

House Bill 688

By: Representatives Powell of the 23rd, Parham of the 94th, Skipper of the 116th and Westmoreland of the 86th

A BILL TO BE ENTITLED
AN ACT

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to enact the "Georgia Vehicle Protection Product Act"; to provide for a short title; to provide for definitions; to provide for scope and exemptions; to provide for registration and filing requirements of warrantors; to provide for financial responsibility; to provide for warranty reimbursement policy requirements; to provide for disclosure to warranty holder; to provide for warranty cancellation; to provide for prohibited acts; to provide for record keeping; to provide for sanctions and administrative penalties; to provide for rulemaking power; to provide for applicability; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by adding a new Chapter 34A to read as follows:

"CHAPTER 34A

33-34A-1.

This Act shall be known and may be cited as the 'Georgia Vehicle Protection Product Act.'

33-34A-2.

(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) 'Department' means the Department of Insurance.

(3) 'Commissioner' means the Commissioner of Insurance.

(4) 'Service contract' means a contract or agreement as defined under Code Section 33-7-6.

(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:

(A) Is installed on or applied to a vehicle;

(B) Is designed to prevent loss or damage to a vehicle from a specific cause; and

(C) Includes a written warranty.

For purposes of this chapter, 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 warranty' or 'warranty' means, for the purposes of this chapter, a written agreement by a warrantor that provides that if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, then 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.

(8) 'Vehicle protection product warrantor' or 'warrantor' for the purposes of this chapter 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 an authorized insurer.

(9) 'Warranty holder' for the purposes of this chapter means the person who purchases a vehicle protection product or who is a permitted transferee.

(10) 'Warranty reimbursement insurance policy' means a policy of insurance that is issued to the vehicle protection product warrantor to provide reimbursement to the warrantor or 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.

33-34A-3.

(a) 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 chapter.

(b) Vehicle protection product warrantors and related vehicle protection product sellers and warranty administrators complying with this chapter are not required to comply with and are not subject to any other provision of this title.

(c) Service contract providers who do not sell vehicle protection products are not subject to the requirements of this chapter and sales of vehicle protection products are exempt from the requirements of Code Section 33-7-6.

(d) 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 chapter.

33-34A-4.

(a) 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 department on a form prescribed by the Commissioner.

(b) 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:

(1) The warrantor's name, any fictitious names under which the warrantor does business in the state, principal office address, and telephone number;

(2) The name and address of the warrantor's agent for service of process the state if other than the warrantor;

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

(4) 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;

(5) A copy of the warranty reimbursement insurance policy or policies or other financial information required by Code Section 33-34-5; and

(6) A copy of each warranty the warrantor proposes to use in this state.

(c) 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 \$750.00 annually. The information in paragraphs (1) and (2) of subsection (b) of this Code section shall be made available to the public.

(d) If a registrant fails to register by the renewal deadline, the Commissioner shall give him or her written notice of the failure and the registrant will have 30 days to complete the renewal of his or her registration before he or she is suspended from being registered in this state.

(e) 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.

1 33-34A-5.

2 No vehicle protection product shall be sold or offered for sale in this state unless the
3 vehicle protection product warrantor is insured under warranty insurance policy meeting
4 the following conditions in order to ensure adequate performance under the warranty:

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

10 (2) A true and correct copy of the warranty reimbursement insurance policy has been
11 filed with the Commissioner by the warrantor; and

12 (3) The policy contains the provision required in Code Section 33-34A-6.

13 No other financial security requirements or financial standards for warrantors shall be
14 required.

15 33-34A-6.

16 No warranty reimbursement insurance policy shall be issued, sold, or offered for sale in
17 this state unless the policy meets the following conditions:

18 (1) The policy states that the issuer of the policy will reimburse or pay on behalf of the
19 vehicle protection product warrantor all covered sums which the warrantor is legally
20 obligated to pay or will provide that all service that the warrantor is legally obligated to
21 perform according to the warrantor's contractual obligations under the provisions of the
22 insured warranties sold by the warrantor;

23 (2) The policy states that in the event payment due under the terms of the warranty is not
24 provided by the warrantor within 60 days after proof of loss has been filed according to
25 the terms of the warranty by the warranty holder, the warranty holder may file directly
26 with the warranty reimbursement insurance company for reimbursement;

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

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

33 (A) The issuer of a reimbursement insurance policy shall not cancel such policy until
34 a notice of cancellation in writing has been mailed or delivered to the Commissioner
35 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; and

(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, provided that there is no lapse in coverage following the termination of the prior policy; or

(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.

33-34A-7.

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

(1) Conspicuously states that the obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy;

(2) 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;

(3) Conspicuously states the name and address of the issuer of the warranty reimbursement insurance policy. This information need not be preprinted on the warranty form but may be stamped on the warranty;

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

(5) 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;

(6) Sets forth the procedure for making a claim, including a telephone number;

(7) Conspicuously states the existence of a deductible amount, if any;

(8) 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, and any limitations, exceptions, or exclusions;

(9) Sets forth the conditions on which substitution will be allowed;

(10) 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;

(11) Sets forth any terms, restrictions, or conditions governing transferability of the warranty, if any; and

(12) Contains a disclosure that reads substantially as follows: 'This agreement is a product warranty and is not insurance.'

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

(1) A copy of the vehicle protection product warranty; or

(2) 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.

33-34A-8.

(a) 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.

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

(1) Fails to pay for the vehicle protection product;

(2) Makes a material misrepresentation to the seller or warrantor;

(3) Commits fraud; or

(4) Substantially breaches the warranty holder's duties under the warranty.

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

33-34A-9.

(a) Unless licensed as an insurance company, a vehicle protection product warrantor shall not use in its name, contracts, or literature the words 'insurance,' 'casualty,' 'surety,' 'mutual,' or any other word that is descriptive of the insurance, casualty, or surety business or that is 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 a similar word in the warrantor's name.

(b) 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.

(c) 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

1 protection product, which under the circumstances should have been made in order to make
2 the statements that were made not misleading.

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

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

8 (f) A bank, savings and loan association, insurance company, or other lending institution
9 shall not require the purchase of a vehicle protection product as a condition of a loan.

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

13 33-34A-10.

14 (a) All vehicle protection product warrantors shall keep accurate accounts, books, and
15 records concerning transactions regulated under this chapter.

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

17 (1) Copies of all vehicle protection product warranties;

18 (2) The name and address of each warranty holder; and

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

20 (c) A vehicle protection product warrantor shall retain all required accounts, books, and
21 records pertaining to each warranty holder for at least two years after the specified period
22 of coverage has expired. A warrantor discontinuing business in the state shall maintain its
23 records until it furnishes the Commissioner satisfactory proof that it has discharged all
24 obligations to warranty holders in this state.

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

28 33-34A-11.

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

(b) The Commissioner may take action that is necessary or appropriate to enforce the provisions of this chapter 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 chapter 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:

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

(2) Issue an order prohibiting that warrantor from selling or offering for sale service contracts in violation of this chapter;

(3) Issue an order imposing a civil penalty on that warrantor; or

(4) Issue any combination of paragraphs (1) through (3) of this subsection, as applicable.

(c) Prior to the effective date of any order issued pursuant to this Code section, the Commissioner must provide written notice of the order to the warrantor and the opportunity for a hearing to be held within ten business days after receipt of the notice, except that prior notice and hearing shall not be required if the Commissioner reasonably believes that the warrantor has become, or is about to become, insolvent.

(d) A person aggrieved by an order issued under this Code 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.

(e) At the hearing, the burden shall be on the Commissioner to show why the order issued pursuant to this Code section is justified. The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall apply to a hearing request under this Code section.

(f) 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 chapter or of the Commissioner's orders or rules. An action filed under this Code section also may seek restitution on behalf of persons aggrieved by a violation of this chapter or orders or rule of the Commissioner.

(g) A person who is found to have violated this chapter 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 \$500.00 per violation and not more than \$10,000.00 in the aggregate for all violations of a similar nature. For purposes of this Code 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 chapter occurred.

1 33-34A-12.

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

8 33-34A-13.

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

15 **SECTION 2.**

16 This Act shall become effective on January 1, 2004.

17 **SECTION 3.**

18 All laws and parts of laws in conflict with this Act are repealed.