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HOUSE FILE No. 933

FIRST COMMITTEE ENGROSSMENT

February 13, 2007

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The bill was read for the first time and referred to the Committee on Commerce and Labor

Referred by Chair to Labor and Consumer Protection Division.

March 2, 2007

Returned to the Committee on Commerce and Labor as Amended.

1.1 A bill for an act
1.2 relating to commerce; regulating vehicle protection products; establishing
1.3 registration and oversight requirements; requiring certain disclosures; providing
1.4 remedies and penalties; proposing coding for new law as Minnesota Statutes,
1.5 chapter 59C.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. **[59C.01] SHORT TITLE.**

1.8 This chapter may be cited as the Vehicle Protection Product Act.

1.9 Sec. 2. **[59C.02] DEFINITIONS.**

1.10 Subdivision 1. **Terms.** For purposes of this chapter, the terms defined in subdivisions
1.11 2 to 11 have the meanings given them.

1.12 Subd. 2. **Administrator.** "Administrator" means a third party other than the
1.13 warrantor who is designated by the warrantor to be responsible for the administration
1.14 of vehicle protection product warranties.

1.15 Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce.

1.16 Subd. 4. **Department.** "Department" means the Department of Commerce.

1.17 Subd. 5. **Incidental costs.** "Incidental costs" means expenses specified in the
1.18 warranty incurred by the warranty holder related to the failure of the vehicle protection
1.19 product to perform as provided in the warranty. Incidental costs may include, without
1.20 limitation, insurance policy deductibles, rental vehicle charges, the difference between the
1.21 actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle,
1.22 sales taxes, registration fees, transaction fees, and mechanical inspection fees.

1.23 Subd. 6. **Service contract.** "Service contract" means a contract or agreement as
1.24 regulated under chapter 59B.

2.1 Subd. 7. **Vehicle protection product.** "Vehicle protection product" means a vehicle
2.2 protection device, system, or service that:

2.3 (1) is installed on or applied to a vehicle;

2.4 (2) is designed to prevent loss or damage to a vehicle from a specific cause; and

2.5 (3) includes a written warranty.

2.6 For purposes of this section, vehicle protection product includes, without limitation,
2.7 alarm systems; body part marking products; steering locks; window etch products; pedal
2.8 and ignition locks; fuel and ignition kill switches; and electronic, radio, and satellite
2.9 tracking devices.

2.10 Subd. 8. **Vehicle protection product warranty or warranty.** "Vehicle protection
2.11 product warranty" or "warranty" means, for the purposes of this chapter, a written
2.12 agreement by a warrantor that provides if the vehicle protection product fails to prevent
2.13 loss or damage to a vehicle from a specific cause, that the warranty holder must be
2.14 paid specified incidental costs by the warrantor as a result of the failure of the vehicle
2.15 protection product to perform pursuant to the terms of the warranty.

2.16 Subd. 9. **Vehicle protection product warrantor or warrantor.** "Vehicle protection
2.17 product warrantor" or "warrantor," for the purposes of this chapter, means a person who is
2.18 contractually obligated to the warranty holder under the terms of the vehicle protection
2.19 product warranty agreement. Warrantor does not include an authorized insurer providing a
2.20 warranty reimbursement insurance policy.

2.21 Subd. 10. **Warranty holder.** "Warranty holder," for the purposes of this chapter,
2.22 means the person who purchases a vehicle protection product or who is a permitted
2.23 transferee.

2.24 Subd. 11. **Warranty reimbursement insurance policy.** "Warranty reimbursement
2.25 insurance policy" means a policy of insurance that is issued to the vehicle protection
2.26 product warrantor to provide reimbursement to, or to pay on behalf of, the warrantor all
2.27 covered contractual obligations incurred by the warrantor under the terms and conditions
2.28 of the insured vehicle protection product warranties sold by the warrantor.

2.29 Sec. 3. **[59C.03] SCOPE AND EXEMPTIONS.**

2.30 (a) No vehicle protection product may be sold or offered for sale in this state unless
2.31 the seller, warrantor, and administrator, if any, comply with the provisions of this chapter.

2.32 (b) Vehicle protection product warrantors and related vehicle protection product
2.33 sellers and warranty administrators complying with this chapter are not required to comply
2.34 with and are not subject to any other provision of chapters 59B to 72A, except that section

3.1 72A.20, subdivision 38, shall apply to vehicle protection product warranties in the same
3.2 manner it applies to service contracts.

3.3 (c) Service contract providers who do not sell vehicle protection products are not
3.4 subject to the requirements of this chapter and sales of vehicle protection products are
3.5 exempt from the requirements of chapter 59B.

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

3.8 **Sec. 4. [59C.04] REGISTRATION AND FILING REQUIREMENTS OF**
3.9 **WARRANTORS.**

3.10 Subdivision 1. **General requirement.** A person may not operate as a warrantor or
3.11 represent to the public that the person is a warrantor unless the person is registered with
3.12 the department on a form prescribed by the commissioner.

3.13 Subd. 2. **Registration records.** A registrant shall file a warrantor registration
3.14 record annually and shall update it within 30 days of any change. A registration record
3.15 must contain the following information:

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

3.18 (2) the name and address of the warrantor's agent for service of process in the state if
3.19 other than the warrantor;

3.20 (3) the names of the warrantor's executive officer or officers directly responsible for
3.21 the warrantor's vehicle protection product business;

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

3.25 (5) a copy of the warranty reimbursement insurance policy or policies or other
3.26 financial information required by section 59C.05;

3.27 (6) a copy of each warranty the warrantor proposes to use in this state; and

3.28 (7) a statement indicating under which provision of section 59C.05 the warrantor
3.29 qualifies to do business in this state as a warrantor.

3.30 Subd. 3. **Registration fee.** The commissioner may charge each registrant a
3.31 reasonable fee to offset the cost of processing the registration and maintaining the records
3.32 in an amount not to exceed \$250 annually. The information in subdivision 2, clauses (1)
3.33 and (2), must be made available to the public.

3.34 Subd. 4. **Renewal.** If a registrant fails to register by the renewal deadline, the
3.35 commissioner shall give them written notice of the failure and the registrant will have 30

4.1 days to complete the renewal of the registration before the commissioner suspends the
4.2 registration.

4.3 Subd. 5. **Exception.** An administrator or person who sells or solicits a sale of a
4.4 vehicle protection product but who is not a warrantor shall not be required to register as a
4.5 warrantor or be licensed under the insurance laws of this state to sell vehicle protection
4.6 products.

4.7 **Sec. 5. [59C.05] FINANCIAL RESPONSIBILITY.**

4.8 Subdivision 1. **General requirements.** No vehicle protection product may be sold,
4.9 or offered for sale in this state unless the warrantor meets either the requirements of
4.10 subdivision 2 or 3 in order to ensure adequate performance under the warranty. No other
4.11 financial security requirements or financial standards for warrantors is required.

4.12 Subd. 2. **Warranty reimbursement insurance policy.** The vehicle protection
4.13 product warrantor shall be insured under a warranty reimbursement insurance policy
4.14 issued by an insurer authorized to do business in this state which provides that:

4.15 (1) the insurer will pay to, or on behalf of the warrantor, 100 percent of all sums
4.16 that the warrantor is legally obligated to pay according to the warrantor's contractual
4.17 obligations under the warrantor's vehicle protection product warranty;

4.18 (2) a true and correct copy of the warranty reimbursement insurance policy has been
4.19 filed with the commissioner by the warrantor; and

4.20 (3) the policy contains the provision required in section 59C.06.

4.21 Subd. 3. **Network or stockholder's equity.** (1) The vehicle protection product
4.22 warrantor, or its parent company in accordance with clause (2), shall maintain a net worth
4.23 or stockholders' equity of \$50,000,000; and

4.24 (2) the warrantor shall provide the commissioner with a copy of the warrantor's or
4.25 the warrantor's parent company's most recent Form 10-K or Form 20-F filed with the
4.26 Securities and Exchange Commission within the last calendar year or, if the warrantor
4.27 does not file with the Securities and Exchange Commission, a copy of the warrantor or
4.28 the warrantor's parent company's audited financial statements that shows a net worth of
4.29 the warrantor or its parent company of at least \$50,000,000. If the warrantor's parent
4.30 company's Form 10-K, Form 20-F, or audited financial statements are filed to meet
4.31 the warrantor's financial stability requirement, then the parent company shall agree to
4.32 guarantee the obligations of the warrantor relating to warranties issued by the warrantor in
4.33 this state. The financial information filed under this paragraph is confidential as a trade
4.34 secret of the entity filing the information and is not subject to public disclosure.

5.1 Sec. 6. **[59C.06] WARRANTY REIMBURSEMENT POLICY REQUIREMENTS.**

5.2 No warranty reimbursement insurance policy may be issued, sold, or offered for sale
5.3 in this state unless the policy meets the following conditions:

5.4 (1) the policy states that the issuer of the policy will reimburse, or pay on behalf of
5.5 the vehicle protection product warrantor, all covered sums that the warrantor is legally
5.6 obligated to pay, or will provide all service that the warrantor is legally obligated to
5.7 perform according to the warrantor's contractual obligations under the provisions of the
5.8 insured warranties sold by the warrantor;

5.9 (2) the policy states that in the event payment due under the terms of the warranty is
5.10 not provided by the warrantor within 60 days after proof of loss has been filed according
5.11 to the terms of the warranty by the warranty holder, the warranty holder may file directly
5.12 with the warranty reimbursement insurance company for reimbursement;

5.13 (3) the policy provides that a warranty reimbursement insurance company that
5.14 insures a warranty is deemed to have received payment of the premium if the warranty
5.15 holder paid for the vehicle protection product and the insurer's liability under the policy
5.16 shall not be reduced or relieved by a failure of the warrantor, for any reason, to report the
5.17 issuance of a warranty to the insurer; and

5.18 (4) the policy has the following provisions regarding cancellation of the policy:

5.19 (i) the issuer of a reimbursement insurance policy shall not cancel the policy until a
5.20 notice of cancellation in writing has been mailed or delivered to the commissioner and
5.21 each insured warrantor;

5.22 (ii) the cancellation of a reimbursement insurance policy shall not reduce the issuer's
5.23 responsibility for vehicle protection products sold prior to the date of cancellation; and

5.24 (iii) in the event an insurer cancels a policy that a warrantor has filed with the
5.25 commissioner, the warrantor shall do either of the following:

5.26 (A) file a copy of a new policy with the commissioner, before the termination of
5.27 the prior policy, providing no lapse in coverage following the termination of the prior
5.28 policy; or

5.29 (B) discontinue offering warranties as of the termination date of the policy until a
5.30 new policy becomes effective and is accepted by the commissioner.

5.31 Sec. 7. **[59C.07] DISCLOSURE TO WARRANTY HOLDER.**

5.32 A vehicle protection product warranty must not be sold or offered for sale in this
5.33 state unless the warranty:

5.34 (1) states, "The obligations of the warrantor to the warranty holder are guaranteed
5.35 under a warranty reimbursement insurance policy" if the warrantor elects to meet its

6.1 financial responsibility obligations under section 59C.05, subdivision 2, or states "The
6.2 obligations of the warrantor under this warranty are backed by the full faith and credit
6.3 of the warrantor" if the warrantor elects to meet its financial responsibility obligations
6.4 under section 59C.05, subdivision 3;

6.5 (2) states that in the event a warranty holder must make a claim against a party other
6.6 than the warranty reimbursement insurance policy issuer, the warranty holder is entitled to
6.7 make a direct claim against the insurer upon the failure of the warrantor to pay any claim
6.8 or meet any obligation under the terms of the warranty within 60 days after proof of loss
6.9 has been filed with the warrantor, if the warrantor elects to meet its financial responsibility
6.10 obligations under section 59C.05, subdivision 2;

6.11 (3) states the name and address of the issuer of the warranty reimbursement
6.12 insurance policy, and this information need not be preprinted on the warranty form, but
6.13 may be added to or stamped on the warranty, if the warrantor elects to meet its financial
6.14 responsibility obligations under section 59C.05, subdivision 2;

6.15 (4) identifies the warrantor, the seller, and the warranty holder;

6.16 (5) sets forth the total purchase price and the terms under which it is to be paid,
6.17 however, the purchase price is not required to be preprinted on the vehicle protection
6.18 product warranty and may be negotiated with the consumer at the time of sale;

6.19 (6) sets forth the procedure for making a claim, including a telephone number;

6.20 (7) specifies the payments or performance to be provided under the warranty
6.21 including payments for incidental costs expressed as either a fixed amount specified in the
6.22 warranty or sales agreement or by the use of a formula itemizing specific incidental costs
6.23 incurred by the warranty holder, the manner of calculation or determination of payments
6.24 or performance, and any limitations, exceptions, or exclusions;

6.25 (8) sets forth all of the obligations and duties of the warranty holder such as the duty
6.26 to protect against any further damage to the vehicle, the obligation to notify the warrantor
6.27 in advance of any repair, or other similar requirements, if any;

6.28 (9) sets forth any terms, restrictions, or conditions governing transferability and
6.29 cancellation of the warranty, if any; and

6.30 (10) contains a disclosure that reads substantially as follows: "This agreement is a
6.31 product warranty and is not insurance."

6.32 **Sec. 8. [59C.08] PROHIBITED ACTS.**

6.33 (a) Unless licensed as an insurance company, a vehicle protection product warrantor
6.34 shall not use in its name, contracts, or literature, any of the words "insurance," "casualty,"
6.35 "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety

7.1 business or deceptively similar to the name or description of any insurance or surety
7.2 corporation, or any other vehicle protection product warrantor. A warrantor may use the
7.3 term "guaranty" or similar word in the warrantor's name.

7.4 (b) A vehicle protection product seller or warrantor may not require as a condition of
7.5 financing that a retail purchaser of a motor vehicle purchase a vehicle protection product.

7.6 **Sec. 9. [59C.09] RECORD KEEPING.**

7.7 (a) All vehicle protection product warrantors shall keep accurate accounts, books,
7.8 and records concerning transactions regulated under this chapter.

7.9 (b) A vehicle protection product warrantor's accounts, books, and records must
7.10 include:

7.11 (1) copies of all vehicle protection product warranties;

7.12 (2) the name and address of each warranty holder; and

7.13 (3) the dates, amounts, and descriptions of all receipts, claims, and expenditures.

7.14 (c) A vehicle protection product warrantor shall retain all required accounts, books,
7.15 and records pertaining to each warranty holder for at least two years after the specified
7.16 period of coverage has expired. A warrantor discontinuing business in this state shall
7.17 maintain its records until it furnishes the commissioner satisfactory proof that it has
7.18 discharged all obligations to warranty holders in this state.

7.19 (d) Vehicle protection product warrantors shall make all accounts, books, and
7.20 records concerning transactions regulated under this chapter available to the commissioner
7.21 for examination.

7.22 **Sec. 10. [59C.10] COMMISSIONER'S POWERS AND DUTIES.**

7.23 Subdivision 1. **EXAMINATION AND COMPLIANCE POWERS.** The
7.24 commissioner may conduct examinations of warrantors, administrators, or other persons
7.25 to enforce this chapter and protect warranty holders in this state. Upon request of the
7.26 commissioner, a warrantor shall make available to the commissioner all accounts,
7.27 books, and records concerning vehicle protection products sold by the warrantor that
7.28 are necessary to enable the commissioner to reasonably determine compliance or
7.29 noncompliance with this chapter.

7.30 Subd. 2. **Enforcement authority.** The commissioner may take action that is
7.31 necessary or appropriate to enforce the provisions of this chapter and the commissioner's
7.32 rules and orders and to protect warranty holders in this state. The commissioner has the
7.33 enforcement authority in chapter 45 available to enforce the provisions of the chapter and
7.34 the rules adopted pursuant to it.

8.1 Sec. 11. **[59C.12] APPLICABILITY.**

8.2 This chapter applies to all vehicle protection products sold or offered for sale on
8.3 or after the effective date of this chapter. The failure of any person to comply with this
8.4 chapter before its effective date is not admissible in any court proceeding, administrative
8.5 proceeding, arbitration, or alternative dispute resolution proceeding and may not otherwise
8.6 be used to prove that the action of any person or the affected vehicle protection product
8.7 was unlawful or otherwise improper. The adoption of this chapter does not imply that
8.8 a vehicle protection product warranty was insurance before the effective date of this
8.9 chapter. Nothing in this section may be construed to require the application of the penalty
8.10 provisions where this section is not applicable.

8.11 Sec. 12. **EFFECTIVE DATE.**

8.12 This act is effective January 1, 2008.