

By: Senator(s) Hewes

To: Judiciary, Division B

SENATE BILL NO. 3028

1 AN ACT TO CREATE THE MISSISSIPPI VEHICLE PROTECTION PRODUCT  
 2 ACT; TO DEFINE CERTAIN TERMS FOR THE PURPOSE OF THIS ACT; TO  
 3 PROVIDE THAT ANY VEHICLE PROTECTION DEVICE, SYSTEM OR SERVICE THAT  
 4 IS SOLD IN THIS STATE WITH A WARRANTY MUST MEET CERTAIN  
 5 REQUIREMENTS PRESCRIBED BY THIS ACT; TO PROVIDE THAT VEHICLE  
 6 PROTECTION WARRANTS ARE NOT CONTRACTS OF INSURANCE AND ARE EXEMPT  
 7 FROM THE LAW REGULATING INSURANCE; TO REQUIRE WARRANTORS OF  
 8 VEHICLE PROTECTION PRODUCTS TO REGISTER WITH THE ATTORNEY GENERAL;  
 9 TO REQUIRE CERTAIN FINANCIAL RESPONSIBILITY AND WARRANTY  
 10 REIMBURSEMENTS TO BE MAINTAINED BY A WARRANTOR; TO REQUIRE  
 11 WARRANTORS TO DISCLOSE CERTAIN INFORMATION TO THE WARRANTY HOLDER;  
 12 TO PROHIBIT CERTAIN ACTS OF WARRANTORS; TO REQUIRE WARRANTORS TO  
 13 RETAIN AN ACCURATE RECORD OF ACCOUNTS, BOOKS AND RECORDS  
 14 CONCERNING TRANSACTIONS REGULATED BY THIS ACT; TO AUTHORIZE THE  
 15 ATTORNEY GENERAL TO ESTABLISH CERTAIN ADMINISTRATIVE SANCTIONS AND  
 16 IMPOSE PENALTIES FOR VIOLATIONS OF THIS ACT; TO AUTHORIZE THE  
 17 ATTORNEY GENERAL TO ADOPT RULES AND REGULATIONS RELATING TO THE  
 18 IMPLEMENTATION OF THIS ACT; AND FOR RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 **SECTION 1.** This act shall be known and may be cited as the  
 21 "Mississippi Vehicle Protection Product Act."

22 **SECTION 2.** As used in this section:

23 (a) "Administrator" means a third party other than the  
 24 warrantor who is designated by the warrantor to be responsible for  
 25 the administration of vehicle protection product warranties.

26 (b) "Attorney General" means the Attorney General of  
 27 the State of Mississippi.

28 (c) "Incidental costs" means expenses specified in the  
 29 warranty incurred by the warranty holder related to the failure of  
 30 the vehicle protection product to perform as provided in the  
 31 warranty. Incidental costs may include, without limitation,  
 32 insurance policy deductibles, rental vehicle charges, the  
 33 difference between the actual value of the stolen vehicle at the  
 34 time of theft and the cost of a replacement vehicle, sales taxes,

35 registration fees, transaction fees and mechanical inspection  
36 fees.

37 (d) "Vehicle protection product" means a vehicle  
38 protection device, system or service that:

39 (i) Is installed on or applied to a vehicle;

40 (ii) Is designed to prevent loss or damage to a  
41 vehicle from a specific cause; and

42 (iii) Includes a written warranty.

43 (e) The term "vehicle protection device, system or  
44 service" shall include, without limitation, alarm systems, body  
45 part marking products, steering locks, window etch products, pedal  
46 and ignition locks, fuel and ignition kill switches and  
47 electronic, radio and satellite tracking devices.

48 (f) "Vehicle protection product warranty" or "warranty"  
49 means a written agreement by a warrantor that provides that if the  
50 vehicle protection product fails to prevent loss or damage to a  
51 vehicle from a specific cause, then the warranty holder shall be  
52 paid specified incidental costs by the warrantor as a result of  
53 the failure of the vehicle protection product to perform pursuant  
54 to the terms of the warranty.

55 (g) "Vehicle protection product warrantor" or  
56 "warrantor" means a person who is contractually obligated to the  
57 warranty holder under the terms of the vehicle protection product  
58 warranty agreement. "Warrantor" does not include an authorized  
59 insurer.

60 (h) "Warranty holder" means the person who purchases a  
61 vehicle protection product or who is a permitted transferee.

62 (i) "Warranty reimbursement insurance policy" means a  
63 policy of insurance that is issued to the vehicle protection  
64 product warrantor to provide reimbursement to the warrantor or to  
65 pay on behalf of the warrantor all covered contractual obligations  
66 incurred by the warrantor under the terms and conditions of the

67 insured vehicle protection product warranties sold by the  
68 warrantor.

69 **SECTION 3.** (1) No vehicle protection product may be sold or  
70 offered for sale in this state unless the seller, warrantor and  
71 administrator, if any, comply with the provisions of this act.

72 (2) A vehicle protection product warranty provided or sold  
73 in compliance with this act is not a contract of insurance.

74 (3) Warranties, indemnity agreements and guarantees that are  
75 not provided as a part of a vehicle protection product are not  
76 subject to the provisions of this act.

77 **SECTION 4.** (1) A person may not operate as a warrantor or  
78 represent to the public that the person is a warrantor unless the  
79 person is registered with the Attorney General's office on a form  
80 prescribed by the Attorney General.

81 (2) Warrantor registration records shall be filed annually  
82 and shall be updated by the warrantor within thirty (30) days of  
83 any change. The registration records shall contain the following  
84 information:

85 (a) The warrantor's name, any other names under which  
86 the warrantor does business in the state, principal office address  
87 and telephone number;

88 (b) The names of the warrantor's executive officer or  
89 officers directly responsible for the warrantor's vehicle  
90 protection product business;

91 (c) The name, address and telephone number of any  
92 administrators designated by the warrantor to be responsible for  
93 the administration of vehicle protection product warranties in  
94 this state;

95 (d) A copy of the warranty reimbursement insurance  
96 policy or policies or other financial information required by  
97 Section 6 below;

98 (e) A copy of each warranty the warrantor proposes to  
99 use in this state; and

100           (f) A statement indicating under which provision of  
101 Section 5 of this act that the warrantor qualifies to do business  
102 in this state as a warrantor.

103           (3) The Attorney General may charge each registrant a  
104 reasonable fee to offset the cost of processing the registration  
105 and maintaining the records. Such fee shall be set by the  
106 Attorney General in an amount not to exceed the amount necessary  
107 to defray the expenses in administering this act.

108           (4) If a registrant fails to register by the renewal  
109 deadline, the Attorney General shall give the registrant written  
110 notice of the failure and the registrant will have thirty (30)  
111 days to complete the renewal of the registration before the  
112 registration is revoked. Revocation for failure to renew a  
113 registration does not require any additional notice or a hearing.

114           (5) An administrator or person who sells or solicits a sale  
115 of a vehicle protection product but who is not a warrantor shall  
116 not be required to register as a warrantor or be licensed under  
117 the insurance laws of this state to sell vehicle protection  
118 products.

119           SECTION 5. (1) No vehicle protection product shall be sold  
120 or offered for sale in this state unless the vehicle protection  
121 product warrantor is insured under a warranty insurance policy  
122 meeting the following conditions in order to ensure adequate  
123 performance under the warranty:

124           (a) The warranty reimbursement insurance policy is  
125 issued by an insurer authorized to do business in this state and  
126 provides that the insurer will pay to, or on behalf of, the  
127 warrantor one hundred percent (100%) of all sums that the  
128 warrantor is legally obligated to pay according to the warrantor's  
129 contractual obligations under the warrantor's vehicle protection  
130 product warranty;

131 (b) A true and correct copy of the warranty  
132 reimbursement insurance policy has been filed with the Attorney  
133 General by the warrantor; and

134 (c) The policy contains the provisions required by  
135 Section 6 of this act.

136 (2) (a) The vehicles protection warrantor or its parent  
137 company, maintains a net worth of stockholders' equity of Fifty  
138 Million Dollars (\$50,000,000.00).

139 (b) The warrantor provides the Attorney General with a  
140 copy of the warrantor's or the warrantor's parent company's most  
141 recent Form 10-K or Form 20-F filed with the Securities Exchange  
142 Commission within the last calendar year or, if the warrantor does  
143 not file with the Securities Exchange Commission, a copy of the  
144 warrantor's or the warrantor's parent company's audited financial  
145 statements that shows a net worth of the warrantor or its parent  
146 company of at least Fifty Million Dollars (\$50,000,000.00). If  
147 the warrantor's parent company's Form 10-K, Form 20-F or audited  
148 financial statements are filed to meet the warrantor's financial  
149 stability requirement, then the parent company shall agree to  
150 guarantee the obligations of the warrantor relating to the  
151 warranties issued by the warrantor in this state. The audited  
152 financial statements filed pursuant to this section shall be  
153 exempt from public disclosure under the Mississippi Public Records  
154 Act of 1983.

155 **SECTION 6.** No warranty reimbursement insurance policy shall  
156 be issued, sold or offered for sale in this state unless the  
157 policy meets the following conditions:

158 (a) The policy states that the issuer of the policy  
159 will reimburse or pay on behalf of the vehicle protection product  
160 warrantor all covered sums which the warrantor is legally  
161 obligated to pay, or will provide all service that the warrantor  
162 is legally obligated to perform according to the warrantor's  
163 contractual obligations under the provisions of the insured

164 warranties sold by the warrantor;

165           (b) The policy states that in the event that payment  
166 due under the terms of the warranty is not provided by the  
167 warrantor within sixty (60) days after proof of loss has been  
168 filed according to the terms of the warranty by the warranty  
169 holder, the warranty holder may file directly with the warranty  
170 reimbursement insurance company for reimbursement;

171           (c) The policy provides that a warranty reimbursement  
172 insurance company that insures a warranty shall be deemed to have  
173 received payment of the premium if the warranty holder paid for  
174 the vehicle protection product and the insurer's liability under  
175 the policy shall not be reduced or relieved by a failure of the  
176 warrantor, for any reason, to report the issuance of a warranty to  
177 the insurer; and

178           (d) The policy has the following provisions regarding  
179 cancellation of the policy:

180           (i) The issuer of a reimbursement insurance policy  
181 shall not cancel such policy until a notice of cancellation in  
182 writing has been mailed or delivered to the Attorney General and  
183 each insured warrantor;

184           (ii) The cancellation of a reimbursement insurance  
185 policy shall not reduce the issuer's responsibility for vehicle  
186 protection products sold prior to the date of cancellation; and

187           (iii) In the event an insurer cancels a policy  
188 that a warrantor has filed with the Attorney General, the  
189 warrantor shall do either of the following:

190           1. File a copy of a new policy with the  
191 Attorney General, before the termination of the prior policy,  
192 provided that there is no lapse in coverage following the  
193 termination of the prior policy; or

194           2. Discontinue acting as a warrantor as of  
195 the termination date of the policy until a new policy becomes  
196 effective and is accepted by the Attorney General.

197           **SECTION 7.** (1) Every vehicle protection product warranty  
198 shall be written in clear, understandable language and shall be  
199 printed or typed in an easy-to-read point size and font and shall  
200 not be sold or offered for sale in the state unless the warranty:

201           (a) Contains a disclosure that reads substantially as  
202 follows: "This agreement is a product warranty and is not  
203 insurance.";

204           (b) Identifies the warrantor, the administrator (if  
205 any), the seller and the warranty holder;

206           (c) Sets forth the procedure for making a claim,  
207 including a telephone number;

208           (d) Sets forth the total purchase price and the terms  
209 under which it is to be paid, however, the purchase price is not  
210 required to be preprinted on the vehicle protection product  
211 warranty and may be negotiated with the consumer at the time of  
212 sale;

213           (e) Sets forth any terms, restrictions or conditions  
214 governing transferability of the warranty, if any;

215           (f) Conspicuously sets forth all of the obligations and  
216 duties of the warranty holder such as the duty to protect against  
217 any further damage to the vehicle, the obligation to notify the  
218 warrantor in advance of any repair or other similar requirements,  
219 if any;

220           (g) Conspicuously states the existence of a deductible  
221 amount, if any;

222           (h) Specifies the payments or performance to be  
223 provided under the warranty including payments for incidental  
224 costs, the manner of calculation or determination of payments or  
225 performance and any limitations, exceptions or exclusions;

226           (i) Sets forth the conditions on which substitution  
227 will be allowed;

228           (j) Conspicuously states that the obligations of the  
229 warrantor to the warranty holder are insured under a warranty  
230 reimbursement insurance policy;

231           (k) Conspicuously states that, in the event a warranty  
232 holder must make a claim against a party other than the warranty  
233 reimbursement insurance policy issuer, the warranty holder is  
234 entitled to make a direct claim against the insurer upon the  
235 failure of the warrantor to pay any claim or meet any obligation  
236 under the terms of the warranty within sixty (60) days after proof  
237 of loss has been filed with the warrantor; and

238           (l) Conspicuously states the name and address of the  
239 issuer of the warranty reimbursement insurance policy. This  
240 information need not be preprinted on the warranty form but may be  
241 stamped on the warranty.

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

244           (a) A copy of the vehicle protection product warranty;  
245 or

246           (b) A receipt or other written evidence of the purchase  
247 of the vehicle protection product and a copy of the warranty  
248 within thirty (30) days of the date of purchase.

249           **SECTION 8.** (1) No vehicle protection product may be sold or  
250 offered for sale in this state unless the vehicle protection  
251 product warranty clearly states the terms and conditions governing  
252 the cancellation of the sale and warranty, if any.

253           (2) The warrantor may only cancel the warranty if the  
254 warranty holder does any of the following:

255           (a) Fails to pay for the vehicle protection product;

256           (b) Makes a material misrepresentation to the seller or  
257 warrantor;

258           (c) Commits fraud; or

259           (d) Substantially breaches the warranty holder's duties  
260 under the warranty.



261 (3) A warrantor canceling a warranty shall mail written  
262 notice of cancellation to the warranty holder at the last address  
263 of the warranty holder in the warrantor's records at least thirty  
264 (30) days prior to the effective date of the cancellation. The  
265 notice shall state the effective date of the cancellation and the  
266 reason for the cancellation.

267 **SECTION 9.** (1) Unless licensed as an insurance company, a  
268 vehicle protection product warrantor shall not use in its name,  
269 contracts or literature the words "insurance," "casualty,"  
270 "surety," "mutual" or any other word that is descriptive of the  
271 insurance, casualty or surety business, or that is deceptively  
272 similar to the name or description of any insurance or surety  
273 corporation or any other vehicle protection product warrantor. A  
274 warrantor may use the term "guaranty" or a similar word in the  
275 warrantor's name.

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

280 (3) A vehicle protection product warrantor shall not permit  
281 or cause the omission of any material statement in connection with  
282 the sale, offer to sell or advertisement of a vehicle protection  
283 product.

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

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

291 (6) A vehicle protection product seller or warrantor may not  
292 require as a condition of sale or financing that a retail

293 purchaser of a motor vehicle purchase a vehicle protection product  
294 that is not installed on the motor vehicle at the time of sale.

295 **SECTION 10.** (1) All vehicle protection product warrantors  
296 shall keep accurate accounts, books and records concerning  
297 transactions regulated under this act.

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

300 (a) Copies of all vehicle protection product  
301 warranties;

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

303 (c) The dates, amounts and descriptions of all  
304 receipts, claims and expenditures.

305 (3) A vehicle protection product warrantor shall retain all  
306 required accounts, books and records pertaining to each warranty  
307 holder for at least two (2) years after the specified period of  
308 coverage has expired. A warrantor discontinuing business in the  
309 state shall maintain its records until it furnishes the Attorney  
310 General satisfactory proof that it has discharged all obligations  
311 to warranty holders in this state.

312 (4) Vehicle protection product warrantors shall make all  
313 accounts, books and records concerning transactions regulated  
314 under this act available to the Attorney General for the purpose  
315 of examination.

316 **SECTION 11.** (1) (a) The Attorney General may conduct  
317 examinations of warrantors, administrators or other persons to  
318 enforce this act and protect warranty holders in this state. Upon  
319 request of the Attorney General, a warrantor shall make available  
320 to the Attorney General all accounts, books and records concerning  
321 vehicle protection products sold by the warrantor that are  
322 necessary to enable the Attorney General to reasonably determine  
323 compliance or noncompliance with this act.

324 (b) Any person or entity examined shall pay any and all  
325 appropriate and reasonable costs incurred by the Attorney General

326 during the examination, including, but not limited to, the  
327 compensation of such experts, actuaries, examiners or other  
328 persons as may be contracted for by the Attorney General or the  
329 Attorney General's designated appointee for the purpose of  
330 assisting in the examination. Such compensation shall be fixed at  
331 a reasonable amount commensurate with usual compensation for like  
332 services and shall be contracted for in accordance with applicable  
333 state contracting procedures, if applicable.

334 (2) The Attorney General may take action that is necessary  
335 or appropriate to enforce the provisions of this act and the  
336 Attorney General's rules and orders and to protect warranty  
337 holders in this state. If a person or entity violates this act  
338 and the Attorney General reasonably believes such violation  
339 threatens to cause irreparable loss or injury to the property or  
340 business of any person or company located in this state, the  
341 Attorney General may:

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

345 (b) Issue an order prohibiting that warrantor from  
346 selling or offering for sale vehicle protection products in  
347 violation of this act;

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

350 (d) Issue any combination of paragraphs (a) through (c)  
351 of this subsection, as applicable.

352 (3) The Attorney General may bring an action in any court of  
353 competent jurisdiction for an injunction or other appropriate  
354 relief to enjoin threatened or existing violations of this act or  
355 of the Attorney General's orders or rules. An action filed under  
356 this section also may seek restitution on behalf of persons  
357 aggrieved by a violation of this act or orders or rule of the  
358 Attorney General.

359 (4) A person or entity who is found to have violated this  
360 act or orders or rules of the Attorney General may be ordered to  
361 pay to the Attorney General a civil penalty in an amount,  
362 determined by the Attorney General, of not more than Five Hundred  
363 Dollars (\$500.00) per violation and not more than Ten Thousand  
364 Dollars (\$10,000.00) in the aggregate for all violations of a  
365 similar nature. For purposes of this section, violations shall be  
366 of a similar nature if the violation consists of the same or  
367 similar course of conduct, action or practice, irrespective of the  
368 number of times the conduct, action or practice is determined to  
369 be a violation of this act.

370 **SECTION 12.** (1) Any warrantor doing business in this state  
371 in accordance with this act shall be deemed to have appointed the  
372 Attorney General its true and lawful attorney upon whom may be  
373 served all lawful process in any action or proceeding against it.

374 (2) Any warrantor doing business in this state, operating  
375 without the authority provided by this act, shall be deemed to  
376 have appointed the Secretary of State to be its true and lawful  
377 attorney upon whom may be served all lawful process in any action  
378 or proceeding against it.

379 **SECTION 13.** The Attorney General may adopt rules and  
380 regulations to establish procedures for implementing the  
381 provisions of this act as are necessary. Such rules and  
382 regulations shall include disclosures for the benefit of the  
383 warranty holder, record keeping requirements, registration fees,  
384 penalties and procedures for public complaints. Such rules and  
385 regulations shall also include the conditions under which surplus  
386 lines insurers may be rejected for the purpose of underwriting  
387 vehicle protection product warranty agreements.

388 **SECTION 14.** This act applies to all vehicle protection  
389 products sold or offered for sale on or after July 1, 2007. The  
390 failure of any person to comply with this act before July 1, 2007,  
391 shall not be admissible in any court proceeding, administrative

392 proceeding, arbitration or alternative dispute resolution  
393 proceeding and may not otherwise be used to prove that the action  
394 of any person or the affected vehicle protection product was  
395 unlawful or otherwise improper.

396         **SECTION 15.** This act shall take effect and be in force from  
397 and after July 1, 2007.