

**2003 DRAFTING REQUEST**

**Bill**

Received: 04/08/2003

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Dale Schultz (608) 266-0703

By/Representing: Eileen O'Neill

This file may be shown to any legislator: NO

Drafter: chanaman

May Contact:

Addl. Drafters: pkahler

Subject: Insurance - miscellaneous

Extra Copies: PJK

Submit via email: YES

Requester's email: Sen.Schultz@legis.state.wi.us

Carbon copy (CC:) to: cathlene.hanaman@legis.state.wi.us

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Vehicle protection product warrantors

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 07/07/2003			_____			
/P1	chanaman 08/18/2003	csicilia 08/19/2003	rschluet 08/19/2003	_____	sbasford 08/19/2003		
/P2	chanaman	rschluet	jfrantze	_____	mbarman		

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	12/12/2003	12/15/2003	12/15/2003	_____	12/15/2003		
/1	chanaman 01/26/2004	csicilia 01/30/2004	rschluet 01/30/2004	_____	mbarman 01/30/2004	lemery 02/05/2004	

FE Sent For:

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needed*

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Carbon copy (CC:) to: **cathlene.hanaman@legis.state.wi.us**

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*[Handwritten signatures and initials]*

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102 qs 12/14/03

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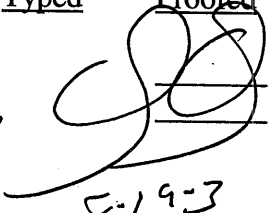
Vehicle protection product warrantors

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8-19-3

FE Sent For:

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# Bill Request Form

Legislative Reference Bureau  
100 N. Hamilton Street  
Legal Section. 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date April 7, 2003

Legislator, agency, or other person requesting this draft Senator Dale Schultz

Person submitting request (name and phone number) Eileen O'Neill, 266-0703

Persons to contact for questions about this draft (names and phone numbers) \_\_\_\_\_  
Eileen O'Neill, 266-0703

Describe the problem, including any helpful examples. How do you want to solve the problem?

See attached.

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you?

YES

If yes:

Anyone who asks?

YES

NO

Any legislator?

YES

NO

Only the following persons

Andy Franken

Do you consider this request urgent?

YES

NO

If yes, please indicate why \_\_\_\_\_

Should we give this request priority over any pending request of this legislator, agency, or person?

YES

NO



## The “Layered Approach” to Protection

Professional thieves can steal any car, but make them work for yours. To prevent thefts, the National Insurance Crime Bureau (NICB) recommends “Layered Protection.” The more layers of protection on your vehicle, the more difficult it is to steal.

The number of layers your vehicle needs varies depending on your vehicle and geographic location. Your budget and personal preferences should determine which anti-theft device is best for you.

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### **Layer #1 – Common Sense**

An unlocked vehicle with a key in the ignition is an open invitation to any thief, regardless of which anti-theft device you use. The common sense approach to protection is the simplest and most cost-effective way to thwart would-be thieves.

Secure your vehicle even if parking for brief periods. You should always:

- Remove your keys from the ignition
- Lock your doors and close your windows
- Park in a well-lit area

---

### **Layer #2 – Warning Device**

The second layer of protection is a visible or audible device which alerts thieves that your vehicle is protected. Popular second layer devices include:

- Audible alarms
- Steering column collars
- Steering wheel/Brake pedal lock
- Brake locks
- Wheel locks
- Tire locks/Tire deflators
- Theft deterrent decals
- Identification markers in or on vehicle
- Window etching
- Laminated glass

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### **Layer #3 – Immobilizing Device**

The third layer of protection is a device which prevents thieves from bypassing your ignition and hot-wiring the vehicle.

Some electronic devices have computer chips in ignition keys. Other devices inhibit the flow of electricity or fuel to the engine until a hidden switch or button is activated.

Popular third layer devices include:

- Smart keys
- Fuse cut-offs
- Kill switches
- Starter, ignition and fuel disablers

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### **Layer #4 – Tracking Device**

The final layer of protection is a tracking device which emits a signal to a police or monitoring station when the vehicle is reported stolen. Tracking devices are very effective in helping authorities recover stolen vehicles.

## Passive and Active Anti-Theft Systems

Passive and active anti-theft devices are the two options available when considering an anti-theft system. Passive devices automatically arm themselves when the vehicle is turned off, the ignition key removed, or a door is shut. No additional action is required. Active devices require some independent physical action before they are set, such as pushing a button, or placing a “lock” over a vehicle component part. This physical action must be repeated every time the anti-theft device is set or it will not function.



## Anti-Theft Devices

Common sense is the simplest and most cost-effective way to thwart thieves. Motorists with high-risk vehicles, should also consider using several "layers" of protection.

### Layer #1 – Common Sense

#### **Ignition Keys**

If removed from the ignition after every use, ordinary ignition keys can significantly reduce the likelihood of theft.

Cost: Standard in all models  
Benefits: Easy to use

#### **Door Locks/Closed Windows**

Door locks, the original anti-theft device, and closed windows effectively limit access to the vehicle's interior.

Cost: Standard in all models  
Benefits: Prevents easy access

#### **Park in a Well-Lit Area**

Parking in a well-lit area discourages thieves from approaching a vehicle because of visibility.

Cost: None  
Benefits: Prevents easy access

### Layer #2 – Warning Devices

#### **Audible Alarms**

Audible alarms are typically equipped with motion or impact sensors which trigger a 120-decibel siren.

Cost: \$150 - \$1,000  
Benefits: Effective in preventing thefts, burglaries and vandalism

#### **Steering Column Collars**

Steering column collars prevent thieves from "hot-wiring" the vehicle. Some collars are installed permanently. Others must be continuously activated.

Cost: \$100 - \$200 installed  
Benefits: Excellent protection for older vehicles

#### **Steering Wheel Locks**

A steering wheel lock is a metal bar designed to prevent the steering wheel from turning.

Cost: \$25 - \$100  
Benefits: Excellent visual deterrent

#### **Steering Wheel/Brake Pedal Lock**

Prevents depression of the brake pedal.

Cost: \$15 - \$80  
Benefits: Excellent visible deterrent

#### **Wheel Locks**

Similar to the circular steel "boots" used by many large city police departments, tire locks prevent the vehicle from being driven.

Cost: \$80 - \$200  
Benefits: Excellent visible deterrent

#### **Tire Locks/Tire Deflators**

Attaches to the tire valve stem and causes the tire to go flat if the tire rotates before they are removed.

Cost: Under \$50  
Benefits: Easy and inexpensive to use.

#### **Theft Deterrent Decals**

Theft deterrent decals visually warn thieves the vehicle is protected by an alarm or other anti-theft devices.

Cost: \$2 - \$5  
Benefits: Inexpensive but effective

#### **Identification markers in or on vehicle**

Security labels marking various vehicle parts enabling the part to be identified if removed from the vehicle.

Cost: \$2 - \$15  
Benefits: Inexpensive, discourages thieves from stealing the vehicle and aids in recovery

#### **Window Etching**

Etching the vehicle identification number or other traceable number onto the vehicle's windows makes it difficult for thieves to resell the vehicle or its parts.

Cost: Free to \$100  
Benefits: Discourages thieves from stealing the vehicle and aids in recovery

### **Laminated Glass**

Impact resistant protective glazing applied to vehicle windows designed to fortify the windows against penetration or splintering.

Cost: Standard  
Benefits: Excellent protection for vehicle windows

### **Layer #3 – Immobilizing Devices**

#### **Smart Keys**

Smart keys contain specially coded computer chips or radio frequencies. Without the exact key, the vehicle's engine cannot be started.

Cost: Standard in some models  
Benefits: Effective and extremely easy to use

#### **Fuse cut-offs**

Short circuits the electrical system, preventing the vehicle from starting.

Cost: \$40 - \$90  
Benefits: Inexpensive and relatively easy to install

#### **Kill Switches**

Kill switches inhibit the flow of electricity or fuel to the engine until a hidden switch is activated.

Cost: \$10 - \$125  
Benefits: Inexpensive and relatively easy to install

#### **Starter, ignition and fuel disablers**

Short circuits the electrical or fuel system, preventing the vehicle from starting, or causes the vehicle to stop running within a short time.

Cost: Standard in some models  
Benefits: Inexpensive and easy to use

### **Layer #4 – Tracking Devices**

#### **Tracking Devices**

Most tracking devices are electronic transmitters hidden in the vehicle which emit signals to the police or monitoring stations when the vehicle is reported stolen.

Cost: \$400 to \$1,500  
Benefits: Effective in recovering stolen vehicles

## WISCONSIN VEHICLE PROTECTION PRODUCT ACT

**§ 1. SHORT TITLE**

This Act may be cited as the Vehicle Protection Product Act.

**§ 2. DEFINITIONS**

- (1) **“Administrator”** means a third party other than the warrantor who is designated by the warrantor to be responsible for the administration of vehicle protection product warranties.
- (2) **“Office”** means the Office of the Commissioner of Insurance.
- (3) **“Commissioner”** means the Commissioner of Insurance.
- (4) **“Service Contract”** means a warranty plan, contract or agreement as defined under the Wisconsin Administrative Code § Ins. 15.01 Warranty Plans.
- (5) **“Incidental costs”** means expenses specified in the warranty incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs may include, without limitation, 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.
- (6) **“Vehicle protection product”** means a vehicle protection device, system, or service that is (i) installed on or applied to a vehicle, (ii) is designed to prevent loss or damage to a vehicle from a specific cause, and (iii) includes a written warranty that provides if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, that the warranty holder shall be paid specified incidental costs by the warrantor as a result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty. The term vehicle protection product shall include, without limitation, 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.
- (7) **“Vehicle protection product warrantor or “warrantor”** for the purposes of this Act means a person who is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty agreement. Warrantor does not include a licensed insurer who is authorized to do business in this state.
- (8) **“Warranty holder”** for the purposes of this Act means the person who purchases a vehicle protection product or who is a permitted transferee.
- (9) **“Warranty reimbursement insurance policy”** means a policy of insurance issued by a licensed insurer authorized to do business in this state that is issued to the vehicle protection product warrantor to provide reimbursement to the warrantor or pay on behalf of the warrantor all covered contractual obligations incurred by the warrantor under the terms and conditions of the insured vehicle protection product warranties sold by the warrantor.

**§ 3. SCOPE AND EXEMPTIONS**

- (1) No vehicle protection product may be sold or offered for sale in this state unless the seller, warrantor, and administrator, if any, comply with the provisions of this Act.
- (2) Vehicle protection product warrantors and related vehicle protection product sellers and warranty administrators complying with this Act are not required to comply with and are not subject to any other provision of the Wisconsin Insurance Code.
- (3) Service contract providers who do not sell vehicle protection products are not subject to the requirements of this Act and sales of vehicle protection products are exempt from the requirements of Wis. Admin. Code § Ins. 15.01 pertaining to warranty plans.
- (4) Warranties, indemnity agreements, and guarantees that are not provided as a part of a vehicle protection product are not subject to the provisions of this Act.

**§ 4. REGISTRATION AND FILING REQUIREMENTS OF WARRANTORS**

- (1) A person may not operate as a warrantor or represent to the public that the person is a warrantor unless the person is registered with the Office of the Commissioner on a form prescribed by the Commissioner.
- (2) **Registration Records:** Warrantor registration records shall be filed annually and shall be updated within 30 days of any change. The registration records shall contain the following information:
  - (a) The warrantor's name, any fictitious names under which the warrantor does business in the state, principal office address, and telephone number.
  - (b) The name and address of the warrantor's agent for service of process in the state if other than the warrantor.
  - (c) The names of the warrantor's executive officer or officers directly responsible for the warrantor's vehicle protection product business
  - (d) The name, address, and telephone number of any administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties in this state.
  - (e) A copy of the warranty reimbursement insurance policy or policies or other financial information required by Section 5 below.
  - (f) A copy of each warranty the warrantor proposes to use in this state.
  - (g) A statement indicating under which provision of §5 the warrantor qualifies to do business in this state as a warrantor.
- (3) **Registration Fee:** The Commissioner may charge each registrant a reasonable fee to offset the cost of processing the registration and maintaining the records in an amount not to exceed \$250 annually. The information in §4(2)a-b shall be made available to the public.
- (4) **Renewal:** If a registrant fails to register by the renewal deadline, the Commissioner shall give them written notice of the failure and the registrant will have 30 days to complete the renewal of their registration before they are suspended from being registered in this state.

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

#### **§ 5. FINANCIAL RESPONSIBILITY**

No vehicle protection product shall be sold, or offered for sale in this state unless the warrantor meets one the conditions in this subsection in order to ensure adequate performance under the warranty. No other financial security requirements or financial standards for warrantors shall be required.

(1) Warranty reimbursement insurance policy.

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

(b) a true and correct copy of the warranty reimbursement insurance policy has been filed with the Commissioner by the warrantor; and

(c) the policy contains the provision required in §6 below.

(2) Net worth qualification.

(a) The vehicle protection product warrantor, or its parent company in accordance with subdivision (2)(b), maintains a net worth or stockholders' equity of \$50,000,000; and

(b) the warrantor provides the Commissioner with a copy of the warrantor's or the warrantor's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the last calendar year or, if the warrantor does not file with the Securities and Exchange Commission, a copy of the warrantor or the warrantor's parent company's audited financial statements that shows a net worth of the warrantor or its parent company of at least \$50,000,000. If the warrantor's parent company's Form 10-K, Form 20-F, or audited financial statements are filed to meet the warrantor's financial stability requirement, then the parent company shall agree to guarantee the obligations of the warrantor relating to warranties issued by the warrantor in this state.

#### **§ 6. WARRANTY REIMBURSEMENT POLICY REQUIREMENTS**

No warranty reimbursement insurance policy shall be issued, sold, or offered for sale in this state unless the policy meets the conditions set forth in this section.

(1) The policy states that the issuer of the policy will reimburse or pay on behalf of the vehicle protection product warrantor all covered sums which the warrantor is legally obligated to pay or will provide the all 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.

(2) The policy states that in the event payment due under the terms of the warranty is not provided by the warrantor within 60 days after proof of loss has been filed according to the terms



of the warranty by the warranty holder, the warranty holder may file directly with the warranty reimbursement insurance company for reimbursement.

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

(4) The policy has the following provisions regarding cancellation of the policy:

(a) The issuer of a reimbursement insurance policy shall not cancel such policy until a notice of cancellation in writing has been mailed or delivered to the Commissioner and each insured warrantor.

(b) The cancellation of a reimbursement insurance policy shall not reduce the issuer's responsibility for vehicle protection products sold prior to the date of cancellation.

(c) In the event an insurer cancels a policy that a warrantor has filed with the Commissioner, the warrantor shall do either of the following:

(i) 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.

(ii) Discontinue acting as a warrantor as of the termination date of the policy until a new policy becomes effective and is accepted by the Commissioner.

## **§ 7. DISCLOSURE TO WARRANTY HOLDER**

(1) Every vehicle protection product warranty shall be written in clear, understandable language and shall be printed or typed in easy-to-read type, size, and style, and shall not be sold or offered for sale in this state unless the warranty:

(a) Conspicuously states that the obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy, if the warrantor elects to meet its financial responsibility obligations under §5(1) above;

(b) Conspicuously states that in the event a warranty holder must make a claim against a party other than the warranty reimbursement insurance policy issuer, the warranty holder is entitled to make a direct claim against the insurer upon the failure of the warrantor to pay any claim or meet any obligation under the terms of the warranty within 60 days after proof of loss has been filed with the warrantor, if the warrantor elects to meet its financial responsibility obligations under §5(1) above;

(c) Conspicuously states the name and address of the issuer of the warranty reimbursement insurance policy, and this information need not be preprinted on the warranty form, but may be stamped on the warranty, if the warrantor elects to meet its financial responsibility obligations under §5(1) above;

(d) Identifies the warrantor, the seller, and the warranty holder;

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

- (f) Sets forth the procedure for making a claim, including a telephone number;
  - (g) Conspicuously states the existence of a deductible amount, if any;
  - (h) Specifies the payments or performance to be provided under the warranty including payments for incidental costs, the manner of calculation or determination of payments or performance whether by formula or a fixed sum, and any limitations, exceptions or exclusions;
  - (i) Sets forth the conditions on which substitution will be allowed;
  - (j) Conspicuously sets forth all of the obligations and duties of the warranty holder such as the duty to protect against any further damage to the vehicle, the obligation to notify the warrantor in advance of any repair, or other similar requirements, if any;
  - (k) Sets forth any terms, restrictions, or conditions governing transferability of the warranty, if any;
  - (l) Contains a disclosure that reads substantially as follows: "This agreement is a product warranty and is not insurance."
- (2) At the time of sale, the seller or warrantor shall provide to the purchaser:
- (a) a copy of the vehicle protection product warranty, or
  - (b) a receipt or other written evidence of the purchase of the vehicle protection product and a copy of the warranty within 30 days of the date of purchase.

#### **§ 8. WARRANTY CANCELLATION**

No vehicle protection product may be sold or offered for sale in this state unless the vehicle protection product warranty clearly states the terms and conditions governing the cancellation of the sale and warranty, if any.

- (1) The warrantor may only cancel the warranty if the warranty holder
  - (a) fails to pay for the vehicle protection product;
  - (b) makes a material misrepresentation to the seller or warrantor;
  - (c) commits fraud; or
  - (d) substantially breaches the warranty holder's duties under the warranty.
- (2) 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 there reason for the cancellation.

#### **§ 9. PROHIBITED ACTS**

- (1) Unless licensed as an insurance company, a vehicle protection product warrantor shall not use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other vehicle protection product warrantor. A warrantor may use the term "guaranty" or similar

word in the warrantor's name.

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

(3) A vehicle protection product warrantor shall not permit or cause the omission of any material statement in connection with the sale, offer to sell, or advertisement of a vehicle protection product, which under the circumstances should have been made in order to make the statements that were made not misleading.

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

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

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

#### **§ 10. RECORD KEEPING**

(1) All vehicle protection product warrantors shall keep accurate accounts, books, and records concerning transactions regulated under this Chapter.

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

(a) Copies of all vehicle protection product warranties;

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

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

(3) A vehicle protection product warrantor shall retain all required accounts, books, and records pertaining to each warranty holder for at least two 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.

(4) Vehicle protection product warrantors shall make all accounts, books, and records concerning transactions regulated under this Act available to the Commissioner for the purpose of examination.

#### **§ 11. SANCTIONS; ADMINISTRATIVE PENALTY**

(1) The Commissioner may conduct examinations of warrantors, administrators, or other persons to enforce this Act and protect warranty holders in this state. Upon request of the Commissioner, a warrantor shall make available to the Commissioner all accounts, books, and records concerning vehicle protection products sold by the warrantor that are necessary to enable the Commissioner to reasonably determine compliance or noncompliance with this Act.

(2) The Commissioner may take action that is necessary or appropriate to enforce the provisions of this Act and the Commissioner's rules and orders and to protect warranty holders

in this state. If a warrantor engages in a pattern or practice of conduct that violates this Act and that the Commissioner reasonably believes threatens to render the warrantor insolvent or cause irreparable loss or injury to the property or business of any person or company located in this state, the Commissioner may

- (a) issue an order directed to that warrantor to cease and desist from engaging in further acts, practices, or transactions that are causing the conduct;
  - (b) issue an order prohibiting that warrantor from selling or offering for sale service contracts in violation of this Act;
  - (c) issue an order imposing a civil penalty on that warrantor; or
  - (d) issue any combination of the foregoing, as applicable.
- (3) Prior to the effective date of any order issued pursuant to this subsection, 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, except prior notice and hearing shall not be required if the Commissioner reasonably believes that the warrantor has become, or is about to become, insolvent.
- (4) A person aggrieved by an order issued under this Section may request a hearing before the Commissioner. The hearing request shall be filed with the Commissioner within 20 days after the date the Commissioner's order is effective, and the Commissioner must hold such a hearing within 15 days after receipt of the hearing request.
- (5) At the hearing, the burden shall be on the Commissioner to show why the order issued pursuant to this Section is justified. The provisions of \_\_\_\_\_ of the Wisconsin [Administrative Procedure] Act shall apply to a hearing request under this Section.
- (6) The Commissioner may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of this Act or of the Commissioner's orders or rules. An action filed under this Section also may seek restitution on behalf of persons aggrieved by a violation of this Act or orders or rules of the Commissioner.
- (7) A person who is found to have violated this Act or orders or rules of the Commissioner may be ordered to pay to the Commissioner a civil penalty in an amount, determined by the Commissioner, of not more than \$500 per violation and not more than \$10,000 in the aggregate for all violations of a similar nature. For purposes of this Section, violations shall be 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 is determined to be a violation of this Act occurred.

## **§ 12. RULEMAKING POWER**

The Commissioner may adopt such administrative rules consistent with the provisions of this Act as are necessary to implement them. Such rules and regulations shall include disclosures for the benefit of the warranty holder, record keeping, and procedures for public complaints. Such rules and regulations shall also include the conditions under which surplus lines insurers may be rejected for the purpose of underwriting vehicle protection product warranty agreements.

## **§ 13. APPLICABILITY**

This Act applies to all service contracts sold or offered for sale on or after the effective date of this Act. The failure of any person to comply with this Act prior to its effective date shall not be admissible in any court proceeding, administrative proceeding, arbitration, or alternative dispute resolution proceeding and may not otherwise be used to prove that the action of any person or the affected vehicle protection product was unlawful or otherwise improper.

**§ 14. EFFECTIVE DATE**

This Act takes effect on January 1, 2004 [6 months after the date of its signing into law?].

# THE VALUE OF VEHICLE PROTECTION PRODUCTS

## National Vehicle Protection Association (NVPA)

The National Vehicle Protection Association (NVPA) is the trade association representing businesses engaged in the production, manufacturing, distribution or installation of vehicle protection products or systems designed to prevent loss or damage to a vehicle.

### NVPA Mission Statement

The NVPA mission is to represent the vehicle protection products industry by advocating sound public policies that promote a favorable business climate and ensure that consumers continue to be able to acquire a variety of vehicle protection products to protect their property.

### Vehicle Protection Products Defined

The principle purposes of vehicle protection products are (1) the deterrent of vehicle theft and (2) assistance in the recovery of the vehicle in the event theft does occur. In fact, national statistics support the theft deterrent value of these products and law enforcement agencies throughout the country recognize their value in vehicle theft prevention.

The principal purpose of these products is the prevention of vehicle theft and aid in the recovery of the vehicle in the event theft does occur. These products are clearly beneficial to consumers as they greatly reduce the time, expense, and anguish of coping with vehicle theft.

Vehicle protection products include:

- **Ignition Cut-Off:** A key-operated or hidden manual switch that interrupts the power supply from the battery to the ignition.
- **Fuel Cut-Off:** Integrated into the fuel line, this device prevents the flow of gasoline once the fuel in the gas line is used. Only a special key deactivates the cut-off.
- **Ignition Column Guard:** This security device can provide protection to the ignition starting system. The device fits around the steering column and over the ignition starting system.
- **Hood Lock:** A secondary hood lock that prevents access to the power source, battery or siren, for an alarm system, via a key-operated bolt accessible from inside the car.
- **Door Locks:** Visible inside door lock buttons that are smooth and tapered.
- **Steering Wheel Lock:** Locks on and prevents steering wheel from turning. Its high visibility deters theft.
- **Vehicle Etching:** Vehicle identification numbers (VIN) or code numbers etched onto vehicle windows.
- **Body Part Marking:** Code numbers, which are permanently affixed to the painted metal body panels such as doors, trunks, hoods, and fenders.
- **Radio Security:** Slide mount removable radio devices. The idea is simple: If you do not want it stolen, take it with you.

Some vehicle protection products, such as steering wheel locking devices and other locking devices, are advertised and sold directly to consumers. Window etching products, however, are sold directly to automobile dealers and are used to etch identification numbers into the vehicle's window.

### **The Vehicle Protection Product Warranty**

The vehicle protection product company's warranty provides for a specified payment to the vehicle owner if the product fails to perform. The warranty is specifically designed to cover the vehicle owner's costs that are a direct result of a failure of the theft prevention product to perform.

The warranty is an integral part of the single product being sold. Simply put, the company is selling a vehicle protection product, which it warrants will do the job it is intended to do—to prevent theft and to aid in recovery if the vehicle is stolen.

For example, once the automobile dealer applies the VIN number to the vehicle with the window etching product, the dealer provides the customer with the company's warranty. The company warrants that having the VIN number etched on the vehicle will deter theft. The company's warranty provides for a specified payment to the new vehicle owner if having the VIN number etched on the vehicle fails to deter theft or aid in recovery.

If the vehicle were subsequently stolen and not recovered, the company's product would then have failed to reduce the risk of theft according to the express representation of the company with respect to its product. The company's warranty provides that the company back up its warranty by paying to the customer a specified maximum amount of damages incurred by the customer as a result of the failure of the product to prevent theft.

### **The Vehicle Protection Product Warranty is not Insurance**

The vehicle protection product warranty and payment to the customer for damages sustained by the customer as a result of the failure of the product to prevent theft, is not a replacement for, or in lieu of, the customer's insurance coverage, if any, under the customer's comprehensive insurance policy.

The customer's insurance company—not the vehicle protection product company—is liable to the customer according to the comprehensive theft provisions, if any, of the customer's insurance policy. The vehicle protection product company is only warranting its product for damages caused by failure of that product.

A warranty and a contract of insurance, though sometimes confused, have fundamental differences in their intent, application and potential benefits:

- The vehicle protection product warranty is not intended as a replacement for insurance. In fact, warranties require the consumer to carry comprehensive auto insurance.
- A warranty is a benefit paid to the consumer for direct expenses resulting from product failure—in this case, failure to prevent theft or aid in recovery.

- Insurance is a contract by which one party for consideration assumes particular risks on behalf of another party and promises to pay that person a certain or ascertainable sum of money on the occurrence of a specified contingency.
- Insurance is an undertaking by one party, usually called the “insurer”, to protect the other party, generally designated as the “insured”, from loss arising from named risks, for the consideration, and on the terms and under the conditions, recited in the insurance contract.
- While a contract of insurance may accompany and be a part of a larger transaction, it is important to remember that insurance is a separate contract that results from a separate payment (premium) by the insured to the insurer for the insurer to assume a risk that the insured otherwise would have.
- Warranties are not considered contracts of insurance although they may contain all of the essential elements of an insurance contract. The distinction is that a warranty is issued to provide protection against defects or failures in a product whereas an insurance policy is issued to provide reimbursement or indemnity based on an accident or occurrence unrelated to any defect or failure in the product.
- A warranty pays the consumer for the expenses directly arising out of the failure of the vehicle protection product, including the costs associated with an insurance deductible, the down payment for a replacement vehicle, tax, title and license costs for the replacement vehicle, etc.
- Insurance, on the other hand, is a benefit paid to the policy holder as the result of a “fortuitous event” resulting from perils outside of and unrelated to a failure of, or defect in, a product, i.e., the cash value of the vehicle.

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### 2001 Auto Theft Statistics

3,300 auto thefts every day of the year (one every 26 seconds).

1.2 million motor vehicle thefts annually.

Annual cost to the American consumer: \$8.2 Billion.

Vehicle theft is the most costly property crime in the United States.

—National Insurance Crime Bureau

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### Contact Information

National Vehicle Protection Association  
7455 Natural Bridge Caverns Road, Schertz, Texas 78154-3210  
TEL: 210.871.7390 — FAX: 210.871.7391  
Email: victors@nvpa.net



State of Illinois

Public Act 93-0218

SB741 Enrolled

LRB093 03236 JLS 03253 b

AN ACT relating to insurance.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Insurance Code is amended by adding Section 155.39 as follows:

(215 ILCS 5/155.39 new)

Sec. 155.39. Vehicle protection products.

(a) As used in this Section:

“Administrator” means a third party other than the warrantor who is designated by the warrantor to be responsible for the administration of vehicle protection product warranties.

“Incidental costs” means expenses specified in the vehicle protection product warranty incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs may include, without limitation, 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.

“Vehicle protection product” means a vehicle protection device, system, or service that is (i) installed on or applied to a vehicle, (ii) is designed to prevent loss or damage to a vehicle from a specific cause, (iii) includes a written warranty by a warrantor that provides if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, that the warranty holder shall be paid specified incidental costs by the warrantor as a result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty, and (iv) the warrantor’s liability is covered by a warranty reimbursement insurance policy. The term “vehicle protection product” shall include, without limitation, 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.

“Vehicle protection product warrantor” or “warrantor” means a person who is contractually obligated to the warranty holder under the terms of the vehicle protection product. Warrantor does not include an authorized insurer.

“Warranty reimbursement insurance policy” means a policy of insurance issued to the vehicle protection product warrantor to pay on behalf of the warrantor all covered contractual obligations incurred by the warrantor under the terms and conditions of the insured vehicle protection product warranties sold by the warrantor. The warranty reimbursement insurance policy shall be issued by an insurer authorized to do business in this State that has filed its policy form with the Department.

(b) No vehicle protection product sold or offered for sale in this State shall be subject to the provisions of this Code. Vehicle protection product warrantors and related vehicle protection

*43 states have wty - 7 states regulate or semi-regulate w/ susp insurance look at exemption*

*[Handwritten bracket and arrow pointing to sub-section (b)]*

product sellers and warranty administrators complying with this Section are not required to comply with and are not subject to any other provision of this Code. The vehicle protection products' written warranties are express warranties and not insurance.

(c) This Section applies to all vehicle protection products sold or offered for sale prior to, on, or after the effective date of this amendatory Act of the 93rd General Assembly. The enactment of this Section does not imply that vehicle protection products should have been subject to regulation under this Code prior to the enactment of this Section.

Section 99. Effective date. This Act takes effect upon becoming law.

**Effective Date: 7/18/2003**



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2495/P1  
CMH&PJK:.....

TUES. P.M.  
8-19

ys

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-NOTE

SA ✓  
new CRS ✓  
x-refs ✓

generator

1 AN ACT ...; relating to: vehicle protection product warranties and granting  
2 rule-making authority.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

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

3 SECTION 1. 100.203<sup>^</sup> of the statutes is created to read:  
4 **100.203 Vehicle protection product warranties.** (1) DEFINITIONS. In this  
5 section:  
6 (a) "Administrator" means a party other than the warrantor whom the  
7 warrantor designates to be responsible for the administration of warranties.  
8 (b) "Commissioner" means the commissioner of insurance.  
9 (c) "Incidental costs" means expenses incurred by the warranty holder that are  
10 specified in the warranty and that are related to the failure of the vehicle protection

1 product to perform as the warranty provides. "Incidental costs" include insurance  
2 policy deductibles, rental vehicle charges, the difference between the actual value of  
3 the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales  
4 taxes, registration fees, transaction fees, and mechanical inspection fees.

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

6 (e) "Vehicle protection product" means a device, system, or service installed on  
7 or applied to a vehicle that is designed to prevent loss or damage to the vehicle. (A)

8 "vehicle protection product" includes alarm systems, body-part marking products,  
9 steering locks, window-etch products, pedal and ignition locks, fuel and ignition kill  
10 switches, and electronic, radio, and satellite tracking devices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 1

\*\*\*NOTE: Is it your intention that this statement be confidential?

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

\*\*\*NOTE: How long would the registration be suspended—until registration is renewed? Or should his or her registration be terminated?

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

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

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

*conditions specified*

13 (b) The warrantor, or its parent company, maintains a net worth or  
14 stockholders' equity of \$50,000,000. If the warrantor files with the U.S. Securities  
15 and Exchange Commission, the warrantor provides the commissioner with a copy of  
16 the warrantor's, or the parent company's, most recent U.S. Securities and Exchange  
17 Commission form 10-K or form 20-f, filed within the preceding year pursuant to 15  
18 USC 78L(b) or (g), 78m, or 78o(d). If the warrantor does not file with the U.S.

19 Securities and Exchange Commission, the warrantor provides <sup>the commissioner</sup> a copy of the  
20 warrantor's, or the parent company's, audited financial statements ~~that~~ show a net  
21 worth of the warrantor, or its parent company, of at least \$50,000,000.

22 warrantor's parent company's forms or audited financial statements are filed to meet  
23 the requirement under this subsection, then the parent company shall agree to

*condition specified*

SECTION 1

*business and economic development*

1 guarantee the obligations of the warrantor relating to warranties issued by the  
2 warrantor in this state.

\*\*\*\*NOTE: The drafting attorney who specializes in ~~the relevant area~~ *least* suggests the following language to replace the first sentence, "The warrantor's net worth, or the total of all outstanding ownership interests in the warrantor, is at \$50,000,000, or, if the warrantor is a subsidiary, the parent entity's net worth is at least \$50,000,000." *He* suggests this language *because it* allows for other forms of business organizations such as LLCs and LLPs rather than ~~single~~ *only* stock corporations. *(S)*

3 (4) DISCLOSURE TO WARRANTY HOLDER. (a) Every warranty shall be written in  
4 clear language that is understandable to lay persons and shall be printed or typed  
5 in easy-to-read ~~word~~ *of type* size, and style, and may ~~not~~ *No warranty* be sold or offered for sale unless  
6 the warranty *it* meets all of the following conditions:

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

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

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

\*\*\*\*NOTE: Is the other party only the warrantor?

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

18 3. The warranty sets forth the total purchase price and the payment terms. The  
19 purchase price does not have to be preprinted on the warranty and may be negotiated  
20 with the consumer at the time of sale.

*purchaser*

SECTION 1

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

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

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

\*\*\*\*NOTE: Does limitation include the duration of the warranty?

\*\*\*\*NOTE: Some of the items say "conspicuously" and others do not—is there a reason for this differentiation? May some of the statements be in inconspicuous print?

8           7. The warranty sets forth the conditions <sup>on</sup> which substitution will be allowed.

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

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

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

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

16           (b) The seller <sup>of the warranty</sup> or <sup>the</sup> warrantor shall provide one of the following to the purchaser:

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

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

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

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



- 1           2. Make<sup>s</sup> a material misrepresentation to the seller or warrantor.
- 2           3. Commits fraud.
- 3           4. Substantially breaches the warranty holder's duties under the warranty.
- 4           (b) A warrantor cancell<sup>ing</sup> a warranty shall mail written notice of cancellation
- 5           to the warranty holder at the last address of the warranty holder in the warrantor's
- 6           records at least 30 days prior to the effective date of the cancellation. The notice shall
- 7           state the effective date of the cancellation and the reason for the cancellation.

8           **(6) PROHIBITED ACTS.** (a) A warrantor that is not an insurer, as defined in s.

9           600.03 (27), may not use in its name, contracts, or literature any of the terms

10          "insurance," "casualty," "surety," "mutual," or any other words descriptive of the

11          insurance, casualty, or surety business. A warrantor may not use any name or

12          description that is deceptively similar to the name or description of any insurance

13          or surety corporation or to any other warrantor. ✓

14          (b) No warrantor may make any warranty claim that is untrue, deceptive, or

15          misleading as provided in s. 100.18. ✓

16          (c) A seller or warrantor may not require as a condition of sale or financing that

17          a retail purchaser of a motor vehicle purchase a vehicle protection product that is not

18          installed on the vehicle at the time of sale.

19          **(7) RECORD KEEPING.** (a) Warrantors shall keep accurate records of transactions

20          regulated under this section.

- 21          (b) A warrantor's records shall include all of the following:
- 22           1. Copies of all warranties under which the warrantor is obligated.
- 23           2. The name and address of each warranty holder to whom the warrantor is
- 24          obligated.

*\* \* \* Should "seller" be defined here? This use of "seller" seems not to be limited to just a warranty seller. ✓*

## SECTION 1

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

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

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

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

- 17           1. Prohibits the warrantor from engaging in the act that violates this section. ✓  
18           2. Prohibits the warrantor from selling or offering for sale any warranty that  
19 violates this section. ✓  
20           3. Imposes a forfeiture on the warrantor. ✓

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

\*\*\*NOTE: Should there be a general effective date for orders? Usually the effective date of <sup>e the</sup> commissioner's order is 10 days after notice unless the order specifies otherwise.

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

4 (c) A person aggrieved by an order issued under par. (a) may request a hearing  
5 before the commissioner. The hearing request shall be filed with the commissioner  
6 within 20 days after the date the commissioner's order is effective, and the  
7 commissioner shall hold the hearing within 15 days after the receipt of the hearing  
8 request.

9 (d) At the hearing, the commissioner bears the burden of proving that the order  
10 issued under par. (a) <sup>✓</sup> is justified. Chapter 227 applies to a hearing request under this  
11 subsection.

\*\*\*NOTE: Is the commissioner both the person conducting the hearing and the  
person with the burden of showing that the order was justified? ✓

12 (e) The commissioner may bring an action in any court of competent  
13 jurisdiction for an injunction or other appropriate relief to enjoin a threatened or  
14 existing violation of this section or of a rule or order of the commissioner. An action  
15 filed under this subsection <sup>e paragraph</sup> may seek restitution on behalf of persons injured by a  
16 violation of this section or a violation of an order or rule of the commissioner.

17 (f) A person who violates this section or a rule or order of the commissioner may  
18 be ordered to forfeit to the state an amount determined by the commissioner, but not  
19 more than \$500 per violation and not more than \$10,000 for all violations of a similar  
20 nature. Violations are of a similar nature if the violation consists of the same or  
21 similar course of conduct, action, or practice, irrespective of the number of times the  
22 conduct, action, or practice that violated this section occurred.

or a rule or order

→ ~~\*\*\*~~ Are violations of rules and orders limited to the rules and orders issued under this ~~subsection~~ section?

1 (9) RULE-MAKING POWER. The commissioner may promulgate rules to  
2 implement this section, including rules related to disclosures for the benefit of  
3 warranty holders, record keeping, procedures for public complaints, and the  
4 conditions under which surplus lines insurers may be rejected for the purpose of  
5 underwriting ~~warranty agreements~~ <sup>warranties</sup>.

\*\*\*\*NOTE: Since the commissioner already has this authority <sup>under</sup> ss. 227.01 (13),  
227.10 (1) and (2), and 227.11 (2), is this ~~paragraph~~ <sup>subsection</sup> necessary? ✓

6 SECTION 2. 600.01 (1) (b) <sup>11.</sup> of the statutes is created to read:

7 600.01 (1) (b) 11. Warrantors, sellers, or administrators of vehicle protection  
8 product warranties under s. 100.203. ✓

9 SECTION 3. 601.31 (1) (km) <sup>^</sup> of the statutes is created to read:

10 601.31 (1) (km) For processing registration and maintaining records under s.  
11 100.203 <sup>✓</sup> (2), a fee to be set by the commissioner by rule but not to exceed \$250  
12 annually.

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

14 601.41 (1) DUTIES. (intro.) The commissioner shall administer and enforce chs.  
15 600 to 655 and ss. 59.52 (11) (c), 66.0137 (4) and (4m), 100.203 <sup>NR</sup> (8), 120.13 (2) (b) to  
16 (g), 149.13, and 149.144 and shall act as promptly as possible under the  
17 circumstances on all matters placed before the commissioner.

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History: 1977 c. 339 s. 43; 1979 c. 89, 102, 177; 1983 a. 358 s. 14; 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 247; 1989 a. 187 s. 29; 1989 a. 201, 336; 1991 a. 39; 1993 a. 16; 1995 a. 201; 1997 a. 27, 51, 252; 1999 a. 150 s. 672; 2001 a. 16, 65, 109.

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

19 631.37 (4) (g) *Warranty reimbursement insurance policy.* Section 632.185 (2)  
20 <sup>(e)</sup> applies to warranty reimbursement insurance policies.

21 SECTION 6. 632.185 <sup>^</sup> of the statutes is created to read:

22 632.185 **Vehicle protection product warranty insurance policy.** (1)

23 DEFINITIONS. In this section:

- 1 (a) "Vehicle protection product" has the meaning given in s. 100.203 (2) (e).
- 2 (b) "Warrantor" has the meaning given in s. 100.203 (2) (f).
- 3 (c) "Warranty" has the meaning given in s. 100.203 (2) (g).
- 4 (d) "Warranty holder" has the meaning given in s. 100.203 (2) (h).
- 5 (e) "Warranty reimbursement insurance policy" has the meaning given in s.
- 6 100.203 (2) (i).

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

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

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

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

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

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

~~\*\*\*~~ Is "premium" the right term? wouldn't the premium already have been paid before the warrantor sold the vehicle protection product?

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policy

**SECTION 6**

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

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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.

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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:

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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.

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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.

\*\*\*\*NOTE: If the warrantor discontinues acting as a warrantor, what happens to those outstanding warranties?

**SECTION 7. Initial applicability.**

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(1) The treatment of sections 100.203 (2), (3), (4), (5), (7), (8), and (9), 600.01 (1) (b) 11., and 601.41 (1) (intro.) of the statutes 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.**

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

22

(END)

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2495/P1dn

CMH:/:....

cjs

date

9) Senator Schultz:

9) This draft is a preliminary draft. It will need to be redrafted as LRB-2495/1, before it can be introduced.

9) I asked some questions about the draft ~~and put the questions in the draft itself. Please see the embedded notes in the draft.~~

The draft currently has one effective date. Would it make logical sense to have three stages for the effective date? The insurance provisions could have the earliest stage, the warrantor provisions would have the next stage, and finally the warranties could have the latest stage.

I eliminated the term "service contract" from the definitions section because the only suggested use, which was in 100.203 (8), seemed to be synonymous with "warranty." Do you agree?

In s. 100.203 (2) (e) 1., the suggested language read "mailed or delivered to the commissioner and each insured warrantor." I changed "each" to "the" because only one warrantor would be affected, right? In general, does the policy insure the warrantor or the warranty?

In s. 100.203 (8), would you prefer to apply subch. V of ch. 601 (Procedures and Enforcement) instead of s. 100.203 (8) (c), (d), (e), and (f)?

Cathlene Hanaman  
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E-mail: cathlene.hanaman@legis.state.wi.us

632.185

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2495/P1dn  
CMH:cjs:rs

August 19, 2003

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