

VEHICLE PROTECTION PRODUCT ACT

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House Bill 5026 (Substitute H-1)

Sponsor: Rep. Judy Emmons

Committee: Insurance

Complete to 9-6-05

A SUMMARY OF HOUSE BILL 5026 AS REPORTED FROM COMMITTEE 8-31-05

The bill would create the Vehicle Protection Product Act, which would regulate the sale of vehicle protection products sold with warranties. A "vehicle protection product" would be defined, generally, to refer to *devices, systems, or services installed on or applied to a vehicle designed to prevent loss or damage from a specific cause*. The term includes alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices. The bill would take effect 120 days after enactment.

Under the new act:

-- Every warranted product (vehicle protection product) sold or offered for sale would need to be supported by a warranty reimbursement insurance policy guaranteeing the warrantor's obligations. The state could not require any other financial security requirements or financial standards from a warrantor. (A "warrantor" is the person contractually obligated to a warranty holder under a warranty. A "warranty holder" is a person who has purchased a warranted product.)

-- A person acting as a warrantor would have to be registered with the Department of Labor and Economic Growth. The term "warrantor" would not apply to an insurance company regulated under the Insurance Code (which would not need to be registered). A warrantor would have to file (and update as necessary) registration records with the department, and the department could charge a fee of up to \$250 for processing a registration and maintaining records.

-- A warranty on a vehicle protection product would have to meet certain requirements in order to be sold or offered for sale. Among those, the product would have to be written in clear, understandable language and printed in easy-to-read type; conspicuously state that the obligations of the warrantor are guaranteed under a reimbursement insurance policy against which a warranty holder could make a direct claim if necessary; contain the total purchase price of the warranty (although this could be negotiated at the time of purchase) and any deductible; and describe the procedure for making a claim, as well as related customer rights. The warranty also would have to disclose that "This product is a product warranty and is not insurance."

-- A warranty would also have to specify the payments or performance provided under the warranty, including any payments for incidental costs. Those are costs related to the failure of a vehicle protection product and could include insurance policy deductibles, rental vehicle charges, the difference between the value of a stolen vehicle and the cost of a replacement vehicle, sales taxes, registration fees, and other fees.

-- A vehicle protection product warranty would have to clearly state the terms and conditions governing the cancellation of the sale and warranty (as specified in the bill).

-- A warrantor could use the term "guaranty" or a similar word in its name, contracts, or literature but could not use the words "insurance," "casualty," "surety," or "mutual" or similar words unless it was licensed as an insurance company. A warrantor further would be prohibited from making, permitting, or causing false and misleading statements in connection with the product.

-- The Department of Labor and Economic Growth could conduct examinations of warrantors and others to enforce the act and protect warranty holders, and warrantors would have to make available to the department all accounts, books, and records concerning warranted products necessary for the department to determine compliance and noncompliance with the act. A warrantor would be required to retain required accounts, books, and records for at least two years beyond the date coverage expired on a warranty

-- The bill describes the actions the department could take to enforce the act if a warrantor engaged in conduct that violated the new act, threatened the solvency of the warrantor, or caused irreparable loss or injury to others. These would include cease and desist orders, civil fines, and court actions to enjoin violations. DLEG would be authorized to promulgate rules to implement and administer the act.

-- A person found to have violated the new act, or rules or orders of the department, could be subject to a civil fine paid to the department of up to \$500 per violation and up to \$10,000 in the aggregate for all violations of a similar nature.

-- The bill specifies that the new act is to apply to all warranted products sold or offered for sale on or after the effective date of the act. The failure of a person to comply with the act before it takes effect would not be admissible in court proceedings, administrative proceedings, arbitrations, or alternative dispute resolutions and could not be used to prove that the action of a person or that a warranted product is unlawful or otherwise improper. This provision, however, would not limit the availability of any claim or cause of action for a violation of any other state or federal law.

FISCAL IMPACT:

The Department of Labor and Economic Growth estimates that the \$250.00 registration fee will generate \$7,500.00 in annual revenue. The administrative duties involved will not require the addition of another full time equivalent employee, but will need to be

absorbed by existing staff. The State of Texas Department of Licensing and Regulation has budgeted \$9,000.00 in administrative costs to implement a similar program, so the additional costs of this legislation are expected to be approximately equal to the additional fee revenue.

POSITIONS:

The National Vehicle Protection Association (a trade association of manufacturers who produce and distribute automobile anti-theft products) has indicated support for the bill. (8-31-05)

The Michigan Automobile Dealers Association has indicated support for the bill. (8-31-05)

The Department of Labor and Economic Growth supports the portions of the bill that distinguish between warranty products and insurance and that establish a code of conduct, but does not support the creation of a new regulatory (registration) program. (9-6-05)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.