

2003 Senate Bill 446

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## 2003 WISCONSIN ACT 302

AN ACT *to amend* 601.41 (1) (intro.); and *to create* 100.203, 600.01 (1) (b) 11., 601.31 (1) (km), 631.37 (4) (g) and 632.185 of the statutes; **relating to:** vehicle protection product warranties.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 100.203 of the statutes is created to read:

**100.203 Vehicle protection product warranties.**

(1) DEFINITIONS. In this section:

(a) "Administrator" means a party other than the warrantor whom the warrantor designates to be responsible for the administration of warranties.

(b) "Commissioner" means the commissioner of insurance.

(c) "Incidental costs" means expenses incurred by the warranty holder that are specified in the warranty and that are related to the failure of the vehicle protection product to perform as the warranty provides. "Incidental costs" include insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees.

(d) "Office" means the office of the commissioner.

(e) "Vehicle protection product" means a device, system, or service installed on or applied to a vehicle that is designed to prevent loss or damage to the vehicle. "Vehicle protection product" includes alarm systems, body-part marking products, steering locks, window-etch products, pedal and ignition locks, fuel and ignition

kill switches, and electronic, radio, and satellite tracking devices.

(f) "Warrantor" means a person who is obligated to the warranty holder under the terms of the warranty.

(g) "Warranty" means a written representation, made to a warranty holder, that applies to a vehicle protection product and that asserts that the vehicle protection product will prevent specified loss or damage to a vehicle or the warrantor will pay the warranty holder specified incidental costs.

(h) "Warranty holder" means the person who purchases a vehicle protection product that includes a warranty or who is a permitted transferee under the terms of the warranty.

(i) "Warranty reimbursement insurance policy" means an insurance policy that is issued to a warrantor to provide reimbursement to the warrantor for, or to pay on behalf of the warrantor, all obligations incurred by the warrantor under the terms and conditions of the insured warranties sold by the warrantor.

(2) REGISTRATION AND FILING REQUIREMENTS OF WARRANTORS. (a) A person shall register with the office by filing a form prescribed by the commissioner before operating as a warrantor or representing to the public that the person is a warrantor.

(b) 1. Warrantor registration records shall be filed with the office annually and shall be updated within 30 days of any change.

\* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

2. The registration records shall contain the following information, which shall be available to the public:

a. The warrantor's name, any names under which the warrantor does business in this state, the warrantor's principal office address, and the warrantor's telephone number.

b. The name and address of the warrantor's agent for service of process in this state if other than the warrantor.

3. The registration records shall contain the following information, which is confidential and not available for inspection or copying under s. 19.35 (1):

a. The name of the warrantor's executive officer directly responsible for the warrantor's vehicle protection product business.

b. The name, address, and telephone number of any administrator that the warrantor designates to be responsible for the administration of warranties in this state.

c. A copy of the warranty reimbursement insurance policy or other financial information required under sub. (3).

d. A copy of each warranty that the warrantor plans to use in this state.

e. A statement indicating that the warrantor qualifies to do business in this state under sub. (3) (a) or that the warrantor qualifies to do business in this state under sub. (3) (b).

(c) 1. If a registrant fails to register by the renewal deadline, the commissioner shall give the registrant written notice of the failure. The registrant shall have 30 days to complete the renewal before his or her registration is suspended.

2. If a registrant's registration is suspended under subd. 1., the suspension shall last until the registrant registers and pays any late payment, except that the registration shall be terminated one year after the renewal deadline if the registrant has not registered or paid any late payment.

(d) A person who sells or solicits a sale of a vehicle protection product that includes a warranty but who is not a warrantor is not required to register as a warrantor to sell the vehicle protection product.

(3) FINANCIAL RESPONSIBILITY. No person may sell, or offer to sell, a vehicle protection product that includes a warranty unless the warrantor meets one of the following conditions:

(a) The warrantor is insured under a warranty reimbursement insurance policy that meets the conditions specified in s. 632.185 (2) and has filed with the commissioner a copy of the warranty reimbursement insurance policy.

(b) The warrantor's net worth, or the total of all outstanding ownership interests in the warrantor, is at least \$50,000,000, or, if the warrantor is a subsidiary, the parent entity's net worth is at least \$50,000,000. If the warrantor files with the U.S. Securities and Exchange Com-

mission, the warrantor provides the commissioner with a copy of the warrantor's, or the parent entity's, most recent U.S. Securities and Exchange Commission form 10-K or form 20-f, filed within the preceding year pursuant to 15 USC 78L(b) or (g), 78m, or 78o(d). If the warrantor does not file with the U.S. Securities and Exchange Commission, the warrantor provides the commissioner a copy of the warrantor's, or the parent entity's, audited financial statements. If the warrantor's parent entity's forms or audited financial statements are filed to meet the condition specified under this subsection, then the parent entity shall agree to guarantee the obligations of the warrantor relating to warranties issued by the warrantor in this state.

(4) DISCLOSURE TO WARRANTY HOLDER. (a) Every warranty shall be written in clear language that is understandable to lay persons and shall be printed or typed in easy-to-read size and style of type. No warranty may be included with a vehicle protection product unless it meets all of the following conditions:

1. If the warrantor chooses to meet its financial responsibility obligations under sub. (3) (a):

a. The warranty states that the obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy and states the name and address of the insurer.

b. The warranty states that if a warranty holder makes a claim against a party other than the issuer of the warranty reimbursement insurance policy, the warranty holder may make a direct claim against the insurer if the warrantor fails to pay any claim or to meet any obligation under the terms of the warranty within 60 days after proof of loss has been filed with the warrantor.

2. The warranty identifies the warrantor, the seller, and the warranty holder.

3. The warranty sets forth the total purchase price and the payment terms. The purchase price of the vehicle protection product does not have to be preprinted on the warranty or sales agreement. The purchase price may be negotiated with the purchaser at the time of sale.

4. The warranty sets forth the procedure for making a claim, including a telephone number.

5. The warranty states the existence of any deductible amount.

6. The warranty specifies the payments or performance to be provided under the warranty, including payments for incidental costs, how the payments or performance will be calculated or determined, and any limitations, exceptions, or exclusions.

7. The warranty sets forth the conditions under which substitution will be allowed.

8. The warranty states all of the obligations and duties of the warranty holder.

9. The warranty sets forth any terms governing transferability of the warranty.

10. The warranty contains a disclosure that reads substantially as follows: "This agreement is a product warranty and is not insurance."

11. The warranty clearly states any terms and conditions governing the cancellation of the sale and warranty.

(b) The seller of the warranty or the warrantor shall provide one of the following to the purchaser:

1. At the time of sale, a copy of the warranty.
2. At the time of sale, a receipt or other written evidence of the purchase of the vehicle protection product and, within 30 days after the purchase, a copy of the warranty.

(5) **WARRANTY CANCELLATION.** (a) A warrantor may cancel the warranty only if the warranty holder does one of the following:

1. Fails to pay for the vehicle protection product to which the warranty applies.
2. Makes a material misrepresentation to the seller of the vehicle protection product to which the warranty applies or to the warrantor.
3. Commits fraud.
4. Substantially breaches the warranty holder's duties under the warranty.

(b) A warrantor canceling a warranty shall mail written notice of cancellation to the warranty holder at the last address of the warranty holder in the warrantor's records at least 30 days prior to the effective date of the cancellation. The notice shall state the effective date of the cancellation and the reason for the cancellation.

(6) **PROHIBITED ACTS.** (a) A warrantor that is not an insurer, as defined in s. 600.03 (27), may not use in its name, contracts, or literature any of the terms, "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business. A warrantor may not use any name or description that is deceptively similar to the name or description of any insurance or surety corporation or to any other warrantor.

(b) No warrantor may make any warranty claim that is untrue, deceptive, or misleading as provided in s. 100.18.

(c) No person may require as a condition of sale or financing of a motor vehicle that a retail purchaser of a motor vehicle purchase a vehicle protection product that is not installed on the vehicle at the time of sale.

(7) **RECORD KEEPING.** (a) Warrantors shall keep accurate records of transactions regulated under this section.

(b) A warrantor's records shall include all of the following:

1. Copies of all warranties under which the warrantor is obligated.
2. The name and address of each warranty holder to whom the warrantor is obligated.
3. The dates, amounts, and descriptions of all receipts, claims, and expenditures related to the warrantor's warranties.

(c) A warrantor shall retain all required records pertaining to each warranty holder to whom the warrantor is obligated for at least 2 years after the specified period of coverage has expired. A warrantor discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to warranty holders in this state.

(d) Warrantors shall make all records concerning transactions regulated under this section available to the commissioner.

(8) **SANCTIONS; ADMINISTRATIVE PENALTY.** (a) The commissioner may take necessary and appropriate action to enforce this section and the commissioner's rules and orders and to protect warranty holders. If a warrantor violates this section and the commissioner reasonably believes the violation threatens to render the warrantor insolvent or cause irreparable loss or injury to the property or business of any person located in this state, the commissioner may issue an order that does any of the following:

1. Prohibits the warrantor from engaging in the act that violates this section.
2. Prohibits the warrantor from providing any warranty that violates this section.
3. Imposes a forfeiture on the warrantor.

(b) 1. Prior to the effective date of any order issued under par. (a), the commissioner must provide written notice of the order to the warrantor and the opportunity for a hearing to be held within 10 business days after receipt of the notice.

2. Notwithstanding subd. 1., if the commissioner reasonably believes that the warrantor is or is about to become insolvent, prior notice and a hearing are not required.

(c) A person aggrieved by an order issued under par. (a) may request a hearing before the commissioner. Section 601.62 applies to a hearing commenced under this paragraph.

(d) At the hearing, the commissioner bears the burden of proving that the order issued under par. (a) is justified. Chapter 227 applies to a hearing request under this subsection.

(e) The commissioner may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin a threatened or existing violation of this section or of a rule or order of the commissioner promulgated or issued under this section. An action filed under this paragraph may seek restitution on behalf of persons injured by a violation of this section or a violation of a rule or order of the commissioner promulgated or issued under this section.

(f) A person who violates this section or a rule or order of the commissioner promulgated or issued under this section may be ordered to forfeit to the state an amount determined by the commissioner, but not more

than \$500 per violation and not more than \$10,000 for all violations of a similar nature. Violations are of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the conduct, action, or practice that violated this section or a rule or order promulgated or issued under this section occurred.

**SECTION 2.** 600.01 (1) (b) 11. of the statutes is created to read:

600.01 (1) (b) 11. Warrantors, sellers, or administrators of vehicle protection product warranties under s. 100.203.

**SECTION 3.** 601.31 (1) (km) of the statutes is created to read:

601.31 (1) (km) For processing and maintaining registration records under s. 100.203 (2), a fee to be set by the commissioner by rule but not to exceed \$250 annually.

**SECTION 4.** 601.41 (1) (intro.) of the statutes is amended to read:

601.41 (1) DUTIES. (intro.) The commissioner shall administer and enforce chs. 600 to 655 and ss. 59.52 (11) (c), 66.0137 (4) and (4m), 100.203, 120.13 (2) (b) to (g), 149.13, and 149.144 and shall act as promptly as possible under the circumstances on all matters placed before the commissioner.

**SECTION 5.** 631.37 (4) (g) of the statutes is created to read:

631.37 (4) (g) *Warranty reimbursement insurance policy.* Section 632.185 (2) (e) applies to warranty reimbursement insurance policies.

**SECTION 6.** 632.185 of the statutes is created to read:

**632.185 Vehicle protection product warranty insurance policy.** (1) In this section:

(a) "Vehicle protection product" has the meaning given in s. 100.203 (1) (e).

(b) "Warrantor" has the meaning given in s. 100.203 (1) (f).

(c) "Warranty" has the meaning given in s. 100.203 (1) (g).

(d) "Warranty holder" has the meaning given in s. 100.203 (1) (h).

(e) "Warranty reimbursement insurance policy" has the meaning given in s. 100.203 (1) (i).

(2) A warranty reimbursement insurance policy that is issued, sold, or offered for sale in this state shall meet all of the following conditions:

(a) The policy is issued by an insurer authorized to do business in this state.

(b) The policy states that the issuer of the policy will reimburse or pay on behalf of the warrantor all covered sums that the warrantor is legally obligated to pay or will provide the service that the warrantor is legally obligated to perform according to the warrantor's contractual obligations under the provisions of the insured warranties sold by the warrantor.

(c) The policy states that if the warrantor does not provide payment due under the terms of the warranty within 60 days after the warranty holder has filed proof of loss according to the terms of the warranty, the warranty holder may file for a reimbursement directly with the issuer of the warranty reimbursement insurance policy.

(d) The policy provides that the issuer of the warranty reimbursement insurance policy has received payment of the premium if the warranty holder paid for the vehicle protection product covered under the insured warranty and that the insurer's liability under the policy may not be reduced or relieved by a failure of the warrantor to report to the insurer the issuance of a warranty.

(e) The policy contains the following provisions regarding cancellation:

1. The policy may not be canceled by the issuer until a written notice of cancellation has been mailed or delivered to the commissioner and the insured warrantor.

2. The cancellation of the policy does not reduce the issuer's responsibility with respect to warranties that apply to vehicle protection products sold prior to the date of cancellation.

3. If the warrantor has filed the policy with the commissioner and the issuer cancels the policy, the warrantor shall do one of the following:

a. File a copy of a new policy with the commissioner, before the termination of the prior policy, providing no lapse in coverage following the termination of the prior policy.

b. Discontinue acting as a warrantor as of the termination date of the policy until a new policy becomes effective and the commissioner accepts it.

**SECTION 7. Initial applicability.**

(1) This act first applies to warranted vehicle protection products and warranties that apply to vehicle protection products that are offered for sale on the effective date of this subsection.

**SECTION 8. Effective date.**

(1) This act takes effect on the first day of the 7th month beginning after publication.