

By: Representatives Miles, Rotenberry

To: Transportation

HOUSE BILL NO. 844

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 WARRANTS 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 DEPARTMENT OF INSURANCE;
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 COMMISSIONER OF INSURANCE TO ESTABLISH CERTAIN ADMINISTRATIVE
16 SANCTIONS AND IMPOSE PENALTIES FOR VIOLATIONS OF THIS ACT; TO
17 AUTHORIZE THE COMMISSIONER OF INSURANCE 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) "Commissioner" means the Commissioner of Insurance.

28 (c) "Department" means the Mississippi Department of
29 Insurance.

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

36 the time of theft and the cost of a replacement vehicle, sales
37 taxes, registration fees, transaction fees and mechanical
38 inspection fees.

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

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

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

44 (iii) Includes a written warranty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

110 (4) If a registrant fails to register by the renewal
111 deadline, the commissioner shall give the registrant written
112 notice of the failure and the registrant will have thirty (30)
113 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 is insured under a warranty insurance policy
124 meeting the following conditions in order to ensure adequate
125 performance under the warranty:

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

133 (b) A true and correct copy of the warranty
134 reimbursement insurance policy has been filed with the
135 commissioner by the warrantor; and

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

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

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

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

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

166 warranties sold by the warrantor;

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

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

180 (d) The policy has the following provisions regarding
181 cancellation of the policy:

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

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

189 (iii) In the event an insurer cancels a policy
190 that a warrantor has filed with the commissioner, the warrantor
191 shall do either of the following:

192 1. File a copy of a new policy with the
193 commissioner, before the termination of the prior policy, provided
194 that there is no lapse in coverage following the termination of
195 the prior policy; or

196 2. Discontinue acting as a warrantor as of
197 the termination date of the policy until a new policy becomes
198 effective and is accepted by the commissioner.

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

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

206 (b) Identifies the warrantor, the administrator (if
207 any), the seller and the warranty holder;

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

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

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

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

222 (g) Conspicuously states the existence of a deductible
223 amount, if any;

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

228 (i) Sets forth the conditions on which substitution
229 will be allowed;

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

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

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

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

246 (a) A copy of the vehicle protection product warranty;
247 or

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

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

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

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

258 (b) Makes a material misrepresentation to the seller or
259 warrantor;

260 (c) Commits fraud; or

261 (d) Substantially breaches the warranty holder's duties
262 under the warranty.

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

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

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

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

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

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

293 (6) A vehicle protection product seller or warrantor may not

294 require as a condition of sale or financing that a retail
295 purchaser of a motor vehicle purchase a vehicle protection product
296 that is not installed on the motor vehicle at the time of sale.

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

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

302 (a) Copies of all vehicle protection product
303 warranties;

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

305 (c) The dates, amounts and descriptions of all
306 receipts, claims and expenditures.

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

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

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

326 (b) Any person or entity examined shall pay any and all

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

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

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

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

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

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

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

359 (4) A person or entity who is found to have violated this
360 act or orders or rules of the commissioner may be ordered to pay
361 to the commissioner a civil penalty in an amount, determined by
362 the commissioner, of not more than Five Hundred Dollars (\$500.00)
363 per violation and not more than Ten Thousand Dollars (\$10,000.00)
364 in the aggregate for all violations of a similar nature. For
365 purposes of this section, violations shall be of a similar nature
366 if the violation consists of the same or similar course of
367 conduct, action or practice, irrespective of the number of times
368 the conduct, action or practice is determined to be a violation of
369 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 commissioner its true and lawful attorney upon whom may be served
373 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 commissioner may adopt rules and regulations
380 to establish procedures for implementing the provisions of this
381 act as are necessary. Such rules and regulations shall include
382 disclosures for the benefit of the warranty holder, record keeping
383 requirements, registration fees, penalties and procedures for
384 public complaints. Such rules and regulations shall also include
385 the conditions under which surplus lines insurers may be rejected
386 for the purpose of underwriting vehicle protection product
387 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.