

2003 SENATE BILL 446

February 10, 2004 – Introduced by Senators SCHULTZ, KANAVAS and HANSEN, cosponsored by Representatives LADWIG, TOWNSEND and HAHN. Referred to Committee on Agriculture, Financial Institutions and Insurance.

1 **AN ACT** *to amend* 601.41 (1) (intro.); and *to create* 100.203, 600.01 (1) (b) 11.,
2 601.31 (1) (km), 631.37 (4) (g) and 632.185 of the statutes; **relating to:** vehicle
3 protection product warranties.

Analysis by the Legislative Reference Bureau

The Wisconsin Administrative Code (code) provides requirements for the business of issuing warranties in lieu of the application of the insurance provisions of the statutes. The code provides that the commissioner of insurance (commissioner) finds that the making of a contract relating to the repair, replacement, or restoration of a good, product, or object is the transaction of insurance and that the person making the contract is subject to the insurance provisions of the statutes unless the person complies with the requirements under the code. This bill provides that the insurance provisions of the statutes do not apply to a vehicle protection product warranty and establishes a system to regulate vehicle protection product warranties. A vehicle protection product warranty is defined as a written representation, made to a warranty holder, that applies to a vehicle protection product (a device, system, or service installed on or applied to a vehicle that is designed to prevent loss or damage to the vehicle) and that asserts the vehicle protection product will prevent specified loss or damage to the vehicle or the warrantor will pay the warranty holder specified incidental costs.

Under the bill, if a person sells or offers to sell a vehicle protection product that includes a warranty, the warrantor must meet several requirements. These requirements include:

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1. The warrantor must register with the office of the commissioner before he or she may operate as a warrantor or represent to the public that he or she is a warrantor. The commissioner may charge an annual fee not to exceed \$250 for processing and maintaining registration records. A warrantor must renew his or her registration annually. If the warrantor fails to renew his or her registration, the commissioner will suspend the warrantor's registration after 30 days. If the warrantor still fails to renew his or her registration one year after the renewal deadline, his or her registration will be terminated.

2. The warrantor must meet one of two conditions of financial responsibility. Either the warrantor must have a net worth of, or ownership interests in the warrantor must total, at least \$50,000,000 or the warrantor must be insured under a warranty reimbursement insurance policy (insurance policy) that meets the conditions specified in the bill and must have filed a copy of the insurance policy with the commissioner.

3. If the warrantor is insured under an insurance policy, the insurance policy must meet several conditions. The conditions include: the insurance policy issuer must be authorized to do business in this state; the insurance policy must state that the policy issuer will pay all covered sums; the insurance policy must state that, if the warrantor does not provide payment due within 60 days after the warranty holder has filed proof of loss, the warranty holder may file directly with the insurance policy issuer for reimbursement; and the insurance policy must contain specified cancellation provisions.

4. The warrantor must provide specific disclosures on each warranty. The disclosures include the identity of the warrantor, the seller, and the warranty holder; the total purchase price and payment terms; the procedure for making a claim; the existence of any deductible amount; any conditions of substitution; and any terms and conditions governing the cancellation.

5. The warrantor may cancel a warranty only under limited, specified conditions. The conditions include circumstances in which the warranty holder: fails to pay for the vehicle protection product; commits fraud; or breaches the warranty holder's duties under the warranty.

6. The warrantor must maintain accurate records of all warranty transactions, and the records must be available to the commissioner. The records must include the following: copies of all warranties under which the warrantor is obligated; names and addresses of warranty holders; and dates, amounts, and descriptions of all receipts, claims, and expenditures related to the warrantor's warranties.

If a warrantor violates a requirement under the vehicle protection product warranty provisions, the commissioner may enforce the requirement, issue orders, and protect warranty holders. A violator may be ordered to forfeit not more than \$500 per violation and not more than \$10,000 for all violations of a similar nature.

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

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

2 **100.203 Vehicle protection product warranties. (1) DEFINITIONS.** In this
3 section:

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

6 (b) “Commissioner” means the commissioner of insurance.

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

13 (d) “Office” means the office of the commissioner.

14 (e) “Vehicle protection product” means a device, system, or service installed on
15 or applied to a vehicle that is designed to prevent loss or damage to the vehicle.
16 “Vehicle protection product” includes alarm systems, body-part marking products,
17 steering locks, window-etch products, pedal and ignition locks, fuel and ignition kill
18 switches, and electronic, radio, and satellite tracking devices.

19 (f) “Warrantor” means a person who is obligated to the warranty holder under
20 the terms of the warranty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 (b) The warrantor's net worth, or the total of all outstanding ownership
2 interests in the warrantor, is at least \$50,000,000, or, if the warrantor is a subsidiary,
3 the parent entity's net worth is at least \$50,000,000. If the warrantor files with the
4 U.S. Securities and Exchange Commission, the warrantor provides the
5 commissioner with a copy of the warrantor's, or the parent entity's, most recent U.S.
6 Securities and Exchange Commission form 10-K or form 20-f, filed within the
7 preceding year pursuant to 15 USC 78L(b) or (g), 78m, or 78o(d). If the warrantor
8 does not file with the U.S. Securities and Exchange Commission, the warrantor
9 provides the commissioner a copy of the warrantor's, or the parent entity's, audited
10 financial statements. If the warrantor's parent entity's forms or audited financial
11 statements are filed to meet the condition specified under this subsection, then the
12 parent entity shall agree to guarantee the obligations of the warrantor relating to
13 warranties issued by the warrantor in this state.

14 **(4) DISCLOSURE TO WARRANTY HOLDER.** (a) Every warranty shall be written in
15 clear language that is understandable to lay persons and shall be printed or typed
16 in easy-to-read size and style of type. No warranty may be sold or offered for sale
17 unless it meets all of the following conditions:

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

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

23 b. The warranty states that if a warranty holder makes a claim against a party
24 other than the issuer of the warranty reimbursement insurance policy, the warranty
25 holder may make a direct claim against the insurer if the warrantor fails to pay any

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1 claim or to meet any obligation under the terms of the warranty within 60 days after
2 proof of loss has been filed with the warrantor.

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

4 3. The warranty sets forth the total purchase price and the payment terms. The
5 purchase price does not have to be preprinted on the warranty and may be negotiated
6 with the purchaser at the time of sale.

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

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

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

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

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

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

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

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

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

24 1. At the time of sale, a copy of the warranty.

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

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

6 1. Fails to pay for the vehicle protection product to which the warranty applies.

7 2. Makes a material misrepresentation to the seller of the vehicle protection
8 product to which the warranty applies or to the warrantor.

9 3. Commits fraud.

10 4. Substantially breaches the warranty holder's duties under the warranty.

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

15 **(6) PROHIBITED ACTS.** (a) A warrantor that is not an insurer, as defined in s.
16 600.03 (27), may not use in its name, contracts, or literature any of the terms,
17 "insurance," "casualty," "surety," "mutual," or any other words descriptive of the
18 insurance, casualty, or surety business. A warrantor may not use any name or
19 description that is deceptively similar to the name or description of any insurance
20 or surety corporation or to any other warrantor.

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

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

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

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

4 1. Copies of all warranties under which the warrantor is obligated.

5 2. The name and address of each warranty holder to whom the warrantor is
6 obligated.

7 3. The dates, amounts, and descriptions of all receipts, claims, and
8 expenditures related to the warrantor's warranties.

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

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

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

23 1. Prohibits the warrantor from engaging in the act that violates this section.

24 2. Prohibits the warrantor from selling or offering for sale any warranty that
25 violates this section.

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1 3. Imposes a forfeiture on the warrantor.

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

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

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

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

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

21 (f) A person who violates this section or a rule or order of the commissioner
22 promulgated or issued under this section may be ordered to forfeit to the state an
23 amount determined by the commissioner, but not more than \$500 per violation and
24 not more than \$10,000 for all violations of a similar nature. Violations are of a similar
25 nature if the violation consists of the same or similar course of conduct, action, or

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1 practice, irrespective of the number of times the conduct, action, or practice that
2 violated this section or a rule or order promulgated or issued under this section
3 occurred.

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

5 600.01 (1) (b) 11. Warrantors, sellers, or administrators of vehicle protection
6 product warranties under s. 100.203.

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

8 601.31 (1) (km) For processing and maintaining registration records under s.
9 100.203 (2), a fee to be set by the commissioner by rule but not to exceed \$250
10 annually.

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

12 601.41 (1) DUTIES. (intro.) The commissioner shall administer and enforce chs.
13 600 to 655 and ss. 59.52 (11) (c), 66.0137 (4) and (4m), 100.203, 120.13 (2) (b) to (g),
14 149.13, and 149.144 and shall act as promptly as possible under the circumstances
15 on all matters placed before the commissioner.

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

17 631.37 (4) (g) *Warranty reimbursement insurance policy.* Section 632.185 (2)
18 (e) applies to warranty reimbursement insurance policies.

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

20 **632.185 Vehicle protection product warranty insurance policy. (1)** In
21 this section:

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

23 (b) “Warrantor” has the meaning given in s. 100.203 (1) (f).

24 (c) “Warranty” has the meaning given in s. 100.203 (1) (g).

25 (d) “Warranty holder” has the meaning given in s. 100.203 (1) (h).

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1 (e) “Warranty reimbursement insurance policy” has the meaning given in s.
2 100.203 (1) (i).

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

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

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

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

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

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

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

