

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5026**

A bill to regulate warranties on motor vehicle protection products; to provide for the powers and duties of certain state officers and entities; and to prescribe civil sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "vehicle protection product act".

3 Sec. 3. As used in this act:

4 (a) "Administrator" means a third party other than the
5 warrantor who is designated by the warrantor to be responsible for
6 the administration of vehicle protection product warranties in this
7 state.

8 (b) "Department" means the department of labor and economic
9 growth.

10 (c) "Incidental costs" means expenses specified in a warranty

1 incurred by a warranty holder and related to the failure of a
2 vehicle protection product to perform as provided in the warranty.
3 Incidental costs may include, but are not limited to, insurance
4 policy deductibles, rental vehicle charges, the difference between
5 the actual value of a stolen vehicle at the time of theft and the
6 cost of a replacement vehicle, sales taxes, registration fees,
7 transaction fees, and mechanical inspection fees.

8 (d) "Person" means an individual, partnership, corporation,
9 limited liability company, association, or other legal entity.

10 (e) "Vehicle protection product" means a vehicle protection
11 device, system, or service that is installed on or applied to a
12 vehicle and is designed to prevent loss or damage to a vehicle from
13 a specific cause. Except as provided in this subdivision, the term
14 includes, but is not limited to, alarm systems, body part marking
15 products, steering locks, window etch products, pedal and ignition
16 locks, fuel and ignition kill switches, and electronic, radio, and
17 satellite tracking devices. The term does not include a vehicle
18 protection device, system, or service that is installed on or
19 applied to a vehicle by the vehicle manufacturer at the vehicle
20 assembly facility.

21 (f) "Vehicle protection product warrantor" or "warrantor" means
22 a person that is contractually obligated to a warranty holder under
23 the terms of a vehicle protection product warranty agreement.
24 Warrantor does not include an insurer regulated under the insurance
25 code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

26 (g) "Vehicle protection product warranty" or "warranty" means a
27 written agreement by a warrantor that provides if a warranted

1 product fails to prevent loss or damage to a vehicle from a
2 specific cause covered by the warranty, the warrantor shall pay the
3 warranty holder specified incidental costs that result from the
4 failure of the warranted product to perform.

5 (h) "Warranted product" means a vehicle protection product
6 covered by a written warranty.

7 (i) "Warranty holder" means a person who purchases a warranted
8 product or who is a permitted transferee.

9 (j) "Warranty reimbursement insurance policy" means a policy of
10 insurance that is issued to a vehicle protection product warrantor
11 to provide reimbursement to the warrantor or to pay on behalf of
12 the warrantor all covered contractual obligations incurred by the
13 warrantor under the terms and conditions of an insured vehicle
14 protection product warranty sold by a warrantor.

15 Sec. 5. (1) A person shall not sell or offer for sale a
16 warranted product in this state unless the seller, warrantor, and
17 any administrator comply with the provisions of this act.

18 (2) A vehicle protection product warrantor, a seller of a
19 warranted product, or an administrator that complies with this act
20 is not required to comply with and is not subject to the insurance
21 code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

22 Sec. 7. (1) A person may not act as a warrantor or represent
23 to the public that the person is a warrantor unless the person
24 files a notice with the department, on a form prescribed by the
25 department, that contains all of the following information:

26 (a) The warrantor's name, any assumed or fictitious names
27 under which the warrantor does business in this state, and the

1 warrantor's principal office address and telephone number.

2 (b) The name and address of the warrantor's designated agent
3 for service of process in this state if it is not the warrantor.

4 (c) The names of the warrantor's executive officer or officers
5 directly responsible for the warrantor's warranted product
6 business.

7 (d) The name, address, and telephone number of any
8 administrators designated by the warrantor to be responsible for
9 the administration of vehicle protection product warranties in this
10 state.

11 (e) A copy of the warranty reimbursement insurance policy or
12 policies or other financial information required in section 9.

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

15 (g) A statement indicating that the warrantor qualifies to do
16 business in this state as a warrantor under section 9.

17 (2) The department shall make the information described in
18 subsection (1)(a) and (b) available to the public.

19 (3) The department may charge each warrantor a reasonable fee
20 to offset the cost of processing a notice and maintaining the
21 records. The fee shall not exceed \$250.00 per year.

22 (4) If a warrantor fails to file a notice by the renewal
23 deadline established by the department, the department shall give
24 the warrantor written notice of the failure and the warrantor has
25 30 days to file its completed notice before the warrantor is
26 suspended from acting as a warrantor in this state.

27 (5) An administrator or person who sells or solicits a sale of

1 a warranted product but who is not a warrantor is not required to
2 file a notice under this section or be licensed under the insurance
3 laws of this state to sell warranted products.

4 Sec. 9. (1) Every warranted product sold or offered for sale
5 in this state shall have a warranty reimbursement insurance policy
6 guaranteeing the warrantor's obligations under the warranty to the
7 warranty holder. The department shall not require any other
8 financial security requirements or financial standards from a
9 warrantor.

10 (2) In addition to the requirements described in section 11, a
11 warranty reimbursement insurance policy provided by a vehicle
12 protection product warrantor for purposes of subsection (1) must
13 meet all of the following:

14 (a) Be filed with the department.

15 (b) Provide that the insurer will reimburse or pay on behalf
16 of the warrantor all covered sums that the warrantor is legally
17 obligated to pay or will provide all services the warrantor is
18 legally obligated to perform according to the warrantor's
19 contractual obligations under the warrantor's vehicle protection
20 product warranty.

21 (c) Provide that if payment due under the warranty is not
22 provided by the warrantor within 60 days after the warranty holder
23 files proof of loss according to the terms of the warranty, the
24 warranty holder may file proof of loss directly with the warranty
25 reimbursement insurance company for reimbursement.

26 (d) Provide that the premium for the policy is considered paid
27 if the warranty holder paid for the warranted product and the

1 insurer's liability under the policy is not reduced or relieved by
2 a failure of the warrantor, for any reason, to report the issuance
3 of a warranty to the insurer.

4 (e) Contain all of the following provisions regarding
5 cancellation of the policy:

6 (i) That the issuer of the reimbursement insurance policy shall
7 not cancel that policy until a notice of cancellation in writing
8 has been mailed or delivered to the department and each insured
9 warrantor.

10 (ii) That the cancellation of the reimbursement insurance
11 policy shall not reduce the issuer's responsibility for warranted
12 products sold before the date of cancellation.

13 (iii) That if an insurer cancels a policy that a warrantor has
14 filed with the department, the warrantor shall do 1 of the
15 following:

16 (A) File a copy of a new policy with the department before the
17 termination of the prior policy so there is no lapse in the
18 warranty holder's coverage after the termination of the prior
19 policy.

20 (B) Discontinue acting as a warrantor as of the termination
21 date of the policy until a new policy becomes effective and is
22 accepted by the department.

23 Sec. 11. A person shall not sell or offer for sale in this
24 state a warranted product unless the warranty on the vehicle
25 protection product meets all of the following requirements:

26 (a) Is written in clear, understandable language and is
27 printed or typed in easy-to-read type, size, and style.

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

4 (c) Conspicuously states that if a warranty holder must make a
5 claim against a party other than the warranty reimbursement
6 insurance policy issuer, the warranty holder is entitled to make a
7 direct claim against the insurer upon the failure of the warrantor
8 to pay any claim or meet any obligation under the terms of the
9 warranty within 60 days after proof of loss has been filed with the
10 warrantor.

11 (d) Conspicuously states the name and address of the issuer of
12 the warranty reimbursement insurance policy.

13 (e) Identifies the warrantor, the seller, and the warranty
14 holder.

15 (f) Contains the total purchase price for the warranty.
16 However, the parties may negotiate the purchase price at the time
17 of sale and it is not required that the purchase price be
18 preprinted on the warranty.

19 (g) Describes the procedure for making a claim, including a
20 telephone number.

21 (h) Conspicuously states the existence of any deductible
22 amount.

23 (i) Specifies the payments or performance provided under the
24 warranty, including, but not limited to, any payments for
25 incidental costs, the manner of calculation or determination of
26 payments or performance, and any limitations, exceptions, or
27 exclusions.

1 (j) Describes the conditions under which substitution of
2 parties or performance is allowed.

3 (k) Conspicuously sets forth all of the obligations and duties
4 of the warranty holder, including, but not limited to, any duty to
5 protect against any further damage to the vehicle, the obligation
6 to notify the warrantor in advance of any repair, or any other
7 similar requirements.

8 (l) Sets forth any terms, restrictions, or conditions governing
9 any right to transfer the warranty.

10 (m) Contains a disclosure that reads substantially as follows:
11 "This agreement is a product warranty and is not insurance."

12 (2) At the time of sale, the seller or warrantor shall provide
13 1 of the following to the purchaser:

14 (a) A copy of the vehicle protection product warranty.

15 (b) A receipt or other written evidence of the purchase of the
16 warranted product. A warrantor or seller that provides a receipt or
17 other evidence under this subdivision shall provide the purchaser
18 with a copy of the warranty within 30 days after the date of
19 purchase.

20 Sec. 13. (1) A person shall not sell or offer for sale in this
21 state a warranted product unless the vehicle protection product
22 warranty clearly states any terms and conditions governing the
23 cancellation of the sale and warranty.

24 (2) A warrantor may only cancel a warranty if the warranty
25 holder does any of the following:

26 (a) Fails to pay for the warranted product.

27 (b) Makes a material misrepresentation to the seller or

1 warrantor.

2 (c) Commits fraud.

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

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

11 Sec. 15. (1) Unless licensed as an insurance company, a
12 vehicle protection product warrantor shall not use in its name,
13 contracts, or literature any of the words "insurance", "casualty",
14 "surety", or "mutual" or any other words descriptive of the
15 insurance, casualty, or surety business or use any name or words in
16 its name that are deceptively similar to the name or description of
17 any insurer or surety or any other vehicle protection product
18 warrantor. However, a warrantor may use the term "guaranty" or a
19 similar word in the warrantor's name.

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

24 (3) A vehicle protection product warrantor shall not permit or
25 cause the omission of any material statement in connection with the
26 sale, offer to sell, or advertisement of a warranted product, which
27 under the circumstances the warrantor should make in order to make

1 the statements in the warranty not misleading.

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

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

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

13 Sec. 17. (1) A vehicle protection product warrantor shall keep
14 accurate accounts, books, and records concerning transactions
15 regulated under this act.

16 (2) A vehicle protection product warrantor's accounts, books,
17 and records shall include all of the following:

18 (a) Copies of all vehicle protection product warranties.

19 (b) The name and address of each warranty holder.

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

22 (3) A vehicle protection product warrantor shall retain all
23 required accounts, books, and records pertaining to each warranty
24 holder for at least 2 years after the specified period of coverage
25 has expired. A warrantor discontinuing business in this state shall
26 maintain its records until it furnishes the department satisfactory
27 proof that it has discharged all obligations to warranty holders in

1 this state.

2 (4) A vehicle protection product warrantor shall make its
3 accounts, books, and records concerning transactions regulated
4 under this act available to the department for the purpose of
5 examination.

6 Sec. 19. The department may promulgate rules under the
7 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
8 24.328, necessary to implement and administer this act. The rules
9 may include disclosure requirements for the benefit of warranty
10 holders, record-keeping requirements, and procedures for public
11 complaints.

12 Sec. 21. Each of the following applies concerning the
13 applicability of this act:

14 (a) This act applies to all warranted products sold or offered
15 for sale on or after the effective date of this act.

16 (b) The failure of any person to comply with this act before
17 its effective date is not admissible in any court proceeding,
18 administrative proceeding, arbitration, or alternative dispute
19 resolution proceeding and may not otherwise be used to prove that
20 the action of any person or the affected warranted product is
21 unlawful or otherwise improper. This subdivision does not limit the
22 availability of any claim or cause of action for a violation of any
23 other state or federal law.

24 Sec. 23. The attorney general has all of the following
25 enforcement powers with respect to a person that violates this act:

26 (a) To bring an action for a temporary or permanent injunction
27 in the manner provided in section 5 of the Michigan consumer

1 protection act, 1976 PA 331, MCL 445.905.

2 (b) To accept an assurance of discontinuance in the manner
3 provided in section 6 of the Michigan consumer protection act, 1976
4 PA 331, MCL 445.906.

5 (c) To apply for the issuance of subpoenas in the manner
6 provided in sections 7 and 8 of the Michigan consumer protection
7 act, 1976 PA 331, MCL 445.907 and 445.908.

8 (d) To bring a class action in the manner provided in section
9 10 of the Michigan consumer protection act, 1976 PA 331, MCL
10 445.910.

11 Enacting section 1. This act takes effect 180 days after the
12 date it is enacted.