



State of Wisconsin
2003 - 2004 LEGISLATURE

P2
LRB-2495/P1
CMH&PJK:cjs:re
stays

MON. 8:30 A.M.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓

1 AN ACT ^{regr} 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 and granting 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: ✓

4 SECTION 1. 100.203 of the statutes is created to read:
5 **100.203 Vehicle protection product warranties. (1) DEFINITIONS.** In this
6 section:
7 (a) "Administrator" means a party other than the warrantor whom the
8 warrantor designates to be responsible for the administration of warranties.
9 (b) "Commissioner" means the commissioner of insurance.
10 (c) "Incidental costs" means expenses incurred by the warranty holder that are
11 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.
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 under sub. (3).

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?

shall

1

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

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

(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 ^{is} or its parent company maintains a net worth ^{or} stockholders equity of \$50,000,000. If the warrantor files with the U.S. Securities and Exchange Commission, the warrantor provides the commissioner with a copy of the warrantor's, or the parent ^{entity's} ~~company'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} ~~company's~~ audited financial statements. If the warrantor's parent ^{entity's} ~~company's~~ forms or audited financial statements are filed to meet the condition specified under this subsection, then the parent ^{entity} ~~company~~ shall agree

or the total of all outstanding ownership interests in the warrantor, is at least \$50,000,000 if the warrantor is a subsidiary, the parent entity's net worth is at least

entity

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

****NOTE: The drafting attorney who specializes in business and economic development 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 least \$50,000,000, or, if the warrantor is a subsidiary, the parent entity's net worth is at least \$50,000,000." This language allows for other forms of business organization, such as LLCs and LLPs, rather than only stock corporations.

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 size and style of type. No warranty may be sold or offered for sale
6 unless 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 purchaser at the time of sale.

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~~ ^{will} be calculated or determined, and any limitations, exceptions, or
7 exclusions.

8 ***NOTE: Does limitation include the duration of the warranty?*** ✓

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

11 8. The warranty conspicuously states all of the obligations and duties of the
12 warranty holder. ✓

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

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

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

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

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

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

22 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.

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

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

4 2. Makes a material misrepresentation to the seller ^{to the} or warrantor.

5 3. Commits fraud.

*of the vehicle protection product
to which the warranty applies*

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

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

11 (6) PROHIBITED ACTS. (a) A warrantor that is not an insurer, as defined in s.
12 600.03 (27), may not use in its name, contracts, or literature any of the terms,
13 "insurance," "casualty," "surety," "mutual," or any other words descriptive of the
14 insurance, casualty, or surety business. A warrantor may not use any name or
15 description that is deceptively similar to the name or description of any insurance
16 or surety corporation or to any other warrantor.

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

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

No person may ~~of~~ of a motor vehicle

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

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

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

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

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

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

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

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

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

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

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

24 3. Imposes a forfeiture on the warrantor.

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

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

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

no 9 Section 601.02 applies to a hearing commenced under this paragraph.

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

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

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

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

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

issued under this section

<use 3x>

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

***NOTE: Are violations of rules and orders limited to the rules and orders issued
under this section?

issued
under
this
section

5 **(9) RULE-MAKING POWER.** The commissioner may promulgate rules to
6 implement this section, including rules related to disclosures for the benefit of
7 warranty holders, record keeping, procedures for public complaints, and the
8 conditions under which surplus lines insurers may be rejected for the purpose of
9 underwriting warranties.

***NOTE: Since the commissioner already has this authority under ss. 227.01 (13),
227.10 (1) and (2), and 227.11 (2), is this subsection necessary?

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

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

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

14 601.31 (1) (km) For processing and maintaining registration records under s.
15 100.203 (2), a fee to be set by the commissioner by rule but not to exceed \$250
16 annually.

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

18 601.41 (1) DUTIES. (intro.) The commissioner shall administer and enforce chs.
19 600 to 655 and ss. 59.52 (11) (c), 66.0137 (4) and (4m), 100.203 (6), 120.13 (2) (b) to
20 (g), 149.13, and 149.144 and shall act as promptly as possible under the
21 circumstances on all matters placed before the commissioner.

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

1 631.37 (4) (g) *Warranty reimbursement insurance policy*. Section 632.185 (2)
2 (e) applies to warranty reimbursement insurance policies.

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

4 **632.185 Vehicle protection product warranty insurance policy. (1)**

5 ~~DEFINITIONS~~ In this section:

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

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

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

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

10 (e) "Warranty reimbursement insurance policy" has the meaning given in s.
11 100.203 (1) (i).

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

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

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

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

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

***NOTE: Is "premium" the right term? Wouldn't the premium already have been paid before the warrantor sold the vehicle protection product?

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

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

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

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

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

18 b. Discontinue acting as a warrantor as of the termination date of the policy
19 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?

20 This act

SECTION 7. Initial applicability.

21 (1) ~~The treatment of sections 100.203 (2), (3), (4), (5), (7), (8), (9), 600.01 (1)~~

22 ~~(b) 11. and 601.41 (1) (Intro.) of the statutes~~ first applies to warranted vehicle

1 protection products and warranties that apply to vehicle protection products that are
2 offered for sale on the effective date of this subsection.

3 **SECTION 8. Effective date.**

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

6 (END)

**2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

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



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2495/P2
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FRIDAY 1/30

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3 protection product warranties.

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5 **100.203 Vehicle protection product warranties. (1) DEFINITIONS.** In this
6 section:

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

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

10 (c) "Incidental costs" means expenses incurred by the warranty holder that are
11 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.
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 under sub. (3).

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

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

4 2. If a registrant's registration is suspended under subd. 1., the suspension
5 shall last until the registrant registers and pays any late payment, except that the
6 registration shall be terminated ~~at the end of~~^{one year} if the registrant has not
7 registered or paid any late payment. *after the renewal deadline*

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

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

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

17 (b) The warrantor's net worth, or the total of all outstanding ownership
18 interests in the warrantor, is at least \$50,000,000, or, if the warrantor is a subsidiary,
19 the \$50,000,000. If the warrantor files with the U.S. Securities and Exchange
20 Commission, the warrantor provides the commissioner with a copy of the
21 warrantor's, or the parent entity's, most recent U.S. Securities and Exchange
22 Commission form 10-K or form 20-f, filed within the preceding year pursuant to 15
23 USC 78L(b) or (g), 78m, or 78o(d). If the warrantor does not file with the U.S.
24 Securities and Exchange Commission, the warrantor provides the commissioner a
25 copy of the warrantor's, or the parent entity's, audited financial statements. If the

parent entity's net worth is at least

1 warrantor's parent entity's forms or audited financial statements are filed to meet
2 the condition specified under this subsection, then the parent entity shall agree to
3 guarantee the obligations of the warrantor relating to warranties issued by the
4 warrantor in this state.

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

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

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

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

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22 with the purchaser at the time of sale.

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2 the warranty, including payments for incidental costs, how the payments or
3 performance will be calculated or determined, and any limitations, exceptions, or
4 exclusions.

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

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

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

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

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

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

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

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

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

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

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

24 3. Commits fraud.

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8 insurance, casualty, or surety business. A warrantor may not use any name or
9 description that is deceptively similar to the name or description of any insurance
10 or surety corporation or to any other warrantor.

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

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

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

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

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

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

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

24 (c) A warrantor shall retain all required records pertaining to each warranty
25 holder to whom the warrantor is obligated for at least 2 years after the specified

1 period of coverage has expired. A warrantor discontinuing business in this state
2 shall maintain its records until it furnishes the commissioner satisfactory proof that
3 it has discharged all obligations to warranty holders in this state.

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

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

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

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

16 3. Imposes a forfeiture on the warrantor.

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

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

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

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

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

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

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

21 600.01 (1) (b) 11. Warrantors, sellers, or administrators of vehicle protection
22 product warranties under s. 100.203.

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

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

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

5 601.41 (1) DUTIES. (intro.) The commissioner shall administer and enforce chs.
6 600 to 655 and ss. 59.52 (11) (c), 66.0137 (4) and (4m), 100.203, 120.13 (2) (b) to (g),
7 149.13, and 149.144 and shall act as promptly as possible under the circumstances
8 on all matters placed before the commissioner.

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

10 631.37 (4) (g) *Warranty reimbursement insurance policy*. Section 632.185 (2)
11 (e) applies to warranty reimbursement insurance policies.

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

13 **632.185 Vehicle protection product warranty insurance policy.** (1) In
14 this section:

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

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

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

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

19 (e) “Warranty reimbursement insurance policy” has the meaning given in s.
20 100.203 (1) (i).

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

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

24 (b) The policy states that the issuer of the policy will reimburse or pay on behalf
25 of the warrantor all covered sums that the warrantor is legally obligated to pay or

1 will provide the service that the warrantor is legally obligated to perform according
2 to the warrantor's contractual obligations under the provisions of the insured
3 warranties sold by the warrantor.

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

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

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

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

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

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

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

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2495/lins
CMH&PJK:cjs:pg&jf

INSERT A

*for processing
and maintaining
registration
records*

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:

1. The warrantor must register with the office of the commissioner of insurance before he or she may operate as a warrantor or represent to the public that he or she is a warrantor. The commissioner ~~must maintain registration records and~~ may charge an annual fee not to exceed \$250 ~~for the maintenance~~. 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 this 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

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

LRB-2495/1dn
CMH:cjs:rs

January 30, 2004

Eileen:

This version is introducible and contains an analysis.

Please review s. 100.203 (2) (c) 2. I changed "at the end of one year" to "one year after the renewal deadline." The former could have been interpreted to mean either 30 days plus one year after the deadline or one year after the deadline. Please make sure I chose the option you prefer.

Cathlene Hanaman
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Northrop, Lori

From: O'Neill, Eileen
Sent: Thursday, February 05, 2004 12:05 PM
To: LRB.Legal
Subject: Draft review: LRB 03-2495/1 Topic: Vehicle protection product warrantors

It has been requested by <O'Neill, Eileen> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-2495/1 Topic: Vehicle protection product warrantors