

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

1

HOUSE BILL 994*

Short Title: Vehicle Protection Product Act. (Public)

Sponsors: Representatives Holliman, Carney (Primary Sponsors); Alexander, Brubaker, Daughtridge, Dockham, Earle, Faison, J. Harrell, Jeffus, McComas, Saunders, and Tolson.

Referred to: Judiciary I, if favorable, Appropriations.

March 26, 2007

A BILL TO BE ENTITLED
AN ACT TO ENACT THE VEHICLE PROTECTION PRODUCT ACT.
The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"Article 92.

"Vehicle Protection Product Act.

"§ 58-92-1. Short title.

This Article shall be known and may be cited as the "Vehicle Protection Product Act."

"§ 58-92-5. Definitions.

As used in this Article, the following terms 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) 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 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.
- (3) Motor vehicle service agreement. – As the term is defined in G.S. 58-1-25.
- (4) Vehicle protection product. – A vehicle protection device, system, or service that is (i) installed on or applied to a vehicle, (ii) is designed to prevent loss or damage to a vehicle from a specific cause, and (iii)

1 includes a written warranty. For purposes of this subdivision, the term
2 "vehicle protection product" shall include alarm systems, body part
3 marking products, steering locks, window etch products, pedal and
4 ignition locks, fuel and ignition kill switches, and electronic, radio, and
5 satellite tracking devices.

6 (5) Vehicle protection product warranty or warranty. – A written
7 agreement by a warrantor that provides if the vehicle protection
8 product fails to prevent loss or damage to a vehicle from a specific
9 cause, that the warranty holder shall be paid specified incidental costs
10 by the warrantor as a result of the failure of the vehicle protection
11 product to perform pursuant to the terms of the warranty. Incidental
12 costs may be reimbursed under the provisions of the warranty in either
13 a fixed amount specified in the warranty or sales agreement or by the
14 use of a formula itemizing specific incidental costs incurred by the
15 warranty holder.

16 (6) Vehicle protection product warrantor or warrantor. – A person who is
17 contractually obligated to the warranty holder under the terms of the
18 vehicle protection product warranty agreement. Warrantor does not
19 include an authorized insurer providing a warranty reimbursement
20 insurance policy.

21 (7) Warranty holder. – A person who purchases a vehicle protection
22 product or who is a permitted transferee.

23 (8) Warranty reimbursement insurance policy. – A policy of insurance that
24 is issued to the vehicle protection product warrantor to provide
25 reimbursement to the warrantor or to pay on behalf of the warrantor all
26 covered contractual obligations incurred by the warrantor under the
27 terms and conditions of the insured vehicle protection product
28 warranties issued by the warrantor.

29 **§ 58-92-10. Scope and exemptions.**

30 (a) No vehicle protection product may be sold or offered for sale in this State
31 unless the seller, warrantor, and administrator, if any, comply with the provisions of this
32 Article.

33 (b) Except as provided in this Article, vehicle protection product warrantors and
34 related vehicle protection product sellers and warranty administrators complying with
35 this Article are not required to comply with and are not subject to any other provision of
36 this Chapter.

37 (c) Motor vehicle service agreement providers who do not sell vehicle protection
38 products are not subject to the requirements of this Article.

39 (d) Warranties, indemnity agreements, and guarantees that are not provided as a
40 part of a vehicle protection product are not subject to the provisions of this Article.

41 **§ 58-92-15. Registration and filing requirements of warrantors.**

42 (a) A person shall not operate as a warrantor or represent to the public that the
43 person is a warrantor unless the person is registered with the Department on a form
44 prescribed by the Commissioner.

1 (b) Warrantor registration records shall be filed annually and shall be updated
2 within 30 days of any change. The registration records shall contain the following
3 information:

- 4 (1) The warrantor's name, any fictitious names under which the warrantor
5 does business in the State, principal office address, and telephone
6 number.
- 7 (2) The name and address of the warrantor's agent for service of process in
8 the State if other than the warrantor.
- 9 (3) The names of the warrantor's executive officer or officers directly
10 responsible for the warrantor's vehicle protection product business.
- 11 (4) The name, address, and telephone number of any administrators
12 designated by the warrantor to be responsible for the administration of
13 vehicle protection product warranties in this State.
- 14 (5) A copy of the warranty reimbursement insurance policy or policies or
15 other financial information required by G.S. 58-92-20.
- 16 (6) A copy of each warranty the warrantor proposes to use in this State.
- 17 (7) A statement indicating under which provision of G.S. 58-92-20 the
18 warrantor qualifies to do business in this State as a warrantor.

19 (c) The Commissioner may charge each registrant a reasonable fee to offset the
20 cost of processing the registration and maintaining the records in an amount not to
21 exceed five hundred dollars (\$500.00) annually. The fee shall be credited to the
22 Insurance Regulatory Fund under G.S. 58-6-25.

23 (d) If a registrant fails to register by the renewal deadline, the Commissioner
24 shall give the registrant written notice of the failure, and the registrant shall have 30
25 days to complete the renewal of the registration before the registrant's registration is
26 suspended in this State.

27 (e) An administrator or person who sells or solicits a sale of a vehicle protection
28 product but who is not a warrantor shall not be required to register as a warrantor or be
29 licensed under this Chapter to sell vehicle protection products.

30 **"§ 58-92-20. Financial responsibility.**

31 No vehicle protection product shall be sold or offered for sale in this State unless the
32 warrantor meets one of the following conditions in order to ensure adequate
33 performance under the warranty:

- 34 (1) The vehicle protection product warrantor is insured under a warranty
35 reimbursement insurance policy issued by an insurer authorized to do
36 business in this State which provides all of the following:
- 37 a. The insurer shall pay to, or on behalf of, the warrantor one
38 hundred percent (100%) of all sums that the warrantor is legally
39 obligated to pay according to the warrantor's contractual
40 obligations under the warrantor's vehicle protection product
41 warranty.
- 42 b. A true and correct copy of the warranty reimbursement
43 insurance policy has been filed with the Commissioner by the
44 warrantor.

1 c. The policy complies with G.S. 58-92-25.

- 2 (2) The vehicle protection product warrantor, or its parent company,
3 maintains a net worth of fifty million dollars (\$50,000,000), and the
4 warrantor provides the Commissioner with a copy of the warrantor's or
5 the warrantor's parent company's most recent Form 10-K or Form 20-F
6 filed with the Securities and Exchange Commission within the last
7 calendar year or, if the warrantor does not file with the Securities and
8 Exchange Commission, a copy of the warrantor's or the warrantor's
9 parent company's audited financial statements that shows a net worth
10 of the warrantor or its parent company of at least fifty million dollars
11 (\$50,000,000). If the warrantor's parent company's Form 10-K, Form
12 20-F, or audited financial statements are filed to meet the warrantor's
13 financial stability requirement, then the parent company shall agree to
14 guarantee the obligations of the warrantor relating to warranties issued
15 by the warrantor in this State.

16 No other financial security requirements or financial standards for warrantors shall
17 be required.

18 **"§ 58-92-25. Warranty reimbursement policy requirements.**

19 No warranty reimbursement insurance policy shall be issued, sold, or offered for sale
20 in this State, unless the policy meets all of the following conditions:

- 21 (1) The policy states that the issuer of the policy will reimburse or pay on
22 behalf of the vehicle protection product warrantor all covered sums
23 which the warrantor is legally obligated to pay or will provide all
24 service that the warrantor is legally obligated to perform according to
25 the warrantor's contractual obligations under the provisions of the
26 insured warranties issued by the warrantor.
- 27 (2) The policy states that in the event payment due under the terms of the
28 warranty is not provided by the warrantor within 60 days after proof of
29 loss has been filed according to the terms of the warranty by the
30 warranty holder, the warranty holder may file directly with the
31 warranty reimbursement insurance company for reimbursement.
- 32 (3) The policy provides that a warranty reimbursement insurance company
33 that insures a warranty shall be deemed to have received payment of
34 the premium if the warranty holder paid for the vehicle protection
35 product and the insurer's liability under the policy shall not be reduced
36 or relieved by a failure of the warrantor, for any reason, to report the
37 issuance of a warranty to the insurer.
- 38 (4) The policy has the following provisions regarding cancellation of the
39 policy:
- 40 a. The issuer of a reimbursement insurance policy shall not cancel
41 the policy until a notice of cancellation in writing has been
42 mailed or delivered to the Commissioner and each insured
43 warrantor.

- 1 b. The cancellation of a reimbursement insurance policy shall not
2 reduce the issuer's responsibility for vehicle protection products
3 sold prior to the date of cancellation.
- 4 c. In the event an insurer cancels a policy that a warrantor has
5 filed with the Commissioner, the warrantor shall do either of the
6 following:
- 7 1. File a copy of a new policy with the Commissioner,
8 before the termination of the prior policy, providing no
9 lapse in coverage following the termination of the prior
10 policy.
- 11 2. Discontinue acting as a warrantor as of the termination
12 date of the policy until a new policy becomes effective
13 and is accepted by the Commissioner.
- 14 (5) The policy and the premium rates for the policy have been filed with
15 and approved by the Commissioner.

16 **"§ 58-92-30. Disclosure to warranty holder.**

17 Every vehicle protection product warranty shall not be sold or offered for sale in this
18 State unless the warranty contains all of the following:

- 19 (1) One of the following statements:
- 20 a. "The obligations of the warrantor to the warranty holder are
21 guaranteed under a warranty reimbursement insurance policy"
22 if the warrantor elects to meet its financial responsibility
23 obligations under G.S. 58-92-20(1).
- 24 b. "The obligations of the warrantor under this warranty are
25 backed by the full faith and credit of the warrantor" if the
26 warrantor elects to meet its financial obligations under
27 G.S. 58-92-20(2).
- 28 (2) A statement that in the event a warranty holder must make a claim
29 against a party other than the warranty reimbursement insurance policy
30 issuer, the warranty holder is entitled to make a direct claim against the
31 insurer upon the failure of the warrantor to pay any claim or meet any
32 obligation under the terms of the warranty within 60 days after proof
33 of loss has been filed with the warrantor, if the warrantor elects to
34 meet its financial responsibility obligations under G.S. 58-92-20(1).
- 35 (3) The name and address of the issuer of the warranty reimbursement
36 insurance policy. The information need not be preprinted on the
37 warranty form, but may be added to or stamped on the warranty, if the
38 warrantor elects to meet its financial responsibility obligations under
39 G.S. 58-92-20(1).
- 40 (4) The identity of the warrantor, the seller, and the warranty holder.
- 41 (5) The total purchase price and the terms under which it is to be paid;
42 however, the purchase price is not required to be preprinted on the
43 vehicle protection product warranty.

44 **"§ 58-92-35. Prohibited acts.**

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

7 (b) A vehicle protection product seller or warrantor shall not require as a
8 condition of financing that a retail purchaser of a motor vehicle purchase a vehicle
9 protection product.

10 (c) Vehicle protection product warrantors and their administrators shall be
11 subject to Article 63 of this Chapter.

12 **"§ 58-92-40. Record keeping.**

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

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

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

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

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

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

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

29 (e) Vehicle protection product warrantors and their administrators shall be
30 subject to the same provisions of Article 2 of this Chapter that apply to insurance
31 companies.

32 **"§ 58-92-45. Rule-making power.**

33 The Commissioner may adopt rules consistent with the provisions of this Article that
34 are necessary to implement this Article. The rules shall include disclosures for the
35 benefit of the warranty holder, record keeping, and procedures for public complaints.
36 The rules shall also include the conditions under which surplus lines insurers may be
37 rejected for the purpose of underwriting vehicle protection product warranty
38 agreements."

39 **SECTION 2.** G.S. 58-6-25(d) reads as rewritten:

40 "(d) Use of Proceeds. – The Insurance Regulatory Fund is created in the State
41 treasury, under the control of the Office of State Budget and Management. The proceeds
42 of the charge levied in this section and all fees collected under Articles 69 through 71
43 and Article 92 of this Chapter and under Articles 9 and 9C of Chapter 143 of the
44 General Statutes shall be credited to the Fund. The Fund shall be placed in an

1 interest-bearing account and any interest or other income derived from the Fund shall be
2 credited to the Fund. Moneys in the Fund may be spent only pursuant to appropriation
3 by the General Assembly and in accordance with the line item budget enacted by the
4 General Assembly. The Fund is subject to the provisions of the Executive Budget Act,
5 except that no unexpended surplus of the Fund shall revert to the General Fund. All
6 money credited to the Fund shall be used to reimburse the General Fund for the
7 following:

8 ...

9 (10) Money appropriated to the Department to pay its expenses incurred in
10 regulating vehicle protection product warrantors and administrators
11 under Article 92 of this Chapter."

12 **SECTION 3.(a)** There is appropriated from the General Fund to the
13 Department of Insurance for fiscal year 2007-2008 the sum of two hundred thousand
14 dollars (\$200,000) for the regulation by the Department of vehicle protection product
15 warrantors and administrators under Article 92 of Chapter 58 of the General Statutes.

16 **SECTION 3.(b)** There is appropriated from the Insurance Regulatory Fund
17 created under G.S. 58-6-25 to the General Fund for fiscal year 2007-2008 the sum of
18 two hundred thousand dollars (\$200,000) for the regulation by the Department of
19 vehicle protection product warrantors and administrators under Article 92 of Chapter 58
20 of the General Statutes.

21 **SECTION 4.(a)** Section 1 of this act becomes effective January 1, 2008, and
22 applies to contracts and agreements entered into on or after that date and to vehicle
23 protection products sold or offered for sale on or after that date. The remainder of this
24 act becomes effective July 1, 2007.

25 **SECTION 4.(b)** This act applies to all vehicle protection products sold or
26 offered for sale on or after the effective date of this act. The failure of any person to
27 comply with this act prior to its effective date shall not be admissible in any court
28 proceeding, administrative proceeding, arbitration, or alternative dispute resolution
29 proceeding and may not otherwise be used to prove that the action of any person or the
30 affected vehicle protection product was unlawful or otherwise improper. The adoption
31 of this act does not imply that a vehicle protection product warranty was insurance prior
32 to the effective date of this act. Nothing in this subsection shall be construed to require
33 the application of the penalty provisions where this subsection is not applicable.