VEHICLE PROTECTION PRODUCT ACT

Act 263 of 2005

AN ACT 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.

History: 2005, Act 263, Eff. June 14, 2006

The People of the State of Michigan enact:

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257.1241 Short title.

Sec. 1.

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

History: 2005, Act 263, Eff. June 14, 2006

257.1243 Definitions.

Sec. 3.

As used in this act:

(a) "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 in this state.

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

(c) "Incidental costs" means expenses specified in a warranty incurred by a warranty holder and related to the failure of a vehicle protection product to perform as provided in the warranty. Incidental costs may include, but are not limited to, insurance policy deductibles, rental vehicle charges, the difference between the actual value of a stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees.

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

(e) "Vehicle protection product" means a vehicle protection device, system, or service that is installed on or applied to a vehicle and is designed to prevent loss or damage to a vehicle from a specific cause. Except as provided in this subdivision, the term includes, but is not limited to, 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. The term does not include a vehicle protection device, system, or service that is installed on or applied to a vehicle by the vehicle manufacturer at the vehicle assembly facility.

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

(g) "Vehicle protection product warranty" or "warranty" means a written agreement by a warrantor that provides if a warranted product fails to prevent loss or damage to a vehicle from

a specific cause covered by the warranty, the warrantor shall pay the warranty holder specified incidental costs that result from the failure of the warranted product to perform.

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

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

(j) "Warranty reimbursement insurance policy" means a policy of insurance that is issued to a 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 an insured vehicle protection product warranty sold by a warrantor.

History: 2005, Act 263, Eff. June 14, 2006

257.1245 Sale of warranted product; compliance required; exception.

Sec. 5.

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

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

History: 2005, Act 263, Eff. June 14, 2006

257.1247 Notice; form; filing; contents; availability to public; fee; failure to file notice; exception.

Sec. 7.

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

(a) The warrantor's name, any assumed or fictitious names under which the warrantor does business in this state, and the warrantor's principal office address and telephone number.

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

(c) The names of the warrantor's executive officer or officers directly responsible for the warrantor's warranted 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 in section 9.

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

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

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

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

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

(5) An administrator or person who sells or solicits a sale of a warranted product but who is not a warrantor is not required to file a notice under this section or be licensed under the insurance laws of this state to sell warranted products.

History: 2005, Act 263, Eff. June 14, 2006

257.1249 Warranty reimbursement insurance policy; other financial security requirements or financial standards not required; additional requirements.

Sec. 9.

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

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

(a) Be filed with the department.

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

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

(d) Provide that the premium for the policy is considered paid if the warranty holder paid for the warranted product and the insurer's liability under the policy is not reduced or relieved by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer.

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

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

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

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

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

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

History: 2005, Act 263, Eff. June 14, 2006

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257.1251 Requirements.

Sec. 11.

(1) A person shall not sell or offer for sale in this state a warranted product unless the warranty on the vehicle protection product meets all of the following requirements:

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

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

(c) Conspicuously states that if 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.

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

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

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

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

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

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

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

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

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

(m) 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 1 of the following to the purchaser:

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

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

History: 2005, Act 263, Eff. June 14, 2006

257.1253 Cancellation of sale and warranty; terms and conditions; notice.

Sec. 13.

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

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

(a) Fails to pay for the warranted product.

(b) Makes a material misrepresentation to the seller or warrantor.

(c) Commits fraud.

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

(3) 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 before the effective date of a cancellation. The notice shall state the effective date of the cancellation and the reason for the cancellation.

History: 2005, Act 263, Eff. June 14, 2006

257.1255 Prohibited conduct.

Sec. 15.

(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", or "mutual" or any other words descriptive of the insurance, casualty, or surety business or use any name or words in its name that are deceptively similar to the name or description of any insurer or surety or any other vehicle protection product warrantor. However, a warrantor may use the term "guaranty" or a 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 warranted 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 warranted product, which under the circumstances the warrantor should make in order to make the statements in the warranty 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 are 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 warranted product seller or warrantor may not require as a condition of sale or financing that a retail purchaser of a motor vehicle purchase a warranted product that is not installed on the motor vehicle at the time of sale.

History: 2005, Act 263, Eff. June 14, 2006

257.1257 Accounts, books, and records.

Sec. 17.

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

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

(a) Copies of all vehicle protection product warranties.

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

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(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 2 years after the specified period of coverage has expired. A warrantor discontinuing business in this state shall maintain its records until it furnishes the department satisfactory proof that it has discharged all obligations to warranty holders in this state.

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

History: 2005, Act 263, Eff. June 14, 2006

257.1259 Rules; promulgation.

Sec. 19.

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

History: 2005, Act 263, Eff. June 14, 2006

257.1261 Applicability of act.

Sec. 21.

Each of the following applies concerning the applicability of this act:

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

(b) The failure of any person to comply with this act before its effective date is not 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 warranted product is unlawful or otherwise improper. This subdivision does not limit the availability of any claim or cause of action for a violation of any other state or federal law.

History: 2005, Act 263, Eff. June 14, 2006

257.1263 Enforcement; powers of attorney general.

Sec. 23.

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

(a) To bring an action for a temporary or permanent injunction in the manner provided in section 5 of the Michigan consumer protection act, 1976 PA 331, MCL 445.905.

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

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

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

History: 2005, Act 263, Eff. June 14, 2006

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