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BILL ANALYSIS



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House Bill 5026 (Substitute H-1 as passed by the House)  
Sponsor: Representative Judy Emmons  
House Committee: Insurance  
Senate Committee: Banking and Financial Institutions

Date Completed: 11-9-05

### **CONTENT**

**The bill would create the "Vehicle Protection Product Act" to do all of the following:**

- Prohibit a person from selling a "warranted product" unless the seller, "warrantor", and any "administrator" complied with the Act.**
- Prohibit a person from acting as a warrantor unless he or she was registered with the Department of Labor and Economic Development (DLEG).**
- Require every warranted product sold in Michigan to have a warranty reimbursement insurance policy guaranteeing the warrantor's obligations to the warranty holder, and specify requirements for such a policy.**
- Specify minimum requirements for a vehicle protection product warranty and a warrantor's responsibilities and prohibited acts.**
- Authorize DLEG to regulate warrantors and administrators, and take actions necessary to enforce the proposed Act.**

The bill would take effect 120 days after it was enacted.

### **Defined Terms**

"Warranted product" would mean a vehicle protection product covered by a written warranty. "Vehicle protection product" would mean a vehicle protection device, system, or service that is installed on or

applied to a vehicle and is designed to prevent loss or damage to a vehicle from a specific cause. The term would include 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.

"Warranty" or "vehicle protection product warranty" would mean a written agreement by a warrantor that provides if a warranted product fails to prevent loss or damage to a vehicle from a specific cause covered by the warranty, the warrantor must pay the warranty holder specified incidental costs that result from the failure of the warranted product to perform.

"Warrantor" or "vehicle protection product warrantor" would mean a person that is contractually obligated to a warranty holder under the terms of a vehicle protection product warranty agreement, but would not include an insurer regulated under the Insurance Code. "Administrator" would mean a third party other than the warrantor who is designated by the warrantor to be responsible for the administration of vehicle protection product warranties in Michigan.

"Warranty reimbursement insurance policy" would mean a policy of insurance that is issued to a vehicle protection product warrantor to provide reimbursement to the warrantor or to pay on behalf of the warrantor all covered contractual obligations incurred by the warrantor under the terms and conditions of an insured vehicle

protection product warranty sold by a warrantor.

### Scope of the Act

The bill would prohibit a person from selling or offering for sale a warranted product in Michigan unless the seller, warrantor, and any administrator complied with the proposed Act. A vehicle protection product warrantor, a seller of a warranted product, or an administrator that complied with the Act would not be required to comply with and would not be subject to the Insurance Code.

The proposed Act would apply to all warranted products sold or offered for sale on or after the bill's effective date. The failure of any person to comply with the Act before its effective date would not be admissible in any court proceeding, administrative proceeding, arbitration, or alternative dispute resolution proceeding and could not otherwise be used to prove that the action of any person or the affected warranted product was unlawful or otherwise improper. The bill specifies that this would not limit the availability of any claim or cause of action for a violation of any other State or Federal law.

### Registration

A person could not act as a warrantor or represent to the public that the person was a warrantor without registering with DLEG on a form prescribed by the Department. A warrantor would have to file warrantor registration records annually and update them within 30 days of any change. Registration records would have to contain all of the following information:

- The warrantor's name, any assumed or fictitious names under which the warrantor did business in Michigan, and the warrantor's principal office address and telephone number.
- The name and address of the warrantor's designated agent for service of process in Michigan, if it were not the warrantor.
- The names of the warrantor's executive officer or officers directly responsible for the warrantor's warranted product business.
- The name, address, and telephone number of any administrators designated by the warrantor to be responsible for the

administration of vehicle protection product warranties in Michigan.

- A copy of the warranty reimbursement insurance policy or policies or other financial information required under the proposed Act.
- A copy of each warranty the warrantor proposed to use in Michigan.
- A statement indicating that the warrantor qualified to do businesses in Michigan as a warrantor under the Act.

The Department would have to make information regarding the warrantor's name and the name and address of its designated agent for service of process available to the public.

The Department could charge each registrant a reasonable fee to offset the cost of processing a registration and maintaining the records. The fee could not exceed \$250 per year.

If a registrant failed to register by the renewal deadline established by DLEG, the Department would have to give the registrant written notice of the failure and the registrant would have 30 days to complete the renewal before being suspended from acting as a warrantor in Michigan.

An administrator or person who sold or solicited a sale of a warranted product, but who was not a warrantor, would not be required to register as a warrantor or be licensed under Michigan's insurance laws to sell warranted products.

### Warranty Reimbursement Insurance

Every warranted product sold or offered for sale in Michigan would have to have a warranty reimbursement insurance policy guaranteeing the warrantor's obligations under the warranty to the warranty holder. The Department could not require any other financial security requirements or financial standards from a warrantor.

A warranty reimbursement insurance policy provided by a vehicle protection product warrantor would have to meet all of the following:

- Be filed with DLEG.
- Provide that the insurer would reimburse or pay on behalf of the warrantor all

covered sums that the warrantor was legally obligated to pay or would provide all services the warrantor was legally obligated to perform according to the warrantor's contractual obligations under its vehicle protection product warranty.

- Provide that, if payment due under the warranty were not provided by the warrantor within 60 days after the warranty holder filed proof of loss according to the terms of the warranty, the warranty holder could file proof of loss directly with the warranty reimbursement insurance company for reimbursement.
- Provide that the premium for the policy would be considered paid if the warranty holder paid for the warranted product and the insurer's liability under the policy were not reduced or relieved by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer.

A warranty reimbursement insurance policy also would have to contain all of the following provisions regarding cancellation of the policy:

- That the issuer of the policy could not cancel it until a written notice of cancellation was mailed or delivered to DLEG and each insured warrantor.
- That the cancellation of the policy could not reduce the issuer's responsibility for warranted products sold before the cancellation date.
- That, if an insurer canceled a policy that a warrantor had filed with DLEG, the warrantor would have to 1) file a copy of a new policy with DLEG before the termination of the policy so there would be no lapse in the warranty holder's coverage after the termination, or 2) discontinue acting as a warrantor as of the termination date of the policy until a new policy became effective and was accepted by DLEG.

#### Sale of Warranted Product

A person could not sell or offer for sale in Michigan a warranted product unless the warranty on the vehicle protection product met all of the following requirements:

- Was written in clear, understandable language and was printed or typed in easy-to-read type, size, and style.

- Conspicuously stated that the obligations of the warrantor to the warranty holder were guaranteed under a warranty reimbursement insurance policy.
- Conspicuously stated that, if a warranty holder had to make a claim against a party other than the warranty reimbursement insurance policy issuer, the warranty holder would be entitled to make a direct claim against the insurer upon the failure of the warrantor to pay any claim or meet any obligation under the terms of the warranty within 60 days after proof of loss was filed with the warrantor.
- Conspicuously stated the name and address of the issuer of the warranty reimbursement insurance policy.
- Identified the warrantor, the seller, and the warranty holder.
- Contained the total purchase price for the warranty.
- Described the procedure for making a claim, including a telephone number.
- Conspicuously stated the existence of any deductible amount.
- Specified the payments or performance provided under the warranty, including any payments for incidental costs, the manner of calculation or determination of payments or performance, and any limitations, exceptions, or exclusions.
- Described the conditions under which substitution of parties or performance was allowed.
- Conspicuously set forth all of the obligations and duties of the warranty holder, including any duty to protect against any further damage to the vehicle, the obligation to notify the warrantor in advance of any repair, or any other similar requirements.
- Set forth any terms, restrictions, or conditions governing any right to transfer the warranty.
- Contained a disclosure that read substantially as follows: "This agreement is a product warranty and is not insurance."

At the time of sale, the seller or warrantor would have to give to the purchaser either a copy of the vehicle protection product warranty or a receipt or other written evidence of the purchase of the warranted product. A warrantor or seller that provided a receipt or other evidence of the purchase would have to give the purchaser a copy of

the warranty within 30 days after the date of purchase.

The bill would prohibit a person from selling or offering for sale in Michigan a warranted product unless the vehicle protection product warranty clearly stated any terms and conditions governing the cancellation of the sale and warranty. A warrantor could cancel a warranty only if the warranty holder did any of the following:

- Failed to pay for the warranted product.
- Made a material misrepresentation to the seller or warrantor.
- Committed fraud.
- Substantially breached the warranty holder's duties under the warranty.

A warrantor canceling a warranty would have to mail written notice of cancellation to the warranty holder at his or her last known address in the warrantor's records at least 30 days before the effective date of a cancellation. The notice would have to state the effective date of the cancellation and the reason for it.

#### Warrantor Prohibitions & Responsibilities

Unless licensed as an insurance company, a vehicle protection product warrantor could not use in its name, contracts, or literature the word "insurance", "casualty", "surety", or "mutual" or any other words descriptive of the insurance, casualty, or surety business. A warrantor also could not use any name or words in its name that were deceptively similar to the name or description of any insurer or surety or any other vehicle protection product warrantor. A warrantor, however, could use the term "guaranty" or a similar word in its name.

A vehicle protection product warrantor could not make, permit, or cause any false or misleading oral or written statements in connection with the sale, offer to sell, or advertisement of a warranted product. A warrantor also could not permit or cause the omission of any material statement in connection with the sale, offer to sell, or advertisement of a warranted product, which under the circumstances the warrantor should make in order to make the statements in the warranty not misleading.

A warrantor could not make, permit, or cause any false or misleading oral or written

statements about the performance required or payments that were available under the vehicle protection product warranty.

A warrantor could not make, permit, or cause any statement or practice that had the effect of creating or maintaining a fraud. A warranted product seller or warrantor could not require as a condition of sale or financing that a retail purchaser of a motor vehicle purchase a warranted product that was not installed on the vehicle at the time of sale.

A vehicle protection product warrantor would have to keep accurate accounts, books, and records concerning transactions regulated under the proposed Act. A warrantor's accounts, books, and records would have to include all of the following:

- Copies of all vehicle protection product warranties.
- The name and address of each warranty holder.
- The dates, amounts, and descriptions of all receipts, claims, and expenditures.

A warrantor would have to retain all required accounts, books, and records pertaining to each warranty holder for at least two years after the specified period of coverage had expired. A warrantor discontinuing business in Michigan would have to maintain its records until it furnished DLEG satisfactory proof that it had discharged all obligations to warranty holders in Michigan.

A warrantor would have to make its accounts, books, and records concerning transactions regulated under the Act available to DLEG for the purpose of examination.

#### DLEG Authority; Penalties

The Department could conduct examinations of warrantors, administrators, or other people to enforce the proposed Act and protect warranty holders in Michigan. Upon DLEG's request, a warrantor would have to make available to the Department all accounts, books, and records concerning warranted products sold by the warrantor that were necessary to enable DLEG reasonably to determine compliance or noncompliance with the Act.

The Department could take any action that was necessary or appropriate to enforce the Act and DLEG's rules and orders to protect warranty holders in Michigan. If a warrantor engaged in a pattern or practice of conduct that violated the Act and DLEG reasonably believed threatened to render the warrantor insolvent or cause irreparable loss or injury to the property or business of any person or company located in Michigan, the Department could do any of the following:

- Issue an order directed to the warrantor to cease and desist from engaging in further acts, practices, or transactions that were causing the conduct.
- Issue an order prohibiting the warrantor from selling or offering for sale warranted products in violation of the Act.
- Issue an order imposing a civil fine on the warrantor.

Unless DLEG reasonably believed that the warrantor was, or was about to become, insolvent, the Department would have to provide written notice of the order to the warrantor and the opportunity for a hearing before the order's effective date. The Department would have to hold the hearing within 10 business days after delivery of the notice. Prior notice and hearing would not be required if DLEG reasonably believed that the warrantor was, or was about to become, insolvent.

A person aggrieved by an order described above could request a hearing before the Department. The hearing request would have to be filed with DLEG within 20 days after the effective date of the order, and the Department would have to hold the hearing within 15 days after receiving the hearing request. At a hearing, the burden would be on the Department to show why an order was justified. The contested case provisions of the Administrative Procedures Act would apply to the hearing.

The Department could bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of the proposed Act or of DLEG's orders or rules. The Department also could seek restitution on behalf of people aggrieved by a violation of the Act or DLEG orders or rules.

A person found to have violated the Act or DLEG orders or rules could be ordered to pay to the Department a civil fine in an amount determined by the Department. The fine could not be more than \$500 per violation and could not exceed \$10,000 in the aggregate for all violations of a similar nature. Violations would be of a similar nature if they consisted of the same or similar course of conduct, action, or practice, irrespective of the number of times the conduct, action, or practice that was determined to be a violation of the Act occurred.

The Department could promulgate rules under the Administrative Procedures Act that were necessary to implement and administer the proposed Act. The rules would have to include disclosure requirements for the benefit of warranty holders, record-keeping requirements, and procedures for public complaints.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would require the Department of Labor and Economic Growth to register and regulate motor vehicle protection product warrantors, increasing the responsibilities of the Department. The bill would provide revenue to the Department by allowing it to charge an annual registration fee of not more than \$250 to warrantors, which would partially offset the costs of the bill. It is estimated by the Department that fee revenue would be about \$7,500 annually. Any civil fines collected pursuant to the bill would be deposited in the General Fund.

The bill would have no fiscal impact on local government.

Fiscal Analyst: Elizabeth Pratt  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.