

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 2117

By: Sparks

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6 AS INTRODUCED

7 An Act relating to insurance; creating the Vehicle
8 Protection Product Act; providing short title;
9 providing definitions; specifying compliance with the
10 Vehicle Protection Product Act; requiring annual
11 registration of warrantors; specifying information to
12 be contained in registration records; authorizing
13 fee; providing exception to registration as a
14 warrantor; providing financial responsibility
15 requirements; setting forth requirements to be
16 contained in the warranty reimbursement insurance
17 policy; specifying requirements contained in a
18 vehicle protection product warranty; prohibiting a
19 warrantor from using certain words to describe its
20 product or business; requiring certain records to be
21 kept and providing procedures related thereto;
22 allowing the Insurance Commissioner to conduct
23 certain examinations and to take certain actions to
24 enforce the Vehicle Protection Product Act;
authorizing the promulgation of rules; specifying
applicability of the Vehicle Protection Product Act;
providing for codification; and providing an
effective date.

21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

6 As used in the Vehicle Protection Product Act:

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

10 2. "Commissioner" means the Insurance Commissioner;

11 3. "Department" means the Insurance Department;

12 4. "Incidental costs" means expenses specified in the warranty
13 incurred by the warranty holder related to the failure of the
14 vehicle protection product to perform as provided in the warranty.
15 Incidental costs may include insurance policy deductibles, rental
16 vehicle charges, the difference between the actual value of the
17 stolen vehicle at the time of theft and the cost of a replacement
18 vehicle, vehicle excise taxes, vehicle registration fees,
19 certificate of title fees, transaction fees and mechanical
20 inspection fees;

21 5. "Service contract" means a contract or agreement as defined
22 under the Service Warranty Insurance Act in Sections 6601 through
23 6639 of Title 36 of the Oklahoma Statutes;

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

- 3 a. is installed on or applied to a vehicle,
- 4 b. is designed to prevent loss or damage to a vehicle
5 from a specific cause, and
- 6 c. includes a written warranty.

7 For purposes of this section, the term vehicle protection
8 product shall include alarm systems, body part marking products,
9 steering locks, window etch products, pedal and ignition locks, fuel
10 and ignition kill switches, and electronic, radio and satellite
11 tracking devices;

12 7. "Vehicle protection product warranty" or "warranty" means a
13 written agreement by a warrantor that provides if the vehicle
14 protection product fails to prevent loss or damage to a vehicle from
15 a specific cause, that the warrantor will pay to or on behalf of the
16 warranty holder specified incidental costs as a result of the
17 failure of the vehicle protection product to perform pursuant to the
18 terms of the warranty;

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

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

3 10. "Warranty reimbursement insurance policy" means a policy of
4 insurance that is issued to the vehicle protection product warrantor
5 to provide reimbursement to the warrantor or to pay on behalf of the
6 warrantor all covered contractual obligations incurred by the
7 warrantor under the terms and conditions of the insured vehicle
8 protection product warranties issued by the warrantor.

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

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

16 B. Vehicle protection product warrantors and related vehicle
17 protection product sellers and warranty administrators complying
18 with the Vehicle Protection Product Act are not required to comply
19 with and are not subject to any other provisions of the Insurance
20 Code.

21 C. Service contract providers who do not sell vehicle
22 protection products are not subject to the requirements of the
23 Vehicle Protection Product Act and sales of the vehicle protection
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1 products are exempt from the requirements of the Service Warranty
2 Insurance Act.

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

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

9 A. A person may not operate as a warrantor or represent to the
10 public that the person is a warrantor unless the person is
11 registered with the Insurance Department on a form prescribed by the
12 Commissioner.

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

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

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

21 3. The names of the warrantor's executive officer or officers
22 directly responsible for the warrantor's vehicle protection product
23 business;

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

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

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

10 7. A statement indicating under which provision of Section 5 of
11 this act the warrantor qualified to do business in this state as a
12 warrantor.

13 C. The Commissioner may charge each registrant a reasonable fee
14 to offer the cost of processing the registration and maintaining the
15 records in an amount not to exceed Two Hundred Fifty Dollars
16 (\$250.00) annually. The information in paragraphs 1 and 2 of
17 subsection B of this section shall be made available to the public.

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

23 E. An administrator or person who sells or solicits a sale of a
24 vehicle protection product but who is not a warrantor shall not be

1 required to register as a warrantor or be licensed under the
2 insurance laws of this state to sell vehicle protection products.

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

6 No vehicle protection product shall be sold, or offered for sale
7 in this state unless the warrantor meets the conditions specified in
8 either paragraph 1 or 2 of this section in order to ensure adequate
9 performance under the warranty. No other financial security
10 requirements or financial standards for warrantors shall be
11 required.

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

- 15 a. the insurer will pay to, or on behalf of, the
16 warrantor one hundred percent (100%) of all sums that
17 the warrantor is legally obligated to pay according to
18 the warrantor's contractual obligations under the
19 warrantor's vehicle protection product warranty,
- 20 b. a true and correct copy of the warranty reimbursement
21 insurance policy has been filed with the Commissioner
22 by the warrantor, and
- 23 c. the policy contains the provision required in Section
24 6 of this act.

- 1 2. a. The vehicle protection product warrantor, or its
2 parent company in accordance with subparagraph b of
3 this paragraph, maintains a net worth or stockholders'
4 equity of Fifty Million Dollars (\$50,000,000.00); and
- 5 b. The warrantor provides the Commissioner with a copy of
6 the warrantor's or the warrantor's parent company's
7 most recent Form 10-K or Form 20-F filed with the
8 Securities and Exchange Commission within the last
9 calendar year or, if the warrantor does not file with
10 the Securities and Exchange Commission, a copy of the
11 warrantor or the warrantor's parent company's audited
12 financial statements that shows a net worth of the
13 warrantor or its parent company of at least Fifty
14 Million Dollars (\$50,000,000.00). If the warrantor's
15 parent company's Form 10-K, Form 20-F, or audited
16 financial statements are filed to meet the warrantor's
17 financial stability requirement, then the parent
18 company shall agree to guarantee the obligations of
19 the warrantor relating to warranties issued by the
20 warrantor in this state. The financial information
21 filed under this subparagraph shall be confidential as
22 a trade secret of the entity filing the information
23 and not subject to public disclosure.
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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6655 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

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

7 1. The policy states that the issuer of the policy shall
8 reimburse or pay on behalf of the vehicle protection product
9 warrantor all covered sums which the warrantor is legally obligated
10 to pay or shall provide all service that the warrantor is legally
11 obligated to perform according to the warrantor's contractual
12 obligations under the provisions of the insured warranties issued by
13 the warrantor.

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

20 3. The policy provides that a warranty reimbursement insurance
21 company that insures a warranty shall be deemed to have received
22 payment of the premium if the warranty holder paid for the vehicle
23 protection product and the insurer's liability under the policy
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1 shall not be reduced or relieved by a failure of the warrantor, for
2 any reason, to report the issuance of a warranty to the insurer.

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

5 a. the issuer of a reimbursement insurance policy shall
6 not cancel such policy until a notice of cancellation
7 in writing has been mailed or delivered to the
8 Commissioner and each insured warrantor,

9 b. the cancellation of a reimbursement insurance policy
10 shall not reduce the issuer's responsibility for
11 vehicle protection products sold prior to the date of
12 cancellation, and

13 c. in the event an insurer cancels a policy that a
14 warrantor has filed with the Commissioner, the
15 warrantor shall do either of the following:

16 (1) file a copy of a new policy with the
17 Commissioner, before the termination of the prior
18 policy, providing no lapse in coverage following
19 the termination of the prior policy, and

20 (2) discontinue offering warranties as of the
21 termination date of the policy until a new policy
22 becomes effective and is accepted by the
23 Commissioner.

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

4 A. Every vehicle protection product warranty shall not be sold
5 or offered for sale in this state unless the warranty:

6 1. States "The obligations of the warrantor to the warranty
7 holder are guaranteed under a warranty reimbursement insurance
8 policy" if the warrantor elects to meet its financial responsibility
9 obligations under paragraph 1 of Section 5 of this act, or states
10 "The obligations of the warrantor under this warranty are backed by
11 the full faith and credit of the warrantor" if the warrantor elects
12 to meet its financial responsibility obligations under paragraph 2
13 of Section 5 of this act;

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

23 3. State the name and address of the issuer of the warranty
24 reimbursement insurance policy, and this information need not be

1 preprinted on the warranty form, but may be added to or stamped on
2 the warranty, if the warrantor elects to meet its financial
3 responsibility obligations under paragraph 1 of Section 5 of this
4 act;

5 4. Identifies the warrantor, the seller, and the warranty
6 holder;

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

11 6. Sets forth the procedure for making a claim, including a
12 telephone number;

13 7. Specifies the payments or performance to be provided under
14 the warranty including payments for incidental costs, the manner of
15 calculation or determination of payments or performance, and any
16 limitations, exceptions or exclusions;

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

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

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

1 B. Incidental costs may be reimbursed under the provisions of
2 the warranty in either a fixed amount specified in the warranty or
3 sales agreement or by the use of a formula itemizing specific
4 incidental costs incurred by the warranty holder.

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

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

16 B. A vehicle protection product seller or warrantor may not
17 require as a condition of financing that a retail purchaser of a
18 motor vehicle purchase a vehicle protection product.

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

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

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

- 3 1. Copies of all vehicle protection product warranties;
- 4 2. The name and address of each warranty holder; and
- 5 3. The dates, amounts, and descriptions of all receipts,
6 claims, and expenditures.

7 C. A vehicle protection product warrantor shall retain all
8 required accounts, books, and records pertaining to each warranty
9 holder for at least two (2) years after the specified period of
10 coverage has expired. A warrantor discontinuing business in this
11 state shall maintain its records until it furnishes the Commissioner
12 satisfactory proof that it has discharged all obligations to
13 warranty holders in this state.

14 D. Vehicle protection product warrantors shall make all
15 accounts, books, and records concerning transactions regulated under
16 the Vehicle Protection Product Act available to the Commissioner for
17 examination.

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

21 A. The Commissioner may conduct examinations of warrantors,
22 administrators, or other persons to enforce the Vehicle Protection
23 Product Act and protect warranty holders in this state. Upon
24 request of the Commissioner, a warrantor shall make available for

1 the Commissioner all accounts, books, and records concerning vehicle
2 protection products sold by the warrantor that are necessary to
3 enable the Commissioner to reasonably determine compliance or
4 noncompliance with the Vehicle Protection Product Act.

5 B. The Commissioner may take action that is necessary or
6 appropriate to enforce the provisions of the Vehicle Protection
7 Product Act and the Commissioner's rules and orders and to protect
8 warranty holders in this state. If a warrantor engages in a pattern
9 or practice of conduct that violates the Vehicle Protection Product
10 Act and that the Commissioner reasonably believes threatens to
11 render the warrantor insolvent or cause irreparable loss or injury
12 to the property or business of any person or company located in this
13 state, the Commissioner may:

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

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

20 3. Issue an order imposing a civil penalty on that warrantor;
21 or

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

23 C. Prior to the effective date of any order issued pursuant to
24 this section, the Commissioner must provide written notice of the

1 order to the warrantor and the opportunity for a hearing to be held
2 within ten (10) business days after receipt of the notice, except
3 prior notice and hearing shall not be required if the Commissioner
4 reasonably believes that the warrantor has become, or is about to
5 become, insolvent.

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

12 E. At the hearing, the burden shall be on the Commissioner to
13 show why the order issued pursuant to this section is justified.
14 The provisions of the Administrative Procedures Act shall apply to a
15 hearing request under this section.

16 F. The Commissioner may bring an action in any court of
17 competent jurisdiction for an injunction or other appropriate relief
18 to enjoin threatened or existing violations of the Vehicle
19 Protection Product Act or of the Commissioner's orders or rules. An
20 action filed under this section also may seek restitution on behalf
21 of persons aggrieved by a violation of the Vehicle Protection
22 Product Act or orders or rules of the Commissioner.

23 G. A person who is found to have violated provisions of the
24 Vehicle Protection Product Act or orders or rules of the

1 Commissioner may be ordered to pay to the Commissioner a civil
2 penalty in an amount, determined by the Commissioner, or not more
3 than Five Hundred Dollars (\$500.00) per violation and not more than
4 Ten Thousand Dollars (\$10,000.00) in the aggregate for all
5 violations of a similar nature. For purposes of this section,
6 violations shall be of a similar nature if the violation consists of
7 the same of similar course of conduct, action, or practice,
8 irrespective of the number of times the conduct, action, or practice
9 that is determined to be a violation of the Vehicle Protection
10 Product Act occurred.

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

14 The Commissioner may promulgate rules consistent with the
15 provisions of the Vehicle Protection Product Act as are necessary to
16 implement them. Such rules shall include disclosures for the
17 benefit of the warranty holder, record keeping, and procedures for
18 public complaints. These rules shall also include the conditions
19 under which surplus lines insurers may be rejected for the purpose
20 of underwriting vehicle protection product warranty agreements.

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

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1 The Vehicle Protection Product Act applies to all vehicle
2 protection products sold or offered for sale on or after the
3 effective date of this act. The failure of any person to comply
4 with the Vehicle Protection Product Act prior to its effective date
5 shall not be admissible in any court proceeding, administrative
6 proceeding, arbitration, or alternative dispute resolution
7 proceeding and may not otherwise be used to prove that the action of
8 any person or the affected vehicle protection product was unlawful
9 or otherwise improper. The adoption of the Vehicle Protection
10 Product Act does not imply that a vehicle protection product
11 warranty was insurance prior to the effective date of this act.
12 Nothing in this section shall be construed to require the
13 application of the penalty provisions where this section is not
14 applicable.

15 SECTION 13. This act shall become effective January 1, 2009.

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