

1 AN ACT concerning vehicle protection products.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the  
5 Vehicle Protection Product Act.

6 Section 5. Definitions.

7 "Administrator" means a third party other than the  
8 warrantor who is designated by the warrantor to be  
9 responsible for the administration of vehicle protection  
10 product warranties.

11 "Department" means the Department of Insurance.

12 "Director" means the Director of Insurance.

13 "Service contract" means a contract or agreement as  
14 defined under Section 5 of the Service Contract Act.

15 "Incidental costs" means expenses specified in the  
16 warranty incurred by the warranty holder related to the  
17 failure of the vehicle protection product to perform as  
18 provided in the warranty. Incidental costs may include,  
19 without limitation, insurance policy deductibles, rental  
20 vehicle charges, the difference between the actual value of  
21 the stolen vehicle at the time of theft and the cost of a  
22 replacement vehicle, sales taxes, registration fees,  
23 transaction fees, and mechanical inspection fees.

24 "Vehicle protection product" means a vehicle protection  
25 device, system, or service that is (i) installed on or  
26 applied to a vehicle, (ii) is designed to prevent loss or  
27 damage to a vehicle from a specific cause, and (iii) includes  
28 a written warranty. For purposes of this Section, the term  
29 vehicle protection product shall include, without limitation,  
30 alarm systems, body part marking products, steering locks,  
31 window etch products, pedal and ignition locks, fuel and

1 ignition kill switches, and electronic, radio, and satellite  
2 tracking devices.

3 "Warranty" or "vehicle protection product warranty" means  
4 a written agreement by a warrantor that provides if the  
5 vehicle protection product fails to prevent loss or damage to  
6 a vehicle from a specific cause, that the warranty holder  
7 shall be paid specified incidental costs by the warrantor as  
8 a result of the failure of the vehicle protection product to  
9 perform pursuant to the terms of the warranty.

10 "Warranty holder" means the person who purchases a  
11 vehicle protection product or who is a permitted transferee.

12 "Warrantor" means a person who is contractually obligated  
13 to the warranty holder under the terms of the vehicle  
14 protection product warranty agreement. A warrantor does not  
15 include an insurer.

16 "Warranty reimbursement insurance policy" means a policy  
17 of insurance that is issued to the vehicle protection product  
18 warrantor to provide reimbursement to the warrantor or to pay  
19 on behalf of the warrantor all covered contractual  
20 obligations incurred by the warrantor under the terms and  
21 conditions of the insured vehicle protection product  
22 warranties sold by the warrantor.

23 Section 10. Exemptions.

24 (a) Vehicle protection product warrantors and related  
25 vehicle protection product sellers and warranty  
26 administrators complying with this Act are not required to  
27 comply with and are not subject to any provision of the  
28 Illinois Insurance Code or the Service Contract Act.

29 (b) Service contract providers who do not sell vehicle  
30 protection products are not subject to the requirements of  
31 this Act.

32 Section 15. Financial requirements. No vehicle

1 protection product shall be sold, or offered for sale in this  
2 State unless one of the following conditions is satisfied:

3 (1) (A) The vehicle protection product warrantor is  
4 insured under a warranty reimbursement insurance policy  
5 issued by an insurer authorized to do business in this  
6 State and providing that the insurer will pay to, or on  
7 behalf of, the warrantor 100% of all sums that the  
8 warrantor is legally obligated to pay according to the  
9 warrantor's contractual obligations under the warrantor's  
10 vehicle protection product warranty;

11 (B) a true and correct copy of the warranty  
12 reimbursement insurance policy has been filed with the  
13 Director by the warrantor;

14 (C) the vehicle protection product warranty states  
15 that the obligations of the warrantor to the warranty  
16 holder are covered under a warranty reimbursement  
17 insurance policy; and

18 (D) the vehicle protection product warranty states  
19 the name and address of the issuer of the warranty  
20 reimbursement insurance policy and states that in the  
21 event payment due under the terms of the warranty is not  
22 provided by the warrantor within 60 days after proof of  
23 loss has been filed according to the terms of the  
24 warranty by the warranty holder, the warranty holder may  
25 file directly with the warranty reimbursement insurance  
26 company for reimbursement.

27 (2) (A) The vehicle protection product warrantor  
28 maintains a funded reserve account for its obligations  
29 under its vehicle protection products sold with  
30 warranties still outstanding in this State. The reserves  
31 shall not be less than 40% of the gross consideration  
32 received, less claims paid, for all vehicle protection  
33 products sold with warranties still then in force;

34 (B) the warrantor places in trust with the Director

1 a financial security deposit, having a value of not less  
2 than 5% of the gross consideration received, less claims  
3 paid, for all vehicle protection products sold with  
4 warranties then in force, but not less than \$25,000,  
5 consisting of securities of the type eligible for deposit  
6 by authorized insurers in this State and;

7 (C) The warrantor provides the Director with an  
8 audited financial statement annually of the vehicle  
9 protection product revenues and claims.

10 (3) (A) The vehicle protection product warrantor,  
11 or its parent company in accordance with subdivision  
12 (3)(B), maintains a net worth or stockholders' equity of  
13 \$50,000,000; and

14 (B) the warrantor provides the Director with a copy  
15 of the warrantor's or the warrantor's parent company's  
16 most recent Form 10-K or Form 20-F filed with the  
17 Securities and Exchange Commission within the last  
18 calendar year or, if the warrantor does not file with the  
19 Securities and Exchange Commission, a copy of the  
20 warrantor's or the warrantor's parent company's audited  
21 financial statements that shows a net worth of the  
22 warrantor or its parent company of at least \$50,000,000.  
23 If the warrantor's parent company's Form 10-K, Form 20-F,  
24 or audited financial statements are filed to meet the  
25 warrantor's financial stability requirement, then the  
26 parent company shall agree to guarantee the obligations  
27 of the warrantor relating to warranties issued by the  
28 warrantor in this State.

29 Section 20. Reimbursement policy; required provisions.

30 (a) No warranty reimbursement insurance policy shall be  
31 issued, sold, or offered for sale in this State unless the  
32 policy states that the issuer of the policy will reimburse or  
33 pay on behalf of the vehicle protection product warrantor all

1 covered sums which the warrantor is legally obligated to pay  
2 or will provide the service that the warrantor is legally  
3 obligated to perform according to the warrantor's contractual  
4 obligations under the provisions of the insured warranties  
5 sold by the warrantor.

6 (b) If services or payment due under the terms of the  
7 warranty is not provided by the warrantor within 60 days  
8 after proof of loss has been filed according to the terms of  
9 the warranty by the warranty holder, the warranty holder may  
10 file directly with the insurance company writing the warranty  
11 reimbursement insurance policy for reimbursement.

12 (c) A warranty reimbursement insurance company that  
13 insures a warranty shall be deemed to have received payment  
14 of the premium if the warranty holder paid for the vehicle  
15 protection product.

16 Section 25. Registration requirements for warrantors.

17 (a) No vehicle protection product shall be sold in this  
18 State until the following information has been submitted to  
19 the Department:

20 (1) the name of the vehicle protection product  
21 warrantor;

22 (2) a list identifying the warrantor's executive  
23 officer or officers directly responsible for the  
24 warrantor's warranty business;

25 (3) the name and address of the warrantor's agent  
26 for service of process in this State, if other than the  
27 warrantor;

28 (4) a true and accurate copy of all warranties to  
29 be used in this State; and

30 (5) a statement indicating under which provision of  
31 Section 15 the warrantor qualifies to do business in this  
32 State as a warrantor.

33 (b) The warranty provider shall pay an initial

1 registration fee of \$200 and a renewal fee of \$75 each year  
2 thereafter. All fees and penalties collected under this Act  
3 shall be paid to the Director and deposited in the Insurance  
4 Financial Regulation Fund.

5 Section 30. Required warranty disclosures. All vehicle  
6 protection product warranties used in this State shall  
7 contain all of the following disclosures written in clear and  
8 understandable language:

9 (1) the name and address of the warrantor;

10 (2) the total consideration for the vehicle  
11 protection product paid by the purchaser of the vehicle  
12 protection product and the terms under which the vehicle  
13 protection product is sold; however, the purchase price  
14 is not required to be preprinted on the vehicle  
15 protection product warranty and may be negotiated with  
16 the product purchaser at the time of sale;

17 (3) the conditions and procedures for making a  
18 claim under the warranty, including the name, address,  
19 and local or toll-free telephone number of the person or  
20 office where such claim must be filed or approvals  
21 obtained;

22 (4) the existence and amount of a deductible, if  
23 any;

24 (5) the details of the warrantor's duties, payment  
25 obligations, or performance to be provided under the  
26 terms of the warranty and any limitations, exceptions, or  
27 exclusions;

28 (6) the terms, conditions, and restrictions  
29 governing transferability of the warranty, if any;

30 (7) the provisions governing cancellation and  
31 refunds in accordance with Section 35 of this Act;

32 (8) whether or not the warranty covers failure  
33 resulting from normal wear and tear;

1           (9) the requirements concerning warranty  
2 reimbursement insurance disclosure in subdivision (1)(C)  
3 of Section 15 of this Act, if required, which information  
4 may be stamped or printed on the form at the time of  
5 sale; and

6           (10) the duties, if any, of the warranty holder to  
7 protect against any further damage and any requirements  
8 to follow the warranty's instructions.

9           Section 35. Cancellation and refunds.

10          (a) No vehicle protection product may be sold or offered  
11 for sale in this State unless the vehicle protection product  
12 warranty clearly states the terms and conditions governing  
13 the cancellation of the sale and warranty, if any.

14          (b) The warrantor may only cancel the warranty if the  
15 warranty holder:

16           (1) fails to pay for the vehicle protection  
17 product;

18           (2) makes a material misrepresentation of fact to  
19 the seller or warrantor;

20           (3) commits fraud; or

21           (4) substantially breaches the warranty holder's  
22 duties under the warranty.

23          (c) A warrantor canceling a warranty shall mail written  
24 notice of cancellation to the warranty holder at the last  
25 address of the warranty holder in the warrantor's records at  
26 least 30 days prior to the effective date of the  
27 cancellation. The notice shall state the effective date of  
28 the cancellation and the reason for the cancellation.

29           Section 40. Incidental benefits. A vehicle protection  
30 product warranty may provide full or partial reimbursement  
31 for other expenses such as incidental costs incurred by the  
32 warranty holder as a direct and proximate result of the

1 failure of the vehicle protection product to perform as  
2 provided in the warranty. The warranty shall clearly describe  
3 the manner for the calculation of payment.

4 Section 45. Record keeping requirements.

5 (a) The vehicle protection product warrantor shall keep  
6 accurate accounts, books, and records concerning transactions  
7 regulated under this Act.

8 (b) The warrantor's accounts, books, and records shall  
9 include the following:

10 (1) copies of each type of warranty sold;

11 (2) the name and address of each warranty holder,  
12 to the extent that the name and address has been  
13 furnished by the warranty holder;

14 (3) a list of the locations where vehicle  
15 protection products are marketed, sold, or offered for  
16 sale; and

17 (4) written claims files which shall contain at  
18 least the date and description of claims related to the  
19 vehicle protection product warranties.

20 (c) Except as provided in subsection (e) of this  
21 Section, the warrantor shall retain all records required to  
22 be maintained by this Section for at least 3 years after the  
23 specified term of a warranty has expired.

24 (d) The records required under this Act may be, but are  
25 not required to be, maintained on a computer disk or other  
26 record keeping technology. If the records are maintained in  
27 other than hard copy, the records shall be capable of  
28 duplication to legible hard copy at the request of the  
29 Director.

30 (e) A warrantor discontinuing business in this State  
31 shall maintain its records until it furnishes the Director  
32 satisfactory proof that it has discharged all obligations to  
33 warranty holders in this State.



1 Section 50. Examinations and enforcement provisions.

2 (a) The Director may conduct examinations of warrantors,  
3 administrators, or other persons to enforce this Act and  
4 protect warranty holders in this State. Upon request of the  
5 Director, a warrantor shall make available to the Director  
6 all accounts, books, and records concerning vehicle  
7 protection products sold by the warrantor that are necessary  
8 to enable the Director to reasonably determine compliance or  
9 noncompliance with this Act.

10 (b) The Director may take action that is necessary or  
11 appropriate to enforce the provisions of this Act and the  
12 Director's rules and orders and to protect warranty holders  
13 in this State. If a warrantor engages in a pattern or  
14 practice of conduct that violates this Act and that the  
15 Director reasonably believes threatens to render the  
16 warrantor insolvent or cause irreparable loss or injury to  
17 the property or business of any person or company located in  
18 this State, the Director may:

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

22 (2) issue an order prohibiting that warrantor from  
23 selling or offering for sale service contracts in  
24 violation of this Act;

25 (3) issue an order imposing a civil penalty on that  
26 warrantor; or

27 (4) issue any combination of the foregoing, as  
28 applicable.

29 Prior to the effective date of any order issued pursuant  
30 to this subsection, the Director must provide written notice  
31 of the order to the warrantor and the opportunity for a  
32 hearing to be held within 10 business days after receipt of  
33 the notice, except prior notice and hearing shall not be  
34 required if the Director reasonably believes that the

1 warrantor has become, or is about to become, insolvent.

2 A person aggrieved by an order issued under this Section  
3 may request a hearing before the Director. The hearing  
4 request shall be filed with the Director within 20 days after  
5 the date the Director's order is effective, and the Director  
6 must hold such a hearing within 15 days after receipt of the  
7 hearing request.

8 (c) At the hearing, the burden shall be on the Director  
9 to show why the order issued pursuant to this Section is  
10 justified. The provisions of Section 10-25 of the Illinois  
11 Administrative Procedure Act shall apply to a hearing request  
12 under this Section.

13 (d) The Director may bring an action in any court of  
14 competent jurisdiction for an injunction or other appropriate  
15 relief to enjoin threatened or existing violations of this  
16 Act or of the Director's orders or rules. An action filed  
17 under this Section also may seek restitution on behalf of  
18 persons aggrieved by a violation of this Act or orders or  
19 rules of the Director.

20 (e) A person who is found to have violated this Act or  
21 orders or rules of the Director may be ordered to pay to the  
22 Director a civil penalty in an amount, determined by the  
23 Director, of not more than \$500 per violation and not more  
24 than \$10,000 in the aggregate for all violations of a similar  
25 nature. For purposes of this Section, violations shall be of  
26 a similar nature if the violation consists of the same or  
27 similar course of conduct, action, or practice, irrespective  
28 of the number of times the conduct, action, or practice that  
29 is determined to be a violation of this Act occurred.

30 Section 55. Rulemaking power. The Director may adopt  
31 such administrative rules consistent with the provisions of  
32 this Act as are necessary to implement them.

1           Section 60. Applicability. This Act applies to all  
2 vehicle protection products sold or offered for sale on or  
3 after the effective date of this Act. The failure of any  
4 person to comply with this Act prior to its effective date  
5 shall not be admissible in any court proceeding,  
6 administrative proceeding, arbitration, or alternative  
7 dispute resolution proceeding and may not otherwise be used  
8 to prove that the action of any person or the affected  
9 vehicle protection product was unlawful or otherwise  
10 improper.

11           Section 99. Effective date. This Act takes effect on  
12 January 1, 2004.