

Enrolled
House Bill 3386

Sponsored by COMMITTEE ON BUSINESS AND LABOR

CHAPTER

AN ACT

Relating to vehicle protection products; creating new provisions; and amending ORS 646.608.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 11 of this 2007 Act:

(1) "Consumer" means a person in this state who purchases a vehicle protection product or who possesses a vehicle protection product and is entitled to enforce a warranty for the product by reason of the person's possession.

(2) "Reimbursement insurance policy" means an insurance policy issued to a warrantor that:

(a) Reimburses the warrantor for expenses or other obligations the warrantor incurs in complying with the terms and conditions in a vehicle protection product warranty; or

(b) Pays on a warrantor's behalf all obligations due under the terms and conditions of the warrantor's vehicle protection product warranty.

(3) "Reimbursement insurer" means an insurer that issues a reimbursement insurance policy.

(4) "Seller" means a person engaged in the business of offering a vehicle protection product for sale to a consumer.

(5) "Vehicle protection product" means a product, system or service that is designed to prevent a particular type of loss or damage to a vehicle from theft, and that is:

(a) Provided as a product or system that is installed on or applied to a vehicle or provided as a service for a specific vehicle; and

(b) Accompanied by a written warranty.

(6) "Warrantor" means a person named under the terms of a vehicle protection product warranty as the contractual obligor to the consumer. "Warrantor" does not include an authorized insurer that provides a warranty reimbursement insurance policy.

SECTION 2. (1) Sections 1 to 11 of this 2007 Act apply to vehicle protection product warranties that:

(a) Accompany vehicle protection products delivered to consumers in this state; and

(b) Require the warrantor, to the extent set forth in the warranty, to pay to the consumer expenses related to the loss of or damage to the vehicle.

(2) A vehicle protection product warranty subject to sections 1 to 11 of this 2007 Act is not a service contract and is not subject to the provisions of ORS 646.263 to 646.285. A seller's or warrantor's selling or providing a warranty for a vehicle protection product in compliance with sections 1 to 11 of this 2007 Act does not subject the seller or warrantor to ORS 646.263 to 646.285.

(3) A vehicle protection product warranty subject to sections 1 to 11 of this 2007 Act is not insurance and is not subject to the provisions of the Insurance Code. A seller's or warrantor's selling or providing a warranty for a vehicle protection product in compliance with sections 1 to 11 of this 2007 Act does not subject the seller or warrantor to the Insurance Code.

SECTION 3. (1) A person may not offer for sale or sell a vehicle protection product that includes a vehicle protection product warranty unless, at the time of the sale, the seller or a warrantor provides to the consumer:

(a) A copy of the vehicle protection product warranty for the vehicle protection product; or

(b) A receipt for, or other written evidence of, the consumer's purchase of the vehicle protection product.

(2) A warrantor who complies with subsection (1)(b) of this section shall provide to the consumer a copy of the vehicle protection product warranty within 30 days after the date of purchase.

(3) The vehicle protection product warranty must:

(a) Be written and printed or typed;

(b) List, either preprinted on the warranty document or, if negotiated at the time of sale, in an addition to the warranty document, the purchase price and terms of sale for the vehicle protection product;

(c) List the name, address, phone number and other available contact information for the warrantor;

(d) List, either preprinted on the warranty document or in an addition to the warranty document at the time of sale, the name of and contact information for the administrator for the vehicle protection product warranty, if any, the name of the seller and the name of the consumer, if the consumer has provided the consumer's name to the warrantor;

(e) Specify the nature or contents of the vehicle protection product or the services included with the product and any limitations, exceptions or exclusions;

(f) Describe the procedure for making a claim under the warranty and provide an address and telephone number for submitting claims;

(g) Specify any restrictions governing the transferability or cancellation of the vehicle protection product warranty;

(h) Disclose the items for which the warrantor will pay incidental expenses, along with any formula the warrantor uses to calculate the expenses, or provide for a fixed sum for payment of incidental expenses;

(i) State the consumer's duties, including any duty to protect against further damage to the vehicle and any requirement to follow the warranty's instructions;

(j) State that a reimbursement insurance policy guarantees the obligations to the consumer set forth in the warranty;

(k) List the name and address and other available contact information for the reimbursement insurer and state that if the warrantor does not provide a covered service within 60 days after the date the consumer provides proof of loss or damage, the consumer may apply directly to the reimbursement insurer for reimbursement;

(l) List the name, mailing address and telephone number for the Department of Consumer and Business Services and state that the consumer may address unresolved complaints concerning a warrantor or questions concerning the regulation of a warrantor to the department; and

(m) State that the vehicle protection product warranty is a product warranty and not insurance.

SECTION 4. (1) A person may not conduct business as a warrantor in this state or make a representation that the person is a warrantor in this state unless the person registers in writing with the Director of the Department of Consumer and Business Services in a form

the director prescribes by rule. For purposes of this section, a person who offers for sale or sells a vehicle protection product but does not offer a warranty with the product or is not contractually obligated to any performance under the terms and conditions of a warranty that accompanies the product is not a warrantor subject to this section.

(2) A registration form submitted to the director under this section shall contain the following information:

(a) The warrantor's name and telephone number and the address of the warrantor's principal office;

(b) The name, address and telephone number of the warrantor's agent for the service of process in this state if the agent is not the warrantor;

(c) The identities of the warrantor's executive officer and officers directly responsible for the warrantor's business operations related to vehicle protection product warranties;

(d) The name, address and telephone number of any person the warrantor designates to administer the warrantor's vehicle protection product warranties in this state;

(e) A copy of each warranty form the warrantor proposes to use in this state; and

(f) A copy of a warranty reimbursement insurance policy the warrantor intends to use to demonstrate the warrantor's financial responsibility in accordance with section 5 of this 2007 Act.

(3) A warrantor shall report any changes to the information provided in this section to the director not later than 30 days after the information has changed.

(4) A registration under this section expires on December 31 of each year. The director by rule shall prescribe a procedure for renewing a registration under this section.

(5) A warrantor shall pay a fee in an amount the director sets by rule for each registration or renewal under this section. The fee must be in an amount that, when aggregated with all other fees collected under this section, is sufficient to pay the expenses of administering and enforcing sections 1 to 11 of this 2007 Act.

SECTION 5. (1) A warrantor shall obtain a reimbursement insurance policy from a qualified reimbursement insurer that covers all liability to the consumer under all vehicle protection product warranties a warrantor issues. A qualified reimbursement insurer is:

(a) An insurer authorized to transact insurance in this state under a certificate of authority issued in accordance with the Insurance Code; or

(b) A surplus lines insurer.

(2) The Department of Consumer and Business Services may not require any other financial security requirements or financial standards for warrantors.

SECTION 6. (1) A reimbursement insurance policy for a warranty issued in accordance with sections 1 to 11 of this 2007 Act shall have the following provisions:

(a) The reimbursement insurer that issues the policy will reimburse or pay on behalf of the warrantor any amounts the warrantor is legally obligated to pay or will provide any service that the warrantor is legally obligated to perform under the vehicle protection product warranty.

(b) If the warrantor does not pay or provide to the consumer the amounts or the service for which the warrantor is legally obligated within 60 days after the date the consumer provides proof of loss or damage, the reimbursement insurer will pay the amount or provide the service directly to or on behalf of the consumer.

(c) A reimbursement insurer may not defend against a consumer's claim for payment of an amount or performance of a service described in paragraph (a) of this subsection on the basis that the consumer did not pay the premium for the reimbursement insurance policy. For the purposes of any claim a consumer makes under the policy, the consumer's payment for the vehicle protection product shall constitute payment of the premium for the reimbursement insurance policy.

(d) The warrantor to whom a reimbursement insurer issued a reimbursement insurance policy is an agent or representative of the reimbursement insurer for the purpose of obli-

gating the reimbursement insurer to the consumer under the terms and conditions of the reimbursement insurance policy.

(2) A reimbursement insurer may not cancel a reimbursement insurance policy until the insurer delivers to the warrantor and the Director of the Department of Consumer and Business Services a written notice of cancellation.

(3) A reimbursement insurer that cancels a reimbursement insurance policy does not reduce the reimbursement insurer's responsibility for vehicle protection products that the warrantor issued and insured under the policy before the cancellation date.

(4) A warrantor that receives a cancellation notice for a reimbursement insurance policy shall:

(a) Obtain new reimbursement insurance from a reimbursement insurer qualified in accordance with section 5 of this 2007 Act and file proof with the Director of the Department of Consumer and Business Services that the warrantor has obtained new insurance; or

(b) Discontinue offering vehicle protection product warranties as of the date of cancellation and until the warrantor obtains new reimbursement insurance from a reimbursement insurer qualified in accordance with section 5 of this 2007 Act.

SECTION 7. A warrantor may designate a person as an administrator for the warrantor's vehicle protection product warranties under sections 1 to 11 of this 2007 Act.

SECTION 8. (1) A warrantor shall maintain accurate accounts, books and other records for transactions regulated under sections 1 to 11 of this 2007 Act and shall make the records available to the Director of the Department of Consumer and Business Services for inspection during normal business hours. The warrantor's records shall include:

(a) A copy of the warranty for each unique form of vehicle protection product sold;

(b) The name and address of each consumer;

(c) A list of the locations where the warrantor's vehicle protection products are offered for sale or sold; and

(d) Dates, descriptions, amounts and receipts for payments to consumers for claims related to the vehicle protection product warranty or any expenditures related to providing the vehicle protection product warranty.

(2) Except as provided in subsection (4) of this section, a warrantor shall retain all records required under subsection (1) of this section for at least two years after the period of coverage specified in the vehicle protection product warranty has expired.

(3) A warrantor may maintain records required under this section in an electronic form. If the warrantor maintains a record in a format other than paper, the warrantor shall reformat the record into a legible paper copy at the director's request.

(4) A warrantor that no longer conducts business in this state shall maintain the warrantor's records until 10 years after the date of the last sale of a vehicle protection product that includes the warrantor's warranty.

SECTION 9. (1) A warrantor may not use in the warrantor's name:

(a) "Casualty," "surety," "insurance," "mutual" or any other word descriptive of the casualty, insurance or surety business; or

(b) A name deceptively similar to the name or description of any insurance company, surety corporation or other warrantor.

(2) A warrantor may use the word "guaranty" or a similar word in the warrantor's name.

SECTION 10. (1) A warrantor or a warrantor's representative, in the warrantor's vehicle protection product warranty or in an advertisement or literature for the warranty, may not:

(a) Make, permit or cause to be made any false or misleading statement; or

(b) Intentionally omit a material statement that would be considered misleading if omitted.

(2) A seller or warrantor may not require, as a condition of financing, that a retail purchaser of a motor vehicle purchase a vehicle protection product.

SECTION 11. (1) The Director of the Department of Consumer and Business Services may adopt rules to implement and enforce sections 1 to 11 of this 2007 Act.

(2) The director may investigate warrantors or other persons as reasonably necessary to enforce sections 1 to 11 of this 2007 Act and to protect consumers in this state.

SECTION 12. The Attorney General may enforce violations of sections 1 to 11 of this 2007 Act under ORS 646.608.

SECTION 13. ORS 646.608 is amended to read:

646.608. (1) A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person does any of the following:

- (a) Passes off real estate, goods or services as those of another.
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.
- (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.
- (d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.
- (e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- (f) Represents that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- (g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another.
- (h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.
- (i) Advertises real estate, goods or services with intent not to provide them as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- (j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.
- (k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.
- (L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.
- (m) Performs service on or dismantles any goods or real estate when not authorized by the owner or apparent owner thereof.
- (n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.
- (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon occurrence of an event subsequent to the time the customer enters into the transaction.
- (p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.
- (q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver them as promised.
- (r) Organizes or induces or attempts to induce membership in a pyramid club.
- (s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity.

(u) Engages in any other unfair or deceptive conduct in trade or commerce.

(v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.

(w) Manufactures mercury fever thermometers.

(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:

(A) Prescribed by a person licensed under ORS chapter 677; and

(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.

(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater. For purposes of this paragraph, "thermostat" means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.

(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.

(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

(bb) Violates ORS 646.850 (1).

(cc) Violates any requirement of ORS 646.661 to 646.686.

(dd) Violates the provisions of ORS 128.801 to 128.898.

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates any provision of ORS 646.195.

(gg) Violates ORS 646.569.

(hh) Violates the provisions of ORS 646.859.

(ii) Violates ORS 759.290.

(jj) Violates ORS 646.872.

(kk) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

(LL) Violates ORS 646.563.

(mm) Violates ORS 759.690 or any rule adopted pursuant thereto.

(nn) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.

(oo) Violates ORS 646.892 or 646.894.

(pp) Violates any provision of ORS 646.249 to 646.259.

(qq) Violates ORS 646.384.

(rr) Violates ORS 646.871.

(ss) Violates ORS 822.046.

(tt) Violates ORS 128.001.

(uu) Violates ORS 646.649 (2) to (4).

(vv) Violates ORS 646.877 (2) to (4).

(ww) Violates ORS 87.686.

(xx) Violates ORS 646.651.

(yy) Violates ORS 646.879.

(zz) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.

(aaa) Violates ORS 180.440 (1).

(bbb) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

(ccc) Violates ORS 87.007 (2) or (3).

(ddd) Violates ORS 92.405 (1), (2) or (3).

(eee) Engages in an unlawful practice under ORS 646.648.

(fff) Violates sections 1 to 11 of this 2007 Act.

(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

(3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.

(4) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.

(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought under subsection (1)(aaa) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

SECTION 14. (1) Sections 1 to 11 of this 2007 Act and the amendments to ORS 646.608 by section 13 of this 2007 Act apply to persons conducting business in this state as warrantors on or after the operative date specified in section 15 of this 2007 Act.

(2) Sections 1 to 11 of this 2007 Act and the amendments to ORS 646.608 by section 13 of this 2007 Act apply to insurers that offer reimbursement insurance policies in this state on or after the operative date specified in section 15 of this 2007 Act.

(3) Sections 1 to 11 of this 2007 Act and the amendments to ORS 646.608 by section 13 of this 2007 Act apply to transactions for vehicle protection products conducted on or after the operative date specified in section 15 of this 2007 Act.

SECTION 15. (1) Sections 1 to 12 of this 2007 Act and the amendments to ORS 646.608 by section 13 of this 2007 Act become operative on July 1, 2008.

(2) The Director of the Department of Consumer and Business Services may take any action before the operative date specified in this section that is necessary to enable the director to exercise, on and after the operative date specified in this section, all the duties, functions and powers conferred on the director by sections 1 to 11 of this 2007 Act and the amendments to ORS 646.608 by section 13 of this 2007 Act.

Passed by House May 16, 2007

Received by Governor:

Repassed by House June 12, 2007

.....M.,....., 2007

Approved:

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Chief Clerk of House

.....M.,....., 2007

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Speaker of House

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Governor

Passed by Senate June 11, 2007

Filed in Office of Secretary of State:

.....M.,....., 2007

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President of Senate

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Secretary of State