

By: Senator(s) Hewes, Jackson (11th)

To: Judiciary, Division B

COMMITTEE SUBSTITUTE
FOR
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 VEHICLE PROTECTION DEVICE, SYSTEM OR SERVICE THAT IS
4 SOLD IN THIS STATE WITH A WARRANTY MUST MEET CERTAIN REQUIREMENTS
5 PRESCRIBED BY THIS ACT; TO PROVIDE THAT VEHICLE PROTECTION
6 WARRANTIES ARE NOT CONTRACTS OF INSURANCE AND ARE EXEMPT FROM THE
7 LAW REGULATING INSURANCE; TO REQUIRE WARRANTORS OF VEHICLE
8 PROTECTION PRODUCTS TO REGISTER WITH THE MOTOR VEHICLE COMMISSION;
9 TO REQUIRE CERTAIN FINANCIAL RESPONSIBILITY OR 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 MOTOR VEHICLE COMMISSION TO ESTABLISH CERTAIN ADMINISTRATIVE
16 SANCTIONS AND IMPOSE PENALTIES FOR VIOLATIONS OF THIS ACT; TO
17 AUTHORIZE THE MOTOR VEHICLE COMMISSION TO ADOPT RULES AND
18 REGULATIONS RELATING TO THE IMPLEMENTATION OF THIS ACT; AND FOR
19 RELATED PURPOSES.

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

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

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

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

27 (b) "Motor Vehicle Commission" means the Mississippi
28 Motor Vehicle Commission.

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

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

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

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

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

43 (iii) Includes a written warranty.

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

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

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

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

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

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

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

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

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

78 **SECTION 4.** (1) A person may not operate as a warrantor or
79 represent to the public that the person is a warrantor unless the
80 person is registered with the Motor Vehicle Commission on a form
81 prescribed by the Motor Vehicle Commission.

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

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

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

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

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

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

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

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

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

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

121 **SECTION 5.** (1) No vehicle protection product shall be sold
122 or offered for sale in this state unless the vehicle protection
123 product warrantor can prove financial solvency as provided under
124 subsection (2) of this section or is insured under a warranty
125 insurance policy meeting the following conditions in order to
126 ensure adequate performance under the warranty:

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

134 (b) A true and correct copy of the warranty
135 reimbursement insurance policy has been filed with the Motor
136 Vehicle Commission by the warrantor; and

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

139 (2) As an alternative to warranty reimbursement insurance
140 under subsection (1) of this section, the vehicles protection
141 warrantor or its parent company must:

142 (a) Maintain a net worth of stockholders' equity of
143 Fifty Million Dollars (\$50,000,000.00); and

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

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

163 (a) The policy states that the issuer of the policy
164 will reimburse or pay on behalf of the vehicle protection product
165 warrantor all covered sums which the warrantor is legally
166 obligated to pay, or will provide all service that the warrantor

167 is legally obligated to perform according to the warrantor's
168 contractual obligations under the provisions of the insured
169 warranties sold by the warrantor;

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

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

183 (d) The policy has the following provisions regarding
184 cancellation of the policy:

185 (i) The issuer of a reimbursement insurance policy
186 shall not cancel such policy until a notice of cancellation in
187 writing has been mailed or delivered to the Motor Vehicle
188 Commission and each insured warrantor;

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

192 (iii) In the event an insurer cancels a policy
193 that a warrantor has filed with the Motor Vehicle Commission, the
194 warrantor shall do either of the following:

195 1. File a copy of a new policy with the Motor
196 Vehicle Commission, before the termination of the prior policy,
197 provided that there is no lapse in coverage following the
198 termination of the prior policy; or

199 2. Discontinue acting as a warrantor as of
200 the termination date of the policy until a new policy becomes
201 effective and is accepted by the Motor Vehicle Commission.

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

206 (a) Contains a disclosure that reads substantially as
207 follows: "This agreement is a product warranty and is not
208 insurance.";

209 (b) Identifies the warrantor, the administrator (if
210 any), the seller and the warranty holder;

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

213 (d) Sets forth the total purchase price and the terms
214 under which it is to be paid, however, the purchase price is not
215 required to be preprinted on the vehicle protection product
216 warranty and may be negotiated with the consumer at the time of
217 sale;

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

220 (f) Conspicuously sets forth all of the obligations and
221 duties of the warranty holder such as the duty to protect against
222 any further damage to the vehicle, the obligation to notify the
223 warrantor in advance of any repair or other similar requirements,
224 if any;

225 (g) Conspicuously states the existence of a deductible
226 amount, if any;

227 (h) Specifies the payments or performance to be
228 provided under the warranty including payments for incidental
229 costs, the manner of calculation or determination of payments or
230 performance and any limitations, exceptions or exclusions;

231 (i) Sets forth the conditions on which substitution
232 will be allowed;

233 (j) Conspicuously states that the obligations of the
234 warrantor to the warranty holder are insured under a warranty
235 reimbursement insurance policy;

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

243 (l) Conspicuously states the name and address of the
244 issuer of the warranty reimbursement insurance policy. This
245 information need not be preprinted on the warranty form but may be
246 stamped on the warranty.

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

249 (a) A copy of the vehicle protection product warranty;
250 or

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

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

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

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

261 (b) Makes a material misrepresentation to the seller or
262 warrantor;

263 (c) Commits fraud; or

264 (d) Substantially breaches the warranty holder's duties
265 under the warranty.

266 (3) A warrantor canceling a warranty shall mail written
267 notice of cancellation to the warranty holder at the last address
268 of the warranty holder in the warrantor's records at least thirty
269 (30) days prior to the effective date of the cancellation. The
270 notice shall state the effective date of the cancellation and the
271 reason for the cancellation.

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

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

285 (3) A vehicle protection product warrantor shall not permit
286 or cause the omission of any material statement in connection with
287 the sale, offer to sell or advertisement of a vehicle protection
288 product.

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

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

296 (6) A vehicle protection product seller or warrantor may not
297 require as a condition of sale or financing that a retail
298 purchaser of a motor vehicle purchase a vehicle protection product
299 that is not installed on the motor vehicle at the time of sale.

300 **SECTION 10.** (1) All vehicle protection product warrantors
301 shall keep accurate accounts, books and records concerning
302 transactions regulated under this chapter.

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

305 (a) Copies of all vehicle protection product
306 warranties;

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

308 (c) The dates, amounts and descriptions of all
309 receipts, claims and expenditures.

310 (3) A vehicle protection product warrantor shall retain all
311 required accounts, books and records pertaining to each warranty
312 holder for at least two (2) years after the specified period of
313 coverage has expired. A warrantor discontinuing business in the
314 state shall maintain its records until it furnishes the Motor
315 Vehicle Commission satisfactory proof that it has discharged all
316 obligations to warranty holders in this state.

317 (4) Vehicle protection product warrantors shall make all
318 accounts, books and records concerning transactions regulated
319 under this act available to the Motor Vehicle Commission for the
320 purpose of examination.

321 **SECTION 11.** (1) (a) The Motor Vehicle Commission may
322 conduct examinations of warrantors, administrators or other
323 persons to enforce this act and protect warranty holders in this
324 state. Upon request of the Motor Vehicle Commission, a warrantor
325 shall make available to the Motor Vehicle Commission all accounts,
326 books and records concerning vehicle protection products sold by
327 the warrantor that are necessary to enable the Motor Vehicle

328 Commission to reasonably determine compliance or noncompliance
329 with this act.

330 (b) Any person or entity examined shall pay any and all
331 appropriate and reasonable costs incurred by the Motor Vehicle
332 Commission during the examination, including, but not limited to,
333 the compensation of such experts, actuaries, examiners or other
334 persons as may be contracted for by the Motor Vehicle Commission
335 or the Motor Vehicle Commission's designated appointee for the
336 purpose of assisting in the examination. Such compensation shall
337 be fixed at a reasonable amount commensurate with usual
338 compensation for like services and shall be contracted for in
339 accordance with applicable state contracting procedures, if
340 applicable.

341 (2) The Motor Vehicle Commission may take action that is
342 necessary or appropriate to enforce the provisions of this act and
343 the Motor Vehicle Commission's rules and orders and to protect
344 warranty holders in this state. If a person or entity violates
345 this act and the Motor Vehicle Commission reasonably believes such
346 violation threatens to cause irreparable loss or injury to the
347 property or business of any person or company located in this
348 state, the Motor Vehicle Commission may:

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

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

355 (c) Issue an order imposing a civil penalty on that
356 warrantor; or

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

359 (3) The Motor Vehicle Commission may bring an action in any
360 court of

361 competent jurisdiction for an injunction or other appropriate
362 relief to enjoin threatened or existing violations of this act or
363 of the Motor Vehicle Commission's orders or rules. An action
364 filed under this section also may seek restitution on behalf of
365 persons aggrieved by a violation of this act or orders or rule of
366 the Motor Vehicle Commission.

367 (4) A person or entity who is found to have violated this
368 act or orders or rules of the Motor Vehicle Commission may be
369 ordered to pay to the Motor Vehicle Commission a civil penalty in
370 an amount, determined by the Motor Vehicle Commission, of not more
371 than Five Hundred Dollars (\$500.00) per violation and not more
372 than Ten Thousand Dollars (\$10,000.00) in the aggregate for all
373 violations of a similar nature. For purposes of this section,
374 violations shall be of a similar nature if the violation consists
375 of the same or similar course of conduct, action or practice,
376 irrespective of the number of times the conduct, action or
377 practice is determined to be a violation of this act.

378 **SECTION 12.** (1) Any warrantor doing business in this state
379 in accordance with this act shall be deemed to have appointed the
380 Motor Vehicle Commission its true and lawful attorney upon whom
381 may be served all lawful process in any action or proceeding
382 against it.

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

388 **SECTION 13.** The Motor Vehicle Commission may adopt rules and
389 regulations to establish procedures for implementing the
390 provisions of this act as are necessary. Such rules and
391 regulations shall include disclosures for the benefit of the
392 warranty holder, record keeping requirements, registration fees,
393 penalties and procedures for public complaints. Such rules and

394 regulations shall also include the conditions under which surplus
395 lines insurers may be rejected for the purpose of underwriting
396 vehicle protection product warranty agreements.

397 **SECTION 14.** This act applies to all vehicle protection
398 products sold or offered for sale on or after July 1, 2007. The
399 failure of any person to comply with this act before July 1, 2007,
400 shall not be admissible in any court proceeding, administrative
401 proceeding, arbitration or alternative dispute resolution
402 proceeding and may not otherwise be used to prove that the action
403 of any person or the affected vehicle protection product was
404 unlawful or otherwise improper.

405 **SECTION 15.** The adoption of this act does not imply that a
406 vehicle protection product warranty constituted insurance prior to
407 the effective date of this act.

408 **SECTION 16.** This act shall take effect and be in force from
409 and after July 1, 2007.