

SECOND REGULAR SESSION

SENATE BILL NO. 1058

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Read 1st time February 15, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4844S.02I

AN ACT

To amend chapter 385, RSMo, by adding thereto thirteen new sections relating to the vehicle protection product act, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 385, RSMo, is amended by adding thereto thirteen new sections, to be known as sections 385.400, 385.403, 385.406, 385.409, 385.412, 385.415, 385.418, 385.421, 385.424, 385.427, 385.430, 385.433, and 385.436, to read as follows:

385.400. Sections 385.400 to 385.436 shall be known and may be cited as the "Missouri Vehicle Protection Product Act".

385.403. As used in sections 385.400 to 385.436, the following terms shall mean:

(1) "Administrator", 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", the department of insurance;

(3) "Director", the director of the department of insurance;

(4) "Incidental costs", 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;

(5) "Service contract", a contract or agreement for a separately stated consideration or for a specific duration to perform the repair,

18 replacement, or maintenance of a motor vehicle or indemnification for
19 repair, replacement, or maintenance, for the operational or structural
20 failure due to a defect in materials, workmanship, or normal wear and
21 tear, with or without additional provision for incidental payment of
22 indemnity under limited circumstances, including but not limited to
23 towing, rental, and emergency road service, but does not include
24 mechanical breakdown insurance or maintenance agreements;

25 (6) "Vehicle protection product", a vehicle protection device,
26 system, or service that:

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

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

30 (c) Includes a written warranty.

31 For purposes of sections 385.400 to 385.436, the term "vehicle protection
32 product" shall include, without limitation, alarm systems, body part
33 marking products, steering locks, window etch products, pedal and
34 ignition locks, fuel and ignition kill switches, and electronic, radio, and
35 satellite tracking devices;

36 (7) "Vehicle protection product warranty" or "warranty", a
37 written agreement by a warrantor that provides that if the vehicle
38 protection product fails to prevent loss or damage to a vehicle from a
39 specific cause, then the warranty holder shall be paid specified
40 incidental costs by the warrantor as a result of the failure of the
41 vehicle protection product to perform pursuant to the terms of the
42 warranty. Incidental costs may be reimbursed under the provisions of
43 the warranty in either a fixed amount specified in the warranty or
44 sales agreement or by the use of a formula itemizing specific incidental
45 costs incurred by the warranty holder;

46 (8) "Vehicle protection product warrantor" or "warrantor", a
47 person who is contractually obligated to the warranty holder under the
48 terms of the vehicle protection product warranty
49 agreement. "Warrantor" does not include an authorized insurer
50 providing a warranty reimbursement insurance policy;

51 (9) "Warranty holder", the person who purchases a vehicle
52 protection product or who is a permitted transferee;

53 (10) "Warranty reimbursement insurance policy", a policy of
54 insurance that is issued to the vehicle protection product warrantor to

55 provide reimbursement to the warrantor or to pay on behalf of the
56 warrantor all covered contractual obligations incurred by the
57 warrantor under the terms and conditions of the insured vehicle
58 protection product warranties sold by the warrantor.

385.406. 1. No vehicle protection product may be sold or offered
2 for sale in this state unless the seller, warrantor, and administrator, if
3 any, comply with the provisions of sections 385.400 to 385.436.

4 2. Vehicle protection product warrantors and related vehicle
5 protection product sellers and warranty administrators complying with
6 sections 385.400 to 385.436 are not required to comply with and are not
7 subject to any other provisions of the state insurance code.

8 3. Service contract providers who do not sell vehicle protection
9 products are not subject to the requirements of sections 385.400 to
10 385.436 and sales of vehicle protection products are exempt from the
11 requirements of sections 407.1200 to 407.1227, RSMo.

12 4. Warranties, indemnity agreements, and guarantees that are
13 not provided as a part of a vehicle protection product are not subject
14 to the provisions of sections 385.400 to 385.436.

385.409. 1. A person may not operate as a warrantor or represent
2 to the public that the person is a warrantor unless the person is
3 registered with the department on a form prescribed by the director.

4 2. Warrantor registration records shall be filed annually and
5 shall be updated within thirty days of any change. The registration
6 records shall contain the following information:

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

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

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

15 (4) The name, address, and telephone number of any
16 administrators designated by the warrantor to be responsible for the
17 administration of vehicle protection product warranties in this state;

18 (5) A copy of the warranty reimbursement insurance policy or
19 policies or other financial information required by section 385.412;

20 **(6) A copy of each warranty the warrantor proposes to use in this**
21 **state; and**

22 **(7) A statement indicating under which provision of section**
23 **385.412 the warrantor qualifies to do business in this state as a**
24 **warrantor.**

25 **3. The director may charge each registrant a reasonable fee to**
26 **offset the cost of processing the registration and maintaining the**
27 **records in an amount not to exceed two hundred fifty annually. The**
28 **information in subdivisions (1) and (2) of subsection 2 of this section**
29 **shall be made available to the public.**

30 **4. If a registrant fails to register by the renewal deadline, the**
31 **director shall give him or her written notice of the failure and the**
32 **registrant will have thirty days to complete the renewal of his or her**
33 **registration before he or she is suspended from being registered in this**
34 **state.**

35 **5. An administrator or person who sells or solicits a sale of a**
36 **vehicle protection product but who is not a warrantor shall not be**
37 **required to register as a warrantor or be licensed under the insurance**
38 **laws of this state to sell vehicle protection products.**

385.412. No vehicle protection product shall be sold or offered for
2 **sale in this state unless the warrantor conforms to either subdivision**
3 **(1) or (2) of this section in order to ensure adequate performance under**
4 **the warranty. No other financial security requirements or financial**
5 **standards for warrantors shall be required. The vehicle protection**
6 **product's warrantor may meet the requirements of this section by:**

7 **(1) Obtaining a warranty reimbursement insurance policy issued**
8 **by an insurer authorized to do business within this state which**
9 **provides that the insurer will pay to, or on behalf of, the warrantor one**
10 **hundred percent of all sums that the warrantor is legally obligated to**
11 **pay according to the warrantor's contractual obligations under the**
12 **warrantor's vehicle protection product warranty. The warrantor shall**
13 **file a true and correct copy of the warranty reimbursement insurance**
14 **policy with the director. The policy shall contain the provisions**
15 **required in section 385.415; or**

16 **(2) Maintaining a net worth or stockholder's equity of fifty**
17 **million dollars. The warrantor shall provide the director with a copy**
18 **of the warrantor's or warrantor's parent company's most recent Form**

19 10-K or Form 20-F filed with the Securities and Exchange Commission
20 within the last calendar year, or if the warrantor does not file with the
21 Securities and Exchange Commission, a copy of the warrantor or the
22 warrantor's parent company's audited financial statements that shows
23 a net worth of the warrantor or its parent company of at least fifty
24 million dollars. If the warrantor's parent company's Form 10-K, Form
25 20-F, or audited financial statements are filed to meet the warrantor's
26 financial stability requirement, then the parent company shall agree to
27 guarantee the obligations of the warrantor relating to warranties
28 issued by the warrantor in this state. The financial information filed
29 under this subdivision shall be confidential as a trade secret of the
30 entity filing the information and not subject to public disclosure.

385.415. No warranty reimbursement insurance policy shall be
2 issued, sold, or offered for sale in this state unless the policy meets the
3 following conditions:

4 (1) The policy states that the issuer of the policy will reimburse
5 or pay on behalf of the vehicle protection product warrantor all
6 covered sums which the warrantor is legally obligated to pay or will
7 provide that all service that the warrantor is legally obligated to
8 perform according to the warrantor's contractual obligations under the
9 provisions of the insured warranties sold by the warrantor;

10 (2) The policy states that in the event payment due under the
11 terms of the warranty is not provided by the warrantor within sixty
12 days after proof of loss has been filed according to the terms of the
13 warranty by the warranty holder, the warranty holder may file directly
14 with the warranty reimbursement insurance company for
15 reimbursement;

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

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

24 (a) The issuer of a reimbursement insurance policy shall not
25 cancel such policy until a notice of cancellation in writing has been

26 mailed or delivered to the director and each insured warrantor;

27 (b) The cancellation of a reimbursement insurance policy shall
28 not reduce the issuer's responsibility for vehicle protection products
29 sold prior to the date of cancellation; and

30 (c) In the event an insurer cancels a policy that a warrantor has
31 filed with the director, the warrantor shall do either of the following:

32 a. File a copy of a new policy with the director, before the
33 termination of the prior policy; or

34 b. Discontinue acting as a warrantor as of the termination date
35 of the policy until a new policy becomes effective and is accepted by
36 the director.

385.418. 1. Every vehicle protection product warranty shall be
2 written in clear, understandable language and shall be printed or typed
3 in an easy-to-read point size and font and shall not be sold or offered
4 for sale in the state unless the warranty:

5 (1) States that the obligations of the warrantor to the warranty
6 holder are guaranteed under a warranty reimbursement insurance
7 policy if the warrantor elects to meet its financial responsibility
8 obligations under subdivision (1) of section 385.412, or states the
9 obligations of the warrantor under this warranty are backed by the full
10 faith and credit of the warrantor if the warrantor elects to meet its
11 financial responsibility under subdivision (2) of section 385.412;

12 (2) States that in the event a warranty holder must make a claim
13 against a party other than the warranty reimbursement insurance
14 policy issuer, the warranty holder is entitled to make a direct claim
15 against the insurer upon the failure of the warrantor to pay any claim
16 or meet any obligation under the terms of the warranty within sixty
17 days after proof of loss has been filed with the warrantor, if the
18 warrantor elects to meet its financial responsibility obligations under
19 subdivision (1) of section 385.412;

20 (3) States the name and address of the issuer of the warranty
21 reimbursement insurance policy, and this information need not be
22 preprinted on the warranty form but may be stamped on the warranty,
23 if the warrantor elects to meet its financial responsibility obligations
24 under subdivision (1) of section 385.412;

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

26 (5) Sets forth the total purchase price and the terms under which

27 it is to be paid; however, the purchase price is not required to be
28 preprinted on the vehicle protection product warranty and may be
29 negotiated with the consumer at the time of sale;

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

32 (7) States the existence of a deductible amount, if any;

33 (8) Specifies the payments or performance to be provided under
34 the warranty including payments for incidental costs, the manner of
35 calculation or determination of payments or performance, and any
36 limitations, exceptions, or exclusions;

37 (9) Sets forth all of the obligations and duties of the warranty
38 holder such as the duty to protect against further damage to the
39 vehicle, the obligation to notify the warrantor in advance of any repair,
40 or other similar requirements, if any;

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

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

45 2. At the time of sale, the seller or warrantor shall provide to the
46 purchaser:

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

48 (2) A receipt or other written evidence of the purchase of the
49 vehicle protection product and a copy of the warranty within thirty
50 days of the date of purchase.

385.421. 1. No vehicle protection product may be sold or offered
2 for sale in this state unless the vehicle protection product warranty
3 clearly states the terms and conditions governing the cancellation of
4 the sale and warranty, if any.

5 2. The warrantor may only cancel the warranty if the warranty
6 holder does any of the following:

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

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

10 (3) Commits fraud; or

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

13 3. A warrantor canceling a warranty shall mail written notice of

14 cancellation to the warranty holder at the last address of the warranty
15 holder in the warrantor's records at least thirty days prior to the
16 effective date of the cancellation. The notice shall state the effective
17 date of the cancellation and the reason for the cancellation.

385.424. 1. Unless licensed as an insurance company, a vehicle
2 protection product warrantor shall not use in its name, contracts, or
3 literature the words "insurance", "casualty", "surety", "mutual", or any
4 other word that is descriptive of the insurance, casualty, or surety
5 business or that is deceptively similar to the name or description of any
6 insurance or surety corporation or any other vehicle protection
7 product warrantor. A warrantor may use the term "guaranty" or a
8 similar word in the warrantor's name.

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

385.427. 1. All vehicle protection product warrantors shall keep
2 accurate accounts, books, and records concerning transactions
3 regulated under sections 385.400 to 385.436.

4 2. A vehicle protection product warrantor's accounts, books, and
5 records shall include:

- 6 (1) Copies of all vehicle protection product warranties;
- 7 (2) The name and address of each warranty holder; and
- 8 (3) The dates, amounts, and descriptions of all receipts, claims,
9 and expenditures.

10 3. A vehicle protection product warrantor shall retain all
11 required accounts, books, and records pertaining to each warranty
12 holder for at least two years after the specified period of coverage has
13 expired. A warrantor discontinuing business in the state shall maintain
14 its records until it furnishes the director satisfactory proof that it has
15 discharged all obligations to warranty holders in this state.

16 4. Vehicle protection product warrantors shall make all accounts,
17 books, and records concerning transactions regulated under sections
18 385.400 to 385.436 available to the director for examination.

385.430. 1. The director may conduct examinations of
2 warrantors, administrators, or other persons to enforce sections 385.400
3 to 385.436 and protect warranty holders in this state. Upon request of

4 the director, a warrantor shall make available to the director all
5 accounts, books, and records concerning vehicle protection products
6 sold by the warrantor that are necessary to enable the director to
7 reasonably determine compliance or noncompliance with sections
8 385.400 to 385.436.

9 2. The director may take action that is necessary or appropriate
10 to enforce the provisions of sections 385.400 to 385.436 and the
11 director's rules and orders and to protect warranty holders in this
12 state. If a warrantor engages in a pattern or practice of conduct that
13 violates sections 385.400 to 385.436 and that the director reasonably
14 believes threatens to render the warrantor insolvent or cause
15 irreparable loss or injury to the property or business of any person or
16 company located in this state, the director may:

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

20 (2) Issue an order prohibiting that warrantor from selling or
21 offering for sale service contracts in violation of sections 385.400 to
22 385.436;

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

24 (4) Issue any combination of subdivisions (1) to (3) of this
25 subsection, as applicable.

26 3. Prior to the effective date of any order issued pursuant to this
27 section, the director shall provide written notice of the order to the
28 warrantor and the opportunity for a hearing to be held within ten
29 business days after receipt of the notice, except that prior notice and
30 hearing shall not be required if the director reasonably believes that
31 the warrantor has become, or is about to become, insolvent.

32 4. A person aggrieved by an order issued under this section may
33 request a hearing before the director. The hearing request shall be
34 filed with the director within twenty days after the date the director's
35 order is effective, and the director must hold such a hearing within
36 fifteen days after receipt of the hearing request.

37 5. At the hearing, the burden shall be on the director to show
38 why the order issued pursuant to this section is justified. The
39 provisions of chapter 536, RSMo, shall apply to a hearing request under
40 this section.

41 6. The director may bring an action in any court of competent
42 jurisdiction for an injunction or other appropriate relief to enjoin
43 threatened or existing violations of this chapter or of the director's
44 orders or rules. An action filed under this section also may seek
45 restitution on behalf of persons aggrieved by a violation of this chapter
46 or orders or rule of the director.

47 7. A person who is found to have violated the provisions of
48 sections 385.400 to 385.436 or orders or rules of the director may be
49 ordered to pay to the director a civil penalty in an amount, determined
50 by the director, of not more than five hundred dollars per violation and
51 not more than ten thousand dollars in the aggregate for all violations
52 of a similar nature. For purposes of this section, violations shall be of
53 a similar nature if the violation consists of the same or similar course
54 of conduct, action, or practice, irrespective of the number of times the
55 conduct, action, or practice that is determined to be a violation of
56 sections 385.400 to 385.436 occurred.

 385.433. The director may promulgate rules and regulations to
2 implement the provisions of sections 385.400 to 385.436. Such rules and
3 regulations shall include disclosures for the benefit of the warranty
4 holder, record keeping, and procedures for public complaints. Such
5 rules and regulations shall also include the conditions under which
6 surplus lines insurers may be rejected for the purpose of underwriting
7 vehicle protection product warranty agreements. Any rule or portion
8 of a rule, as that term is defined in section 536.010, RSMo, that is
9 created under the authority delegated in sections 385.400 to 385.436
10 shall become effective only if it complies with and is subject to all of
11 the provisions of chapter 536, RSMo, and, if applicable, section 536.028,
12 RSMo. This section and chapter 536, RSMo, are nonseverable and if any
13 of the powers vested with the general assembly pursuant to chapter
14 536, RSMo, to review, to delay the effective date, or to disapprove and
15 annul a rule are subsequently held unconstitutional, then the grant of
16 rulemaking authority and any rule proposed or adopted after August
17 28, 2006, shall be invalid and void.

 385.436. Sections 385.400 to 385.436 applies to all vehicle
2 protection products sold or offered for sale on or after January 1,
3 2007. The failure of any person to comply with sections 385.400 to
4 385.436 prior to January 1, 2007, shall not be admissible in any court

5 proceeding, administrative proceeding, arbitration, or alternative
6 dispute resolution proceeding and may not otherwise be used to prove
7 that the action of any person or the affected vehicle protection product
8 was unlawful or otherwise improper. The adoption of sections 385.400
9 to 385.436 does not imply that a vehicle protection product warranty
10 was insurance prior to January 1, 2007. The penalty provision of
11 sections 385.400 to 385.436 do not apply to any violation of sections
12 385.400 to 385.436 relating to or in connection with the sale or failure
13 to disclose in a retail installment contract or lease, or contract or
14 agreement that provides for payments under a vehicle protection
15 product warranty so long as the sale of such product, contract, or
16 agreement was otherwise disclosed to the purchaser in writing at the
17 time of the purchase or lease. In an event of a violation for which
18 penalty provisions of sections 385.400 to 385.436 do not apply, the court
19 shall award actual damages and costs, including reasonable attorney's
20 fees. Nothing in this section shall be construed to require the
21 application of the penalty provisions where this section is not
22 applicable.

Section B. The provisions of sections 385.400 to 385.436 are severable. If
2 any part of sections 385.400 to 385.436 is declared invalid or unconstitutional, it
3 is the intent of the legislature that the remaining portions of sections 385.400 to
4 385.436 shall remain and be in full force and effect.

Section C. The enactment of sections 385.400 to 385.436 shall become
2 effective on January 1, 2007.

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