ACT No. 2006-600

1 HB538

2 80402-3

3 By Representatives Thigpen, Boothe, Martin and Vance

4 RFD: Banking and Insurance

5 First Read: 31-JAN-06

RECEIVED
APR 17 2006
GOVERNOR'S OFFICE

1

2 ENROLLED, An Act,

3 Relating to insurance; to establish the Alabama
4 Vehicle Protection Product Act; to prevent loss or damage to a
5 vehicle from a specific cause which is included with a written
6 warranty; to exclude sellers, warrantors, and administrators
7 of vehicle protection products from complying with the state
8 insurance code; to require the warrantor to be insured under a
9 warranty reimbursement insurance policy or maintain a net
10 worth or stockholders equity of $50,000,000; and to impose
11 certain requirements and conditions on the warranty.
12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
13 Section 1. This act shall be known and may be cited
14 as the Vehicle Protection Product Act.
15 Section 2. As used in this act, the following words
16 shall have the following meanings:
17 (1) ADMINISTRATOR. A third party other than the
18 warrantor who is designated by the warrantor to be responsible
19 for the administration of vehicle protection product
20 warranties.
21 (2) COMMISSIONER. The Commissioner of the Department
22 of Insurance.
23 (3) DEPARTMENT. The Department of Insurance.
24 (4) INCIDENTAL COSTS. Expenses specified in the
25 warranty incurred by the warranty holder related to the

1 failure of the vehicle protection product to perform as
2 provided in the warranty. Incidental costs may include,
3 without limitation, insurance policy deductibles, rental
4 vehicle charges, the difference between the actual value of
5 the stolen vehicle at the time of theft and the cost of a
6 replacement vehicle, sales taxes, registration fees,
7 transaction fees, and mechanical inspection fees.
8 (5) SERVICE CONTRACT. A contract or agreement as
9 defined in Section 8-32-2(13) of the Code of Alabama 1975.
10 (6) VEHICLE PROTECTION PRODUCT. A vehicle protection
11 device, system, or service that is all of the following:
12 a. Installed on or applied to a vehicle.
13 b. Is designed to prevent loss or damage to a
14 vehicle from a specific cause.
15 c. Includes a written warranty.
16 For purposes of this act, the term vehicle
17 protection product shall include, without limitation, alarm
18 systems, body part marking products, steering locks, window
19 etch products, pedal and ignition locks, fuel and ignition
20 kill switches, and electronic, radio, and satellite tracking
21 devices. A vehicle protection product is not insurance for any
22 purpose.
23 (7) VEHICLE PROTECTION PRODUCT WARRANTOR or
24 WARRANTOR. A person who is contractually obligated to the
25 warranty holder under the terms of the vehicle protection

1 product warranty agreement. Warrantor does not include an
2 authorized insurer providing a warranty reimbursement
3 insurance policy.
4 (8) VEHICLE PROTECTION PRODUCT WARRANTY or WARRANTY.
5 A written agreement by a warrantor that provides if the
6 vehicle protection product fails to prevent loss or damage to
7 a vehicle from a specific cause, that the warranty holder
8 shall be paid specified incidental costs by the warrantor as a
9 result of the failure of the vehicle protection product to
10 perform pursuant to the terms of the warranty. Incidental
11 costs may be reimbursed under the provisions of the warranty
12 in either a fixed amount specified in the warranty or sales
13 agreement or by use of a formula itemizing specific incidental
14 costs incurred by the warranty holder.
15 (9) WARRANTY HOLDER. The person who purchases a
16 vehicle protection product or who is a permitted transferee.
17 (10) WARRANTY REIMBURSEMENT INSURANCE POLICY. A
18 policy of insurance that is issued to the vehicle protection
19 product warrantor to provide reimbursement to the warrantor or
20 to pay on behalf of the warrantor all covered contractual
21 obligations incurred by the warrantor under the terms and
22 conditions of the insured vehicle protection product
23 warranties sold by the warrantor.
24 Section 3. (a) No vehicle protection product may be
25 sold or offered for sale in this state unless the seller,

1 warrantor, and administrator, if any, comply with the
2 provisions of this act.
3 (b) Vehicle protection product warrantors and
4 related vehicle protection product sellers and warranty
5 administrators complying with this act are not required to
6 comply with and are not subject to any other provision of the
7 Alabama Insurance Code.
8 (c) Service contract providers who do not sell
9 vehicle protection products are not subject to the
10 requirements of this act and sales of vehicle protection
11 products are exempt from the requirements of Chapter 32 of the
12 Code of Alabama 1975.
13 (d) Warranties, indemnity agreements, and guarantees
14 that are not provided as a part of a vehicle protection
15 product are not subject to the provisions of this act.
16 Section 4. (a) A person may not operate as a
17 warrantor or represent to the public that the person is a
18 warrantor unless the person is registered with the department
19 on a form prescribed by the commissioner.
20 (b) Warrantor registration records shall be filed
21 annually and shall be updated within 30 days of any change.
22 The registration records shall contain the following
23 information:

1 (1) The warrantor's name, any fictitious names under
2 which the warrantor does business in the state, principal
3 office address, and telephone number.
4 (2) The name and address of the warrantor's agent
5 for service of process in the state if other than the
6 warrantor.
7 (3) The names of the warrantor's executive officer
8 or officers directly responsible for the warrantor's vehicle
9 protection product business.
10 (4) The name, address, and telephone number of any
11 administrators designated by the warrantor to be responsible
12 for the administration of vehicle protection product
13 warranties in this state.
14 (5) A copy of the warranty reimbursement insurance
15 policy or policies or other financial information required by
16 Section 5.
17 (6) A copy of each warranty the warrantor proposes
18 to use in this state.
19 (7) A statement indicating under which provision of
20 Section 5 the warrantor qualifies to do business in this state
21 as a warrantor.
22 (c) The commissioner may charge each registrant a
23 reasonable fee to offset the cost of processing the
24 registration and maintaining the records in an amount not to
25 exceed two hundred fifty dollars ($250) annually. The

information in subdivisions (1) and (2) of subsection (b) shall be made available to the public.

(d) If a registrant fails to register by the renewal deadline, the commissioner shall give him or her written notice of the failure and the registrant will have 30 days to complete the renewal of his or her registration before he or she is suspended from being registered in this state.

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

Section 5. (a) No vehicle protection product shall be sold or offered for sale in this state unless the warrantor meets one of the conditions in subsection (b) or (c) in order to ensure adequate performance under the warranty. No other financial security requirements or financial standards for warrantors shall be required.

(b) The vehicle protection product warrantor is insured under a warranty reimbursement insurance policy issued by an insurer authorized to do business in this state which provides that:

(1) The insurer will pay to, or on behalf of, the warrantor 100 percent of all sums that the warrantor is legally obligated to pay according to the warrantor's

1 contractual obligations under the warrantor's vehicle
2 protection product warranty.
3 (2) A true and correct copy of the warranty
4 reimbursement insurance policy has been filed with the
5 commissioner by the warrantor.
6 (3) The policy contains the provision required in
7 Section 6.
8 (c)(1) The vehicle protection product warrantor, or
9 its parent company, maintains a net worth or stockholders'
10 equity of fifty million dollars ($50,000,000).
11 (2) The warrantor provides the commissioner with a
12 copy of the warrantor's or the warrantor's parent company's
13 most recent Form 10-K or Form 20-F filed with the Securities
14 and Exchange Commission within the last calendar year or, if
15 the warrantor does not file with the Securities and Exchange
16 Commission, a copy of the warrantor or the warrantor's parent
17 company's audited financial statements that shows a net worth
18 of the warrantor or its parent company of at least fifty
19 million dollars ($50,000,000). If the warrantor's parent
20 company's Form 10-K, Form 20-F, or audited financial
21 statements are filed to meet the warrantor's financial
22 stability requirement, then the parent company shall agree to
23 guarantee the obligations of the warrantor relating to
24 warranties issued by the warrantor in this state. The audited
25 financial statements filed pursuant to this section shall be

exempt from public disclosure under Section 36-12-40, Code of Alabama 1975.

Section 6. No warranty reimbursement insurance policy shall be issued, sold, or offered for sale in this state unless the policy meets the following conditions:

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

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

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

1 (4) The policy has the following provisions
2 regarding cancellation of the policy:
3 a. The issuer of a reimbursement insurance policy
4 shall not cancel such policy until a notice of cancellation in
5 writing has been mailed or delivered to the commissioner and
6 each insured warrantor.
7 b. The cancellation of a reimbursement insurance
8 policy shall not reduce the issuer's responsibility for
9 vehicle protection products sold prior to the date of
10 cancellation.
11 c. In the event an insurer cancels a policy that a
12 warrantor has filed with the commissioner, the warrantor shall
13 do either of the following:
14 1. File a copy of a new policy with the
15 commissioner, before the termination of the prior policy,
16 providing no lapse in coverage following the termination of
17 the prior policy.
18 2. Discontinue acting as a warrantor as of the
19 termination date of the policy until a new policy becomes
20 effective and is accepted by the commissioner.
21 Section 7. (a) Every vehicle protection product
22 warranty in its entirety, shall be written, printed, or typed
23 in eight point type size or larger and shall not be sold or
24 offered for sale in this state unless the warranty:

1 (1) States that the obligations of the warrantor to
2 the warranty holder are guaranteed under a warranty
3 reimbursement insurance policy if the warrantor elects to meet
4 its financial responsibility obligations under Section 5(b) or
5 states that the obligations of the warrantor under the
6 warranty are backed by the full faith and credit of the
7 warrantor if the warrantor elects to meet its financial
8 responsibility obligations under Section 5(c).
9 (2) States that in the event a warranty holder must
10 make a claim against a party other than the warranty
11 reimbursement insurance policy issuer, the warranty holder is
12 entitled to make a direct claim against the insurer upon the
13 failure of the warrantor to pay any claim or meet any
14 obligation under the terms of the warranty within 60 days
15 after proof of loss has been filed with the warrantor.
16 (3) States the name and address of the issuer of the
17 warranty reimbursement insurance policy and this information
18 need not be preprinted on the warranty form, but may be added
19 to or stamped on the warranty, if the warrantor elects to meet
20 its financial responsibility obligations under Section 5(c).
21 (4) Identifies the warrantor, the seller, and the
22 warranty holder.
23 (5) Sets forth the total purchase price and the
24 terms under which it is to be paid, however, the purchase
25 price is not required to be preprinted on the vehicle

1 protection product warranty and may be negotiated with the
2 consumer at the time of sale.
3 (6) Sets forth the procedure for making a claim,
4 including a telephone number.
5 (7) States the existence of a deductible amount, if
6 any.
7 (8) Specifies the payments or performance to be
8 provided under the warranty including payments for incidental
9 costs, the manner of calculation or determination of payments
10 or performance, and any limitations, exceptions, or
11 exclusions.
12 (9) Sets forth all of the obligations and duties of
13 the warranty holder including the duty to protect against any
14 further damage to the vehicle, the obligation to notify the
15 warrantor in advance of any repair, or other similar
16 requirements, if any.
17 (10) Sets forth any terms, restrictions, or
18 conditions governing transferability of the warranty, if any.
19 (11) Contains a disclosure that reads substantially
20 as follows: "This agreement is a product warranty and is not
21 insurance."
22 (b) At the time of sale, the seller or warrantor
23 shall provide one of the following to the purchaser:
24 (1) A copy of the vehicle protection product
25 warranty.

1 (2) A receipt or other written evidence of the
2 purchase of the vehicle protection product and a copy of the
3 warranty within 30 days of the date of purchase.
4 Section 8. (a) No vehicle protection product may be
5 sold or offered for sale in this state unless the vehicle
6 protection product warranty clearly states the terms and
7 conditions governing the cancellation of the sale and
8 warranty, if any.
9 (b) The warrantor may only cancel the warranty if
10 the warranty holder does any of the following:
11 (1) Fails to pay for the vehicle protection product.
12 (2) Makes a material misrepresentation to the seller
13 or warrantor.
14 (3) Commits fraud related to the purchase of the
15 vehicle protection product, registration of the warranty, or a
16 claim made under the warranty.
17 (4) Substantially breaches the warranty holder's
18 duties under the warranty.
19 (c) A warrantor canceling a warranty shall mail
20 written notice of cancellation to the warranty holder at the
21 last address of the warranty holder in the warrantor's records
22 at least 30 days prior to the effective date of the
23 cancellation. The notice shall state the effective date of the
24 cancellation and the reason for cancellation.

1 Section 9. (a) Unless licensed as an insurance
2 company, a vehicle protection product warrantor shall not use
3 in its name, contracts, or literature, any of the words
4 "insurance," "casualty," "surety," "mutual," or any other
5 words descriptive of the insurance, casualty, or surety
6 business or deceptively similar to the name or description of
7 any insurance or surety corporation, or any other vehicle
8 protection product warrantor. A warrantor may use the term
9 "guaranty" or similar word in the warrantor's name.
10 (b) A vehicle protection product seller or warrantor
11 may not require as a condition of sale or financing that a
12 retail purchaser of a motor vehicle purchase a vehicle
13 protection product that is not installed on the motor vehicle
14 at the time of sale.
15 Section 10. (a) All vehicle protection product
16 warrantors shall keep accurate accounts, books, and records
17 concerning transactions regulated under this act.
18 (b) A vehicle protection product warrantor's
19 accounts, books, and records shall include:
20 (1) Copies of all vehicle protection product
21 warranties.
22 (2) The name and address of each warranty holder.
23 (3) The dates, amounts, and descriptions of all
24 receipts, claims, and expenditures.

1 (c) A vehicle protection product warrantor shall
2 retain all required accounts, books, and records pertaining to
3 each warranty holder for at least two years after the
4 specified period of coverage has expired. A warrantor
5 discontinuing business in this state shall maintain its
6 records until it furnishes the commissioner satisfactory proof
7 that it has discharged all obligations to warranty holders in
8 this state.
9 (d) Vehicle protection product warrantors shall make
10 all accounts, books, and records concerning transactions
11 regulated under this act available to the commissioner for
12 examination.
13 Section 11. (a) The commissioner may conduct
14 examinations of warrantors, administrators, or other persons
15 to enforce this act and protect warranty holders in this
16 state. Upon request of the commissioner, a warrantor shall
17 make available to the commissioner all accounts, books, and
18 records concerning vehicle protection products sold by the
19 warrantor that are necessary to enable the commissioner to
20 reasonably determine compliance or noncompliance with this
21 act.
22 (b) The commissioner may take action that is
23 necessary or appropriate to enforce the provisions of this
24 act, the commissioner's rules and orders, and to protect
25 warranty holders in this state. If a warrantor engages in a

1 pattern or practice of conduct that violates this act and that
2 the commissioner reasonably believes threatens to render the
3 warrantor insolvent or cause irreparable loss or injury to the
4 property or business of any person or company located in this
5 state, the commissioner may do any of the following:
6 (1) Issue an order directed to that warrantor to
7 cease and desist from engaging in further acts, practices, or
8 transactions that are causing the conduct.
9 (2) Issue an order prohibiting that warrantor from
10 selling or offering for sale vehicle protection products in
11 violation of this act.
12 (3) Issue an order imposing a civil penalty on that
13 warrantor.
14 (4) Issue any combination of the foregoing, as
15 applicable.
16 (c) Prior to the effective date of any order issued
17 pursuant to this subsection, the commissioner must provide
18 written notice of the order to the warrantor and the
19 opportunity for a hearing to be held within 10 business days
20 after receipt of the notice, except prior notice and hearing
21 shall not be required if the commissioner reasonably believes
22 that the warrantor has become, or is about to become,
23 insolvent.
24 (d) A person aggrieved by an order issued under this
25 section may request a hearing before the commissioner. The

1 hearing request shall be filed with the commissioner within 20
2 days after the date the commissioner's order is effective, and
3 the commissioner must hold such a hearing within 15 days after
4 receipt of the hearing request.
5 (e) At the hearing, the burden shall be on the
6 commissioner to show why the order issued pursuant to this
7 section is justified. The provisions of the Alabama Department
8 of Insurance Administrative Code Chapter 482-1-065 shall apply
9 to a hearing request under this section.
10 (f) The commissioner may bring an action in any
11 court of competent jurisdiction for an injunction or other
12 appropriate relief to enjoin threatened or existing violations
13 of this act or of the commissioner's orders or rules. An
14 action filed under this section also may seek restitution on
15 behalf of persons aggrieved by a violation of this act or
16 orders or rules of the commissioner.
17 (g) A person who is found to have violated this act
18 or orders or rules of the commissioner may be ordered to pay
19 to the commissioner a civil penalty in an amount, determined
20 by the commissioner, of not more than five hundred dollars
21 ($500) per violation and not more than ten thousand dollars
22 ($10,000) in the aggregate for all violations of a similar
23 nature. For purposes of this section, violations shall be of a
24 similar nature if the violation consists of the same or
25 similar course of conduct, action, or practice, irrespective

1 of the number of times the conduct, action, or practice that
2 is determined to be a violation of this act occurred.
3 (h) This act does not create a separate civil cause
4 of action.
5 Section 12. The commissioner may adopt such
6 administrative rules consistent with the provisions of this
7 act as are necessary to implement this act. Such rules and
8 regulations shall include disclosures for the benefit of the
9 warranty holder, record keeping, and procedures for public
10 complaints. Such rules and regulations shall also include the
11 conditions under which surplus lines insurers may be rejected
12 for the purpose of underwriting vehicle protection product
13 warranty agreements.
14 Section 13. This act applies to all vehicle
15 protection products sold or offered for sale on or after the
16 effective date of this act. The failure of any person to
17 comply with this act prior to its effective date shall not be
18 admissible in any court proceeding, administrative proceeding,
19 arbitration, or alternative dispute resolution proceeding and
20 may not otherwise be used to prove that the action of any
21 person or the affected vehicle protection product was unlawful
22 or otherwise improper. The adoption of this act does not imply
23 that a vehicle protection product warranty was insurance prior
24 to the effective date of this act. The penalty provisions of
25 this act do not apply to any violation of this act relating to

1 or in connection with the sale or failure to disclose in a
2 retail installment contract or lease, or contract or agreement
3 that provides for payments under a vehicle protection product
4 warranty as long as the sale of such product, contract, or
5 agreement was otherwise disclosed to the purchaser in writing
6 at the time of the purchase or lease. In the event of a
7 violation for which the penalty provisions of this act do not
8 apply, the court shall award actual damages and costs,
9 including reasonable attorney's fees. Nothing in this section
10 shall be construed to require the application of the penalty
11 provisions where this section is not applicable.
12 Section 14. The provisions of this act are
13 severable. If any part of this act is declared invalid or
14 unconstitutional, that declaration shall not affect the part
15 which remains.
16 Section 15. This act shall become effective on
17 January 1, 2007, following its passage and approval by the
18 Governor, or its otherwise becoming law.

1
2
3 _____
4 Speaker of the House of Representatives
5 _____
6 President and Presiding Officer of the Senate

7 House of Representatives
8 I hereby certify that the within Act originated in
9 and was passed by the House 02-MAR-06.
10
11 Greg Pappas
12 Clerk
13

14 _____
15
16 Senate 17-APR-06 Passed
17

APPROVED April 26, 2006
TIME 11:35 a.m.
Bob Riley
GOVERNOR

Alabama Secretary Of State
Act Num....: 2006-600
Bill Num...: H-538
Recv'd 04/26/06 01:56pmJJB