

ACT 237

S.B. NO. 3028

A Bill for an Act Relating to the Regulation of Warrantors of Vehicle Protection Products.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
VEHICLE PROTECTION PRODUCT WARRANTORS**

§ **-1 Definitions.** As used in this chapter:

“Commissioner” means the insurance commissioner.

“Consumer” means a person in this State who purchases or otherwise possesses a vehicle protection product.

“Department” means the department of commerce and consumer affairs.

“Reimbursement insurance policy” means a policy of insurance issued to a warrantor to:

- (1) Provide reimbursement to the warrantor under the terms of the insured vehicle protection product issued or sold by the warrantor; and
- (2) Pay on behalf of the warrantor, in the event of the warrantor’s nonperformance, all covered obligations incurred by the warrantor under the terms of the insured vehicle protection product issued or sold by the warrantor.

“Seller” means a person engaged in the business of offering a vehicle protection product for sale to a consumer.

“Vehicle identification number” means a serial number or identification mark of any vehicle established by the manufacturer for the purpose of identifying the vehicle.

“Vehicle protection product” means a product or system, which includes a written warranty, that is:

- (1) Installed or applied to a vehicle; and
- (2) Designed to prevent loss or damage to a vehicle from a specific cause.

“Warrantor” means a person named under the terms of a vehicle protection product warranty as the contractual obligor to the consumer.

§ **-2 Applicability of chapter.** (a) This chapter shall apply only to vehicle protection products delivered to consumers in the State of Hawaii, the warranties of which require the warrantor, to the extent agreed on as part of the warranty, to pay expenses to the consumer for the loss of or damage to the vehicle.

(b) A vehicle protection product which includes the application of a serial number or identification mark to a component or part of the vehicle shall include the vehicle identification number of the vehicle to which the product is applied. This chapter shall not apply to such a product if the product does not include the respective vehicle identification number.

(c) Loss of or damage to the vehicle under subsection (a) may also include unreimbursed incidental expenses that may be incurred by the consumer, including expenses for a replacement vehicle, temporary vehicle rental expenses, and registration expenses for replacement vehicles.

§ **-3 Powers and duties of the commissioner.** (a) The commissioner may adopt rules under chapter 91 as necessary to implement this chapter.

(b) The commissioner may conduct investigations of warrantors or other persons as reasonably necessary to enforce this chapter and to protect consumers in this State. On request of the commissioner, a warrantor shall make the warrantor’s records maintained under section -8 regarding vehicle protection products sold by the warrantor available to the department as necessary to enable the department to reasonably determine compliance with this chapter.

§ **-4 Registration requirements.** (a) Before conducting business in this State or issuing any warranty, a warrantor shall register with the commissioner on a form prescribed by the commissioner, and shall pay to the commissioner a fee as

provided under section 431:7-101. A person who sells or solicits a vehicle protection product, but who is not a warrantor, shall not be required to register with the commissioner as a warrantor.

(b) Warrantor registration records shall be updated annually and shall contain the following information:

- (1) The address of the principal office of the warrantor;
- (2) The name and address of the warrantor's agent for the service of process in this State if other than the provider;
- (3) The identities 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 each warranty form the warrantor proposes to use in this State; and
- (6) A statement that the warrantor is in compliance with the financial responsibility requirements of section -5 and that details how the warrantor intends to meet the requirements, and proof of compliance with the requirements.

(c) The marketing, selling, offering for sale, issuing, making, proposing to make, and administering of vehicle protection products shall be exempt from:

- (1) Chapter 481X; and
- (2) The insurance laws of this State.

(d) The following contracts and agreements shall be exempt from this chapter and shall only be subject to other statutes and laws that specifically apply to them:

- (1) Warranties or guarantees, other than those provided as part of a vehicle protection product; and
- (2) Service contracts regulated by chapter 481X.

(e) A seller shall not be deemed to be a warrantor unless, in addition to acting as a seller, the person is named under the terms of a vehicle protection product warranty as the contractual obligor to the consumer.

§ -5 Financial security requirements. (a) To ensure the adequate performance of a warrantor's obligations to a consumer, each warrantor shall comply with financial security requirements by insuring each vehicle protection product warranty issued by the warrantor under a reimbursement insurance policy issued by an insurer authorized to engage in the business of insurance in this State or under a surplus lines insurance policy issued by an insurer eligible to place coverage in this State as regulated under the insurance laws of this State.

(b) The department may not require any other financial security requirements or financial standards for warrantors. Warrantors shall not be subject to any other financial security requirements under state law.

§ -6 Reimbursement insurance policy. (a) In order for a warrantor to comply with section -5(a), the warrantor's insurance policy shall state that:

- (1) The insurer that issued the policy shall reimburse or pay on behalf of the warrantor any covered amounts the warrantor is legally obligated to pay or shall provide the service that the warrantor is legally obligated to perform according to the warrantor's obligations under the insured vehicle protection product issued or sold by the warrantor; and
- (2) If the covered amounts are not paid or the covered service is not provided by the warrantor to a consumer before the sixty-first day after the date the consumer provides proof of loss, payment shall be made or

the service shall be provided directly from the reimbursement insurer to the consumer.

(b) An insurer who issues a reimbursement insurance policy under this chapter may not cancel the policy until the insurer delivers to the warrantor a written notice of cancellation that complies with the requirements adopted for those notices under the insurance laws of this State.

The warrantor shall forward a copy of the cancellation notice to the commissioner not later than the fifteenth business day after the date the notice is delivered to the warrantor.

(c) The cancellation of a reimbursement insurance policy shall not reduce the insurer's responsibility for vehicle protection products issued by the warrantor and insured under the policy before the date of the cancellation.

(d) For purposes of this section, a warrantor shall be considered to be the representative of the insurer who issues the reimbursement insurance policy for purposes of obligating the insurer to consumers in accordance with the vehicle protection product and this chapter.

§ -7 General warrantor operation requirements. (a) A warrantor may appoint a designee to be responsible for any or all of the administration of vehicle protection products and for compliance with this chapter. The designee shall be liable to the extent the warrantor would be liable for violations of this chapter committed by the designee.

(b) A vehicle protection product may not be issued, sold, or offered for sale in this State unless at the time of purchase the warrantor provides to the consumer:

- (1) A copy of the vehicle protection product warranty; or
- (2) A receipt for, or other written evidence of, the purchase of the vehicle protection product.

(c) A warrantor who complies with subsection (b)(2), within thirty days after the date of purchase, shall provide to the consumer a copy of the vehicle protection product warranty.

(d) A warrantor shall indemnify a seller who pays or is obligated to pay a consumer any money the warrantor is obligated to pay under the terms of the vehicle protection product warranty, including damages, reasonable attorney's fees, and costs.

§ -8 Warrantor records. (a) Each warrantor shall maintain accurate accounts, books, and other records regarding transactions regulated under this chapter. The warrantor's records shall include:

- (1) A copy of the warranty for each unique form of vehicle protection product sold;
- (2) The name and address of each consumer;
- (3) A list of the locations where the warrantor's vehicle protection products are marketed, sold, or offered for sale; and
- (4) Files that contain at least the dates and descriptions of payments to consumers related to the vehicle protection product.

(b) Except as provided by subsection (d), each warrantor shall retain all records required under subsection (a) until at least the first anniversary of the expiration date of the obligations under the vehicle protection product warranty.

(c) The records required to be maintained under this section may be maintained in an electronic medium pursuant to section 489E-12. If a record is maintained in a format other than paper, the warrantor shall reformat the record into a legible paper copy at the request of the department.

(d) A warrantor who discontinues business in this State shall maintain the warrantor's records until ten years after the date of the last sale of a covered motor vehicle protection product.

§ -9 Required disclosures. (a) Each vehicle protection product warranty marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this State shall be written, printed, or typed, in clear, understandable, and easy to read language, and shall disclose the applicable requirements set forth in this section.

(b) The obligations of a vehicle protection product warranty that are insured under a reimbursement insurance policy shall contain a statement substantially similar to the following:

"Obligations of the warrantor under this vehicle protection product are insured under a reimbursement insurance policy."

(c) The vehicle protection product warranty shall state the name and address of the insurer and state that if a covered service is not provided by the warrantor before the sixty-first day after the date the consumer provides proof of loss, the consumer may apply for reimbursement directly to the vehicle protection product's reimbursement insurance company.

(d) Each vehicle protection product warranty shall state the name, address, and phone number of the warrantor. All warrantors shall report to the department before the thirty-first day after the date of any change in the information required to be provided in this subsection.

(e) Each vehicle protection product warranty shall identify any administrator, if different from the warrantor, the vehicle protection product seller, and the consumer, if the name of the consumer has been provided by the consumer. The identities of those persons shall not be required to be preprinted on the warranty and may be added to the warranty at the time of sale.

(f) Each vehicle protection product warranty shall state the product's purchase price, or the warrantor's suggested purchase price, and the terms under which the product is sold. The purchase price shall not be required to be preprinted on the vehicle protection product warranty and may be negotiated with the consumer at the time of sale.

(g) Each vehicle protection product warranty shall:

- (1) Specify the products and services to be provided and any limitations, exceptions, or exclusions;
- (2) Specify any restrictions governing the transferability of the vehicle protection product;
- (3) State the duties of the consumer, including any duty to protect against any further damage and any requirement to follow the warranty's instructions;
- (4) State the name, mailing address, and telephone number of the department; and
- (5) Include a statement that unresolved complaints concerning a registered warrantor or questions concerning the regulation of a warrantor may be addressed to the department.

(h) The requirements of subsection (g)(4) and (5) may be stamped on the vehicle protection product warranty.

§ -10 Cancellation of warranty. (a) Each vehicle protection product warranty shall state the terms, restrictions, or conditions if any, governing cancellation of the warranty by the warrantor before the expiration date of the warranty. Cancellation may only occur under this section for:

- (1) Nonpayment by the consumer for the vehicle protection product;

- (2) A material misrepresentation by the consumer to the seller or warrantor;
- (3) Fraud by the consumer; or
- (4) A substantial breach of duties by the consumer relating to the warranty.

(b) A warrantor shall mail written notice of cancellation to the consumer at the last address of the consumer contained in the records of the warrantor at least thirty 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.

§ -11 Limitations on use of warrantor's name. (a) A warrantor shall not use:

- (1) In its name, the word "casualty", "surety", "insurance", or "mutual" or any other word descriptive of the casualty, insurance, or surety business; or
- (2) A name deceptively similar to the name or description of any insurance company, surety corporation, or other warrantor.

(b) A warrantor may use the word "guaranty" or a similar word in the warrantor's name.

§ -12 Prohibited acts. (a) A warrantor or a warrantor's representative, in the warrantor's vehicle protection product warranty or in an advertisement or literature for the warranty, may not:

- (1) Make, permit, or cause to be made any false or misleading statement; or
- (2) Deliberately omit a material statement that would be considered misleading if omitted.

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

§ -13 Enforcement. (a) The commissioner may take any action necessary or appropriate to enforce this chapter, and the rules adopted and orders issued hereunder, which is consistent with the provisions of this chapter. The commissioner may conduct investigations and examinations of warrantors, administrators, insurers, or other persons. If a warrantor has violated this chapter, or rules or orders under this chapter, the commissioner may issue an order:

- (1) Requiring a person to cease and desist from violating this chapter or rules or orders under this chapter;
- (2) Prohibiting a person from selling or offering for sale vehicle protection product warranties in violation of this chapter;
- (3) Imposing a civil penalty on a person, in addition to attorneys' fees and costs incurred in the investigation and prosecution of a violation of this chapter, as follows:
 - (A) For persons acting negligently or recklessly, not more than \$5,000 per violation; or
 - (B) For persons acting intentionally or knowingly, not more than \$10,000 per violation.

The terms "negligently", "recklessly", "knowingly", and "intentionally" shall have the meanings provided in section 702-206; or

- (4) Any combination of the foregoing, as deemed appropriate by the commissioner.

(b) A person aggrieved by an order under this section may request a hearing before the commissioner, conducted subject to chapter 91. The hearing request shall be filed with the commissioner within twenty days of the effective date of the commissioner's order. Upon filing of a hearing request, the order shall be suspended

from its effective date, until completion of the hearing and final decision of the commissioner. At the hearing, the commissioner shall have the burden of proof to show that the order is justified.

(c) The commissioner may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to remedy threatened or existing violations of this chapter, rules established pursuant to this chapter, or orders of the commissioner. An action filed under this section may also seek restitution on behalf of persons aggrieved by a violation of this chapter, rules established pursuant to this chapter, or orders of the commissioner.”

SECTION 2. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The commissioner shall collect in advance the following fees:

- (1) Certificate of authority: Issuance \$900
- (2) Organization of domestic insurers and affiliated corporations:
 - (A) Application and all other papers required for issuance of solicitation permit, filing \$1,500
 - (B) Issuance of solicitation permit \$150
- (3) General agent’s license:
 - (A) Issuance, regular license. \$75
 - (B) Issuance, temporary license. \$75
- (4) Subagent’s license:
 - (A) Issuance, regular license \$75
 - (B) Issuance, temporary license \$75
- (5) Nonresident agent’s or broker’s license: Issuance \$60
- (6) Solicitor’s license: Issuance \$60
- (7) Independent adjuster’s license: Issuance \$60
- (8) Public adjuster’s license: Issuance \$60
- (9) Workers’ compensation claims adjuster’s limited license: Issuance \$60
- (10) Independent bill reviewer’s license: Issuance \$80
- (11) Limited license issued pursuant to section 431:9-214(c): Issuance \$60
- (12) Managing general agent’s license: Issuance \$75
- (13) Reinsurance intermediary’s license: Issuance \$75
- (14) Surplus line broker’s license: Issuance \$150
- (15) Service contract provider’s registration: Issuance \$75
- (16) Approved course provider certificate: Issuance \$100
- (17) Approved continuing education course certificate: Issuance \$30
- (18) Examination for license: For each examination, a fee to be established by the commissioner[-.]
- (19) Vehicle protection product warrantor’s registration: Issuance \$75.

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) \$600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$75 per year for all services (including extension of the license) for a regularly licensed general agent;
- (3) \$75 per year for all services (including extension of the license) for a regularly licensed subagent;
- (4) \$45 per year for all services (including extension of the license) for a regularly licensed nonresident agent or broker;

- (5) \$30 per year for all services (including extension of the license) for a regularly licensed solicitor;
- (6) \$45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (7) \$45 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (8) \$45 per year for all services (including extension of the license) for a regularly limited licensed workers' compensation claims adjuster;
- (9) \$60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (10) \$45 per year for all services (including extension of the license) for a limited license issued pursuant to section 431:9-214(c);
- (11) \$75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- (12) \$75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (13) \$45 per year for all services (including extension of the license) for a licensed surplus line broker;
- (14) \$75 per year for all services (including renewal of registration) for a service contract provider;
- (15) \$65 per year for all services (including extension of the certificate) for an approved course provider; ~~and~~
- (16) \$20 per year for all services (including extension of the certificate) for an approved continuing education course~~[-]; and~~
- (17) \$75 per year for all services (including renewal of registration) for a vehicle protection product warrantor.

The services referred to in paragraphs (1) to ~~[(16)]~~ (17) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs."

SECTION 3. A person who would be regulated under section 2 of this Act shall not be required to comply with its provisions until January 1, 2003, but may elect to do so before January 1, 2003. The failure of a warrantor or other person to comply with this Act or otherwise to administer a vehicle protection product in the manner required by this Act before January 1, 2003, shall not be admissible in any court, administrative, arbitration, or alternative dispute resolution proceeding and may not otherwise be used to prove that the action of any person or the affected vehicle protection product was unlawful or otherwise improper.

SECTION 4. This Act shall apply only to a vehicle protection product purchased on or after January 1, 2003; it shall not apply to a vehicle protection product purchased before January 1, 2003, and transferred to a subsequent consumer on or after January 1, 2003.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on January 1, 2003.

(Approved June 28, 2002.)