

Senate Amendments to House Bill No. 844

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

40 1. Is installed on or applied to a vehicle;

41 2. Is designed to prevent loss or damage to a
42 vehicle from a specific cause; and

43 3. Includes a written warranty.

44 (ii) Any product offered without a warranty shall
45 not be considered a vehicle protection product and shall not be
46 covered by the provisions of this act.

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

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

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

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

66 (i) "Warranty reimbursement insurance policy" means a
67 policy of insurance that is issued to the vehicle protection
68 product warrantor to provide reimbursement to the warrantor or to
69 pay on behalf of the warrantor all covered contractual obligations
70 incurred by the warrantor under the terms and conditions of the
71 insured vehicle protection product warranties sold by the
72 warrantor.

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

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

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

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

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

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

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

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

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

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

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

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

113 (4) If a registrant fails to register by the renewal
114 deadline, the Motor Vehicle Commission shall give the registrant
115 written notice of the failure and the registrant will have thirty

116 (30) days to complete the renewal of the registration before the
117 registration is revoked. Revocation for failure to renew a
118 registration does not require any additional notice or a hearing.

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

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

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

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

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

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

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

147 (b) Provide the Motor Vehicle Commission with a copy of
148 the warrantor's or the warrantor's parent company's most recent
149 Form 10-K or Form 20-F filed with the Securities Exchange
150 Commission within the last calendar year or, if the warrantor does

151 not file with the Securities Exchange Commission, a copy of the
152 warrantor's or the warrantor's parent company's audited financial
153 statements that shows a net worth of the warrantor or its parent
154 company of at least Fifty Million Dollars (\$50,000,000.00). If
155 the warrantor's parent company's Form 10-K, Form 20-F or audited
156 financial statements are filed to meet the warrantor's financial
157 stability requirement, then the parent company shall agree to
158 guarantee the obligations of the warrantor relating to the
159 warranties issued by the warrantor in this state. The audited
160 financial statements filed pursuant to this subsection shall be
161 exempt from public disclosure under the Mississippi Public Records
162 Act of 1983.

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

166 (a) The policy states that the issuer of the policy
167 will reimburse or pay on behalf of the vehicle protection product
168 warrantor all covered sums which the warrantor is legally
169 obligated to pay, or will provide all service that the warrantor
170 is legally obligated to perform according to the warrantor's
171 contractual obligations under the provisions of the insured
172 warranties sold by the warrantor;

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

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

186 (d) The policy has the following provisions regarding
187 cancellation of the policy:

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

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

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

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

202 2. Discontinue acting as a warrantor as of
203 the termination date of the policy until a new policy becomes
204 effective and is accepted by the Motor Vehicle Commission.

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

209 (a) Contains a disclosure that reads substantially as
210 follows: "This agreement is a product warranty and is not
211 insurance.";

212 (b) Identifies the warrantor, the administrator (if
213 any), the seller and the warranty holder;

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

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

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

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

228 (g) Conspicuously states the existence of a deductible
229 amount, if any;

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

234 (i) Sets forth the conditions on which substitution
235 will be allowed;

236 (j) Conspicuously states that the obligations of the
237 warrantor to the warranty holder are insured under a warranty
238 reimbursement insurance policy;

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

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

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

252 (a) A copy of the vehicle protection product warranty;

253 or

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

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

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

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

264 (b) Makes a material misrepresentation to the seller or
265 warrantor;

266 (c) Commits fraud; or

267 (d) Substantially breaches the warranty holder's duties
268 under the warranty.

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

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

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

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

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

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

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

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

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

308 (a) Copies of all vehicle protection product
309 warranties;

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

311 (c) The dates, amounts and descriptions of all
312 receipts, claims and expenditures.

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

320 (4) Vehicle protection product warrantors shall make all
321 accounts, books and records concerning transactions regulated

322 under this act available to the Motor Vehicle Commission for the
323 purpose of examination.

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

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

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

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

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

358 (c) Issue an order imposing a civil penalty on that
359 warrantor; or

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

362 (3) The Motor Vehicle Commission may bring an action in any
363 court of

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

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

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

386 (2) Any warrantor doing business in this state, operating
387 without the authority provided by this act, shall be deemed to
388 have appointed the Secretary of State to be its true and lawful

389 attorney upon whom may be served all lawful process in any action
390 or proceeding against it.

391 **SECTION 13.** The Motor Vehicle Commission may adopt rules and
392 regulations to establish procedures for implementing the
393 provisions of this act as are necessary. Such rules and
394 regulations shall include disclosures for the benefit of the
395 warranty holder, record keeping requirements, registration fees,
396 penalties and procedures for public complaints. Such rules and
397 regulations shall also include the conditions under which surplus
398 lines insurers may be rejected for the purpose of underwriting
399 vehicle protection product warranty agreements.

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

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

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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.

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John O. Gilbert
Secretary of the Senate