

BILL ANALYSIS

Senate Research Center
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S.B. 714
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DIGEST AND PURPOSE

Currently, the sale of vehicle registration protection products in Texas is unregulated. As proposed, S.B. 714 established regulation, through the Texas Department of Licensing and Regulation, of vehicle protection product warrantors; creates the Vehicle Protection Product Warrantors Advisory Board, and provides penalties for violations of this title.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of licensing and regulation in SECTION 1 (Sections 4, 5, 6, and 10 Title 132, Chapter 20 Revised Statutes) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 20, Title 132, Revised Statutes, by adding Article 9035, as follows:

Art. 9035. REGULATION OF CERTAIN VEHICLE PROTECTION PRODUCT WARRANTORS.

Sec. 1. SHORT TITLE. Authorizes this article to be cited as the Vehicle Protection Product Regulatory Act.

Sec. 2. DEFINITIONS. Defines “commission,” “commissioner,” “consumer,” “department,” “person,” “reimbursement insurance policy,” “seller,” “vehicle protection product,” and “warrantor.”

Sec. 3. APPLICABILITY OF ARTICLE. (a) Provides that this article applies only to certain vehicle protection product warrantors.

(b) Provides that loss or damage to the vehicle under Subsection (a) of this section may include unreimbursed incidental expenses that may be incurred by the warrantor, including expenses for a replacement vehicle, temporary vehicle rental expenses, and registration expenses for replacement vehicles.

Sec. 4. POWERS AND DUTIES OF COMMISSIONER. (a) Authorizes the commissioner of licensing and regulation (commissioner) to adopt rules as necessary to implement this article.

(b) Authorizes the commissioner to conduct investigations of warrantors or other persons as reasonably necessary to enforce this article and to protect consumers in this state. Requires a warrantor, on request of the commissioner, to make the warrantor's records maintained under of this article regarding vehicle protection products sold by the warrantor available to the Texas Department of Licensing and Registration(department) as necessary to enable the department to reasonably determine compliance with this article.

Sec. 5. VEHICLE PROTECTION PRODUCT WARRANTOR ADVISORY BOARD. (a) Provides that the Vehicle Protection Product Warrantor Advisory Board(board) is an advisory body to the department. Requires the advisory board to advise the Texas Commission of Licensing and Regulation (commission) or the commissioner.

(b) Sets forth the composition of the six-member board.

(c) Sets forth the terms of board members, including initial members.

(d) Requires the commissioner to designate one member of the board to serve as presiding officer.

(e) Provides that the commissioner or the commissioner's designee serves as an ex officio nonvoting member of the advisory board.

(f) Requires the commissioner to fill any board vacancy by appointing an individual who meets the qualifications for the vacant board position to serve the remainder of the unexpired term.

(g) Requires the board to meet at least every six months and at other times at the call of the presiding officer or commissioner. Requires the board to meet at a location in this state designated by the board.

(h) Provides that a decision of the board is not effective unless it receives the affirmative vote of at least four members.

(i) Provides that board members serve without compensation, but that consumer representative board members are entitled to reimbursement for actual and necessary expenses incurred in performing functions as member of the advisory board.

(j) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the board.

Sec. 6. REGISTRATION REQUIREMENTS; EXEMPTIONS. (a) Prohibits a person from operating as a warrantor or representing to the public that the person is a warrantor unless the person is registered with the department. Provides that a person who sells or solicits a vehicle protection product but who is not a warrantor is not required to register with the department as a warrantor.

(b) Requires each applicant for registration to file an application on a form prescribed by the department that includes satisfactory evidence of compliance with the financial security requirements adopted under this article.

(c) Requires each registered warrantor to pay an annual registration fee not to exceed \$2,500 as set by the commission to cover the costs of administering this article. Requires the department to develop a tiered fee structure under which registration fees are assessed on warrantors based on the number of vehicle protection products sold within this state in the 12 months preceding the date of registration. Provides that the information submitted to the department under this section regarding the number of vehicle protection products sold by a warrantor is to only be used by the department in determining the tiered fee structure. Provides that information concerning the number of vehicle protection products sold by a warrantor submitted under this section is a trade secret and subject to Section 552.110 (Exception: Trade Secrets; Certain Commercial or Financial Information), Government Code.

(d) Requires the commissioner to adopt rules providing for the renewal of a warrantor's registration.

(e) Provides that the marketing, selling, offering for sale, issuing, making, proposing to make, and administering of vehicle protection products are exempt from certain codes and laws.

(f) Provides that certain contracts and agreements are exempt from this article and are only subject to other statutes and laws that specifically apply to them.

(g) Provides that a seller is not 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.

Sec. 7. FINANCIAL SECURITY REQUIREMENTS. (a) Requires each warrantor, in order to ensure the adequate performance of a warrantor's obligations to a consumer, to comply with financial security requirements by providing certain forms of financial security.

(b) Prohibits the department from requiring any other financial security requirements or financial standards for warrantors.

Sec. 8. REIMBURSEMENT INSURANCE POLICY. (a) Provides that in order for a warrantor to comply with Section 7(a)(1) of this article, the warrantor's insurance policy must contain certain statements.

(b) Prohibits an insurer who issues a reimbursement insurance policy under this article from canceling the policy until the insurer delivers to the warrantor a written notice of cancellation that complies with the requirements adopted for those notices under Articles 21.49-2A and 21.49-2B (Cancellation and Nonrenewal of Certain Liability Insurance Coverage, and Cancellation and Nonrenewal of Certain Property and Casualty Policies), Insurance Code. Requires the warrantor to forward a copy of the cancellation notice to the department not later than the 15th business day after the date the notice is delivered to the warrantor.

(c) Provides that the cancellation of a reimbursement insurance policy does 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) Provides that, for purposes of this section, a warrantor is 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 article.

Sec. 9. GENERAL WARRANTOR OPERATION REQUIREMENTS. (a) Authorizes a warrantor to appoint a designee to be responsible for any or all of the administration of vehicle protection products and for compliance with this article.

(b) Prohibits a vehicle protection product from being issued, sold, or offered for sale in this state unless at the time of sale the warrantor provides to the consumer certain documents.

(c) Requires a warrantor who complies with Subsection (b)(2) of this section to, within a reasonable time after the date of purchase, provide to the consumer a copy of the vehicle protection product warranty.

(d) Requires a warrantor to 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, attorney's fees, and costs.

Sec. 10. WARRANTOR RECORDS. (a) Requires each warrantor to maintain accurate accounts, books, and other records regarding transactions regulated under this article. Requires the warrantor's records to include certain information.

(b) Requires each warrantor, except as provided by Subsection (d) of this section, to retain all records required under of this section until at least the first anniversary of the expiration date of the obligations under the vehicle protection product warranty.

(c) Authorizes the records required to be maintained under this section to be maintained in an electronic medium or through another recordkeeping technology. Requires that, if a record is maintained in a format other than paper, the warrantor be able to reformat the record into a legible paper copy at the request of the department.

(d) Requires a warrantor who discontinues business in this state to maintain the warrantor's records until the date the warrantor provides the department with satisfactory proof to the department that the warrantor has discharged all obligations to consumers in this state.

(e) Requires the commissioner to adopt rules governing how a warrantor is to protect nonpublic personal information provided by a consumer to the warrantor.

Sec. 11. REQUIRED DISCLOSURES. (a) Provides that each vehicle protection product warranty marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must be written, printed, or typed, in clear, understandable, and easy to read language, and must disclose the applicable requirements set forth in this section.

(b) Requires the obligations of a vehicle protection product warranty that are insured under a reimbursement insurance policy to 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) Requires the vehicle protection product warranty to state the name and address of the insurer and state that if a covered service is not provided by the warrantor before the 61st 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) Requires the obligations of a vehicle protection product warranty that are not insured under a reimbursement insurance policy to contain a statement in the warranty substantially similar to the following: "Obligations of the warrantor under this vehicle protection product are backed by the full faith and credit of the warrantor."

(e) Requires each vehicle protection product warranty to state the name, address, and phone number of the warrantor. Requires all warrantors to report to the department before the 31st day after the date of any change in the information required to be provided in this subsection.

(f) Requires each vehicle protection product warranty to 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. Provides that the identities of those persons are not required to be preprinted on the warranty and may

be added to the warranty at the time of sale.

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

(h) Requires each vehicle protection product warranty to include certain provisions.

(i) Authorizes the requirements of Subsections (h)(4) and (5) of this section to be stamped on the vehicle protection product warranty.

Sec. 12. CANCELLATION OF WARRANTY. (a) Requires each vehicle protection product warranty to state the terms, restrictions, or conditions, if any, governing cancellation of the warranty by the warrantor before the expiration date of the warranty. Sets forth the only reasons for which cancellation under this section may occur.

(b) Requires a warrantor to mail written notice of cancellation to the consumer at the consumer's last address contained in the records of the warrantor before the fifth day preceding the effective date of the cancellation. Requires the notice to state the effective date of the cancellation and the reason for the cancellation.

Sec. 13. LIMITATIONS ON USE OF WARRANTOR'S NAME. (a) Prohibits a warrantor from using, in its name the word "casualty," "surety," "insurance," or "mutual" or any other word descriptive of the casualty, insurance, or surety business, or a name deceptively similar to the name or description of any insurance company, surety corporation, or other warrantor.

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

Sec. 14. PROHIBITED ACTS. (a) Prohibits a warrantor or a warrantor's representative, in the warrantor's vehicle protection product warranty or in an advertisement or literature for the warranty, from making, permitting, or causing to be made any false or misleading statement, or deliberately omit the a material statement that would be considered misleading if omitted.

(b) Prohibits a warrantor from requiring 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.

Sec. 15. SANCTIONS; ADMINISTRATIVE PENALTY. (a) Authorizes the commissioner, on a finding that a ground for disciplinary action exists under this article, to impose appropriate administrative sanctions on a warrantor, including administrative penalties as provided by Chapter 51F (Administrative Penalty), Occupations Code.

(b) Prohibits an administrative penalty imposed under this section from exceeding \$1,000 for each violation or \$10,000 in the aggregate for all violations of a similar nature.

Sec. 16. INJUNCTION; CIVIL PENALTY. (a) Authorizes the commissioner to bring an action against a warrantor for injunctive relief under Section 51.352 (Injunctive Relief; Civil Penalty) Occupations Code, for a threatened or existing violation of this article or of the commissioner's orders or rules adopted under this article.

(b) Authorizes the commissioner to bring an action against a warrantor for civil

penalties as provided by Section 51.352, Occupations Code. Prohibits a civil penalty assessed under this subsection from exceeding \$1,000 for each violation or \$50,000 in the aggregate for all violations of a similar nature.

(c) Provides that for purposes of this section and Section 15 of this article, violations are of a similar nature if the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice determined to be a violation of this article occurred.

SECTION 2. Effective date: September 1, 2001.

Makes application of this Act prospective.