehicle protection
21 product shall include alarm systems, body part marking products,
22 steering locks, window etch products, pedal and ignition locks, fuel
23 and ignition kill switches, and electronic, radio and satellite
24 tracking devices;

1 7. "Vehicle protection product warranty" or "warranty" means a
2 written agreement by a warrantor that provides if the vehicle
3 protection product fails to prevent loss or damage to a vehicle from
4 a specific cause, that the warrantor will pay to or on behalf of the
5 warranty holder specified incidental costs as a result of the
6 failure of the vehicle protection product to perform pursuant to the
7 terms of the warranty;

8 8. "Vehicle protection product warrantor" or "warrantor" means
9 a person who is contractually obligated to the warranty holder under
10 the terms of the vehicle protection product warranty agreement.
11 Warrantor does not include an authorized insurer providing a
12 warranty reimbursement insurance policy;

13 9. "Warranty holder" means a person who purchases a vehicle
14 protection product or who is a permitted transferee; and

15 10. "Warranty reimbursement insurance policy" means a policy of
16 insurance that is issued to the vehicle protection product warrantor
17 to provide reimbursement to the warrantor or to pay on behalf of the
18 warrantor all covered contractual obligations incurred by the
19 warrantor under the terms and conditions of the insured vehicle
20 protection product warranties issued by the warrantor.

21 SECTION 3. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 6652 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. No vehicle protection product may be sold or offered for
2 sale in this state unless the seller, warrantor, and administrator,
3 if any, comply with the provisions of the Vehicle Protection Product
4 Act.

5 B. Vehicle protection product warrantors and related vehicle
6 protection product sellers and warranty administrators complying
7 with the Vehicle Protection Product Act are not required to comply
8 with and are not subject to any other provisions of the Insurance
9 Code.

10 C. Service contract providers who do not sell vehicle
11 protection products are not subject to the requirements of the
12 Vehicle Protection Product Act and sales of the vehicle protection
13 products are exempt from the requirements of the Service Warranty
14 Insurance Act.

15 D. Warranties, indemnity agreements, and guarantees that are
16 not provided as a part of a vehicle protection product are not
17 subject to the provisions of the Vehicle Protection Product Act.

18 SECTION 4. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 6653 of Title 36, unless there
20 is created a duplication in numbering, reads as follows:

21 A. A person may not operate as a warrantor or represent to the
22 public that the person is a warrantor unless the person is
23 registered with the Insurance Department on a form prescribed by the
24 Commissioner.

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

4 1. The warrantor's name, any fictitious names under which the
5 warrantor does business in the state, principal office address, and
6 telephone number;

7 2. The name and address of the warrantor's agent for service of
8 process in the state if other than the warrantor;

9 3. The names of the warrantor's executive officer or officers
10 directly responsible for the warrantor's vehicle protection product
11 business;

12 4. The name, address, and telephone number of any
13 administrators designated by the warrantor to be responsible for the
14 administration of vehicle protection product warranties in this
15 state;

16 5. A copy of the warranty reimbursement insurance policy or
17 policies or other financial information required by Section 5 of
18 this act;

19 6. a copy of each warranty the warrantor proposes to use in
20 this state; and

21 7. A statement indicating under which provision of Section 5 of
22 this act the warrantor qualified to do business in this state as a
23 warrantor.

1 C. The Commissioner may charge each registrant a reasonable fee
2 to offer the cost of processing the registration and maintaining the
3 records in an amount not to exceed Two Hundred Fifty Dollars
4 (\$250.00) annually. The information in paragraphs 1 and 2 of
5 subsection B of this section shall be made available to the public.

6 D. If a registrant fails to register by the renewal deadline,
7 the Commissioner shall give them written notice of the failure and
8 the registrant will have thirty (30) days to complete the renewal of
9 their registration before they are suspended from being registered
10 in this state.

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

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 6654 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 No vehicle protection product shall be sold, or offered for sale
19 in this state unless the warrantor meets the conditions specified in
20 either paragraph 1 or 2 of this section in order to ensure adequate
21 performance under the warranty. No other financial security
22 requirements or financial standards for warrantors shall be
23 required.

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1 1. The vehicle protection product warrantor is insured under a
2 warranty reimbursement policy issued by an insurer authorized to do
3 business in this state which provides that:

- 4 a. the insurer will pay to, or on behalf of, the
5 warrantor one hundred percent (100%) of all sums that
6 the warrantor is legally obligated to pay according to
7 the warrantor's contractual obligations under the
8 warrantor's vehicle protection product warranty,
- 9 b. a true and correct copy of the warranty reimbursement
10 insurance policy has been filed with the Commissioner
11 by the warrantor, and
- 12 c. the policy contains the provision required in Section
13 6 of this act.

- 14 2. a. The vehicle protection product warrantor, or its
15 parent company in accordance with subparagraph b of
16 this paragraph, maintains a net worth or stockholders'
17 equity of Fifty Million Dollars (\$50,000,000.00); and
- 18 b. The warrantor provides the Commissioner with a copy of
19 the warrantor's or the warrantor's parent company's
20 most recent Form 10-K or Form 20-F filed with the
21 Securities and Exchange Commission within the last
22 calendar year or, if the warrantor does not file with
23 the Securities and Exchange Commission, a copy of the
24 warrantor or the warrantor's parent company's audited

1 financial statements that shows a net worth of the
2 warrantor or its parent company of at least Fifty
3 Million Dollars (\$50,000,000.00). If the warrantor's
4 parent company's Form 10-K, Form 20-F, or audited
5 financial statements are filed to meet the warrantor's
6 financial stability requirement, then the parent
7 company shall agree to guarantee the obligations of
8 the warrantor relating to warranties issued by the
9 warrantor in this state. The financial information
10 filed under this subparagraph shall be confidential as
11 a trade secret of the entity filing the information
12 and not subject to public disclosure.

13 SECTION 6. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 6655 of Title 36, unless there
15 is created a duplication in numbering, reads as follows:

16 No warranty reimbursement insurance policy shall be issued,
17 sold, or offered for sale in this state unless the policy meets the
18 conditions set forth in this section.

19 1. The policy states that the issuer of the policy shall
20 reimburse or pay on behalf of the vehicle protection product
21 warrantor all covered sums which the warrantor is legally obligated
22 to pay or shall provide all service that the warrantor is legally
23 obligated to perform according to the warrantor's contractual
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1 obligations under the provisions of the insured warranties issued by
2 the warrantor.

3 2. The policy states that in the event payment due under the
4 terms of the warranty is not provided by the warrantor within sixty
5 (60) days after proof of loss has been filed according to the terms
6 of the warranty by the warranty holder, the warranty holder may file
7 directly with the warranty reimbursement insurance company for
8 reimbursement.

9 3. The policy provides that a warranty reimbursement insurance
10 company that insures a warranty shall be deemed to have received
11 payment of the premium if the warranty holder paid for the vehicle
12 protection product and the insurer's liability under the policy
13 shall not be reduced or relieved by a failure of the warrantor, for
14 any reason, to report the issuance of a warranty to the insurer.

15 4. The policy has the following provisions regarding
16 cancellation of the policy:

17 a. the issuer of a reimbursement insurance policy shall
18 not cancel such policy until a notice of cancellation
19 in writing has been mailed or delivered to the
20 Commissioner and each insured warrantor,

21 b. the cancellation of a reimbursement insurance policy
22 shall not reduce the issuer's responsibility for
23 vehicle protection products sold prior to the date of
24 cancellation, and

1 c. in the event an insurer cancels a policy that a
2 warrantor has filed with the Commissioner, the
3 warrantor shall do either of the following:

- 4 (1) file a copy of a new policy with the
5 Commissioner, before the termination of the prior
6 policy, providing no lapse in coverage following
7 the termination of the prior policy, and
8 (2) discontinue offering warranties as of the
9 termination date of the policy until a new policy
10 becomes effective and is accepted by the
11 Commissioner.

12 SECTION 7. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 6656 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Any vehicle protection product shall not be sold or offered
16 for sale in this state unless the warranty:

17 1. States "The obligations of the warrantor to the warranty
18 holder are guaranteed under a warranty reimbursement insurance
19 policy" if the warrantor elects to meet its financial responsibility
20 obligations under paragraph 1 of Section 5 of this act, or states
21 "The obligations of the warrantor under this warranty are backed by
22 the full faith and credit of the warrantor" if the warrantor elects
23 to meet its financial responsibility obligations under paragraph 2
24 of Section 5 of this act;

1 2. States that in the event a warranty holder must make a claim
2 against a party other than the warranty reimbursement insurance
3 policy issuer, the warranty holder is entitled to make a direct
4 claim against the insurer upon the failure of the warrantor to pay
5 any claim or meet any obligation under the terms of the warranty
6 within sixty (60) days after proof of loss has been filed with the
7 warrantor, if the warrantor elects to meet its financial
8 responsibility obligations under paragraph 1 of Section 5 of this
9 act;

10 3. State the name and address of the issuer of the warranty
11 reimbursement insurance policy, and this information need not be
12 preprinted on the warranty form, but may be added to or stamped on
13 the warranty, if the warrantor elects to meet its financial
14 responsibility obligations under paragraph 1 of Section 5 of this
15 act;

16 4. Identifies the warrantor, the seller, and the warranty
17 holder;

18 5. Sets forth the total product purchase price and the terms
19 under which it is to be paid; however, the purchase price is not
20 required to be preprinted on the vehicle protection product warranty
21 and may be negotiated with the consumer at the time of sale;

22 6. Sets forth the procedure for making a claim, including a
23 telephone number;

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1 7. Specifies the payments or performance to be provided under
2 the warranty including payments for incidental costs, the manner of
3 calculation or determination of payments or performance, and any
4 limitations, exceptions or exclusions;

5 8. Sets forth all of the obligations and duties of the warranty
6 holder such as the duty to protect against any further damage to the
7 vehicle, the obligation to notify the warrantor in advance of any
8 repair, or other similar requirements, if any;

9 9. Sets forth any terms, restrictions, or conditions governing
10 transferability and cancellation of the warranty, if any; and

11 10. Contains a disclosure that reads substantially as follows:
12 "This agreement is a product warranty and is not insurance."

13 B. Incidental costs may be reimbursed under the provisions of
14 the warranty in either a fixed amount specified in the warranty or
15 sales agreement or by the use of a formula itemizing specific
16 incidental costs incurred by the warranty holder.

17 SECTION 8. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 6657 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Unless licensed as an insurance company, a vehicle
21 protection product warrantor shall not use in its name, contracts,
22 or literature, any of the words "insurance", "casualty", "surety",
23 "mutual", or any other words descriptive of the insurance, casualty,
24 or surety business or deceptively similar to the name or description

1 of any insurance or surety corporation, or any other vehicle
2 protection product warrantor. A warrantor may use the term
3 "guaranty" or similar word in the warrantor's name.

4 B. A vehicle protection product seller or warrantor may not
5 require as a condition of financing that a retail purchaser of a
6 motor vehicle purchase a vehicle protection product.

7 SECTION 9. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 6658 of Title 36, unless there
9 is created a duplication in numbering, reads as follows:

10 A. All vehicle protection product warrantors shall keep
11 accurate accounts, books, and records concerning transactions
12 regulated under the Vehicle Protection Product Act.

13 B. A vehicle protection product warrantor's accounts, books,
14 and records shall include:

- 15 1. Copies of all vehicle protection product warranties;
- 16 2. The name and address of each warranty holder; and
- 17 3. The dates, amounts, and descriptions of all receipts,
18 claims, and expenditures.

19 C. A vehicle protection product warrantor shall retain all
20 required accounts, books, and records pertaining to each warranty
21 holder for at least two (2) years after the specified period of
22 coverage has expired. A warrantor discontinuing business in this
23 state shall maintain its records until it furnishes the Commissioner
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1 satisfactory proof that is has discharged all obligations to
2 warranty holders in this state.

3 D. Vehicle protection product warrantors shall make all
4 accounts, books, and records concerning transactions regulated under
5 the Vehicle Protection Product Act available to the Commissioner for
6 examination.

7 SECTION 10. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 6559 of Title 36, unless there
9 is created a duplication in numbering, reads as follows:

10 A. The Commissioner may conduct examinations of warrantors,
11 administrators, or other persons to enforce the Vehicle Protection
12 Product Act and protect warranty holders in this state. Upon
13 request of the Commissioner, a warrantor shall make available for
14 the Commissioner all accounts, books, and records concerning vehicle
15 protection products sold by the warrantor that are necessary to
16 enable the Commissioner to reasonably determine compliance or
17 noncompliance with the Vehicle Protection Product Act.

18 B. The Commissioner may take action that is necessary or
19 appropriate to enforce the provisions of the Vehicle Protection
20 Product Act and the Commissioner's rules and orders and to protect
21 warranty holders in this state. If a warrantor engages in a pattern
22 or practice of conduct that violates the Vehicle Protection Product
23 Act and that the Commissioner reasonably believes threatens to
24 render the warrantor insolvent or cause irreparable loss or injury

1 to the property or business of any person or company located in this
2 state, the Commissioner may:

3 1. Issue an order directed to that warrantor to cease and
4 desist from engaging in further acts, practices, or transactions
5 that are causing the conduct;

6 2. Issue an order prohibiting that warrantor from selling or
7 offering for sale vehicle protection products in violation of the
8 Vehicle Protection Product Act;

9 3. Issue an order imposing a civil penalty on that warrantor;
10 or

11 4. Issue any combination of the foregoing, as applicable.

12 C. Prior to the effective date of any order issued pursuant to
13 this section, the Commissioner must provide written notice of the
14 order to the warrantor and the opportunity for a hearing to be held
15 within ten (10) business days after receipt of the notice, except
16 prior notice and hearing shall not be required if the Commissioner
17 reasonably believes that the warrantor has become, or is about to
18 become, insolvent.

19 D. A person aggrieved by an order issued under this section may
20 request a hearing before the Commissioner. The hearing request shall
21 be filed with the Commissioner within twenty (20) days after the
22 date the Commissioner's order is effective, and the Commissioner
23 must hold such a hearing within fifteen (15) days after the receipt
24 of the hearing request.

1 E. At the hearing, the burden shall be on the Commissioner to
2 show why the order issued pursuant to this section is justified.
3 The provisions of the Administrative Procedures Act shall apply to a
4 hearing request under this section.

5 F. The Commissioner may bring an action in any court of
6 competent jurisdiction for an injunction or other appropriate relief
7 to enjoin threatened or existing violations of the Vehicle
8 Protection Product Act or of the Commissioner's orders or rules. An
9 action filed under this section also may seek restitution on behalf
10 of persons aggrieved by a violation of the Vehicle Protection
11 Product Act or orders or rules of the Commissioner.

12 G. A person who is found to have violated provisions of the
13 Vehicle Protection Product Act or orders or rules of the
14 Commissioner may be ordered to pay to the Commissioner a civil
15 penalty in an amount, determined by the Commissioner, or not more
16 than Five Hundred Dollars (\$500.00) per violation and not more than
17 Ten Thousand Dollars (\$10,000.00) in the aggregate for all
18 violations of a similar nature. For purposes of this section,
19 violations shall be of a similar nature if the violation consists of
20 the same or similar course of conduct, action, or practice,
21 irrespective of the number of times the conduct, action, or practice
22 that is determined to be a violation of the Vehicle Protection
23 Product Act occurred.

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1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6660 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 The Commissioner may promulgate rules consistent with the
5 provisions of the Vehicle Protection Product Act as are necessary to
6 implement them. Such rules shall include disclosures for the
7 benefit of the warranty holder, record keeping, and procedures for
8 public complaints. These rules shall also include the conditions
9 under which surplus lines insurers may be rejected for the purpose
10 of underwriting vehicle protection product warranty agreements.

11 SECTION 12. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 6661 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

14 The Vehicle Protection Product Act applies to all vehicle
15 protection products sold or offered for sale on or after the
16 effective date of this act. The failure of any person to comply
17 with the Vehicle Protection Product Act prior to its effective date
18 shall not be admissible in any court proceeding, administrative
19 proceeding, arbitration, or alternative dispute resolution
20 proceeding and may not otherwise be used to prove that the action of
21 any person or the affected vehicle protection product was unlawful
22 or otherwise improper. The adoption of the Vehicle Protection
23 Product Act does not imply that a vehicle protection product
24 warranty was insurance prior to the effective date of this act.

