

Amendment No. 42

Senate Amendment to Senate Bill No. 229	(BDR 57-1137)
Proposed by: Senate Committee on Commerce and Labor	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 229 (§ 17).

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>
Receded	<input type="checkbox"/>	Not <input type="checkbox"/>	Receded	<input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

RRY



Date: 4/21/2007

S.B. No. 229—Provides for the registration and regulation of warrantors of vehicle protection products and related sellers and warranty administrators of such products. (BDR 57-1137)



SENATE BILL NO. 229—COMMITTEE ON COMMERCE AND LABOR

MARCH 7, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Provides for the registration and regulation of warrantors of vehicle protection products and related sellers and warranty administrators of such products. (BDR 57-1137)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to warrantors of vehicle protection products; requiring the registration and regulation of warrantors and related sellers and warranty administrators; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill enacts a new chapter of the Nevada Revised Statutes regulating the business of providing warranties for vehicle protection products. **Section 11** of this bill defines "vehicle protection product" to include certain devices, systems or services for protecting a vehicle that include a written warranty. **Section 16** of this bill prohibits selling vehicle protection products without complying with the provisions of the new chapter. **Section 17** of this bill requires registration of warrantors of vehicle protection products, and authorizes the Commissioner of Insurance to establish a fee for registration or renewal thereof. **Section 19** of this bill establishes requirements for policies of warranty reimbursement insurance. **Section 20** of this bill specifies the requirements for warranties for vehicle protection products. **Sections ~~23-29~~ 23, 24 and 29** of this bill provide for **the** administration and enforcement of the provisions of the new chapter by the Commissioner and the Division of Insurance of the Department of Business and Industry.

This bill applies to all vehicle protection products marketed, offered for sale, sold, made, issued or administered on or after January 1, 2008.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 57 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 29, inclusive, of this act.

Sec. 2. *This chapter may be known and cited as the Nevada Vehicle Protection Product Act.*

1 Sec. 3. *As used in this chapter, unless the context otherwise requires, the*
2 *words and terms defined in sections 4 to 15, inclusive, of this act have the*
3 *meanings ascribed to them in those sections.*

4 Sec. 4. *“Administrator” means a third party other than the warrantor who*
5 *is designated by the warrantor to be responsible for the administration of a*
6 *warranty.*

7 Sec. 5. *“Holding company” means a corporation or other business entity*
8 *which owns at least 51 percent of the equity voting securities of the warrantor*
9 *and which has a net worth of at least \$50,000,000 as established by:*

10 1. *The most recent Form 10-K or Form 20-F filed by such holding company*
11 *with the Securities and Exchange Commission; or*

12 2. *If the holding company does not file with the Securities and Exchange*
13 *Commission, the audited financial statements of the holding company.*

14 Sec. 6. *“Incidental costs” means expenses specified in the warranty*
15 *incurred by the warranty holder relating to the failure of the vehicle protection*
16 *product to perform as provided in the warranty. The term includes, without*
17 *limitation, insurance policy deductibles, rental vehicle charges, the difference*
18 *between the actual value of the stolen vehicle at the time of theft and the cost of a*
19 *replacement vehicle, sales taxes, registration fees, transaction fees and*
20 *mechanical inspection fees.*

21 Sec. 7. *“Proof of financial responsibility” means evidence satisfactory to*
22 *the Commissioner that:*

23 1. *The warrantor has filed with the Division a true and correct copy of a*
24 *warranty reimbursement insurance policy containing the provision required in*
25 *section 19 of this act, demonstrating that the warrantor is insured under such a*
26 *policy issued by an insurer ~~(licensed)~~ authorized or eligible to do business in this*
27 *State and providing that the insurer shall pay to, or on behalf of, the warrantor*
28 *100 percent of all sums that the warrantor is legally obligated to pay according to*
29 *the warrantor’s contractual obligations under the warranty;*

30 2. *The warrantor has a net worth or stockholders’ equity of \$50,000,000;*
31 ~~*for*~~

32 3. *The warrantor is subject to a guaranty issued by a holding company of*
33 *the obligations of the warrantor relating to any warranty issued by the warrantor*
34 *in this State ~~for~~; or*

35 4. *The warrantor:*

36 (a) *Maintains a reserve account that is subject to examination by the*
37 *Commissioner at any time and that contains at all times an amount of money*
38 *equal to at least 40 percent of the gross consideration received by the warrantor*
39 *for any unexpired warranties, less any claims paid on the unexpired warranties;*
40 *and*

41 (b) *Deposits with the Commissioner security in an amount that is the greater*
42 *of \$25,000 or 5 percent of the gross consideration received by the warrantor for*
43 *any unexpired warranties, less any claims paid on those unexpired warranties,*
44 *which security must be:*

45 (1) *A surety bond issued by a surety company authorized to do business*
46 *in this State;*

47 (2) *Securities of the type eligible for deposit pursuant to NRS 682B.030;*

48 (3) *Cash;*

49 (4) *An irrevocable letter of credit issued by a financial institution*
50 *approved by the Commissioner; or*

51 (5) *In any other form prescribed by the Commissioner.*

52 Sec. 8. *“Seller” means any person, other than a warrantor, who markets,*
53 *offers for sale, solicits a sale of or sells a vehicle protection product.*

1 Sec. 9. *"Service contract" has the meaning ascribed to it in NRS 690C.080.*

2 Sec. 10. *"Vehicle" has the meaning ascribed to it in NRS 482.135.*

3 Sec. 11. *"Vehicle protection product" means a device, system or service for*
4 *protecting a vehicle, including, without limitation, alarm systems, products for*
5 *marking body parts, steering locks, window-etch products, pedal and ignition*
6 *locks, fuel- and ignition-killing switches, and electronic, radio and satellite*
7 *tracking devices, that:*

8 1. *Is installed on or applied to a vehicle;*

9 2. *Is designed to prevent loss or damage to a vehicle from a specific cause;*
10 *and*

11 3. *Includes a warranty.*

12 Sec. 12. *"Warrantor" means a person who is contractually obligated to a*
13 *warranty holder under the terms of a warranty. The term does not include a*
14 *licensed insurer providing a warranty reimbursement insurance policy.*

15 Sec. 13. *"Warranty" means a written agreement by a warrantor that*
16 *provides if the vehicle protection product fails to prevent loss or damage to a*
17 *vehicle from a specified cause or causes, the warrantor shall pay to, or on behalf*
18 *of, the warranty holder specified incidental costs as a result of the failure of the*
19 *vehicle protection product to perform pursuant to the terms of the agreement.*

20 Sec. 14. *"Warranty holder" means a person who purchases a vehicle*
21 *protection product or who is a permitted transferee of such a product.*

22 Sec. 15. *"Warranty reimbursement insurance policy" means a policy of*
23 *insurance that is issued to a warrantor to provide reimbursement to the*
24 *warrantor, or to pay on behalf of the warrantor, all covered contractual*
25 *obligations incurred by the warrantor under the terms and conditions of the*
26 *warranty issued by the warrantor.*

27 Sec. 16. 1. *No vehicle protection product may be marketed, offered for*
28 *sale, sold, made, issued or administered in this State unless the seller and*
29 *warrantor, and, if applicable, the administrator, comply with the provisions of*
30 *this chapter.*

31 2. *The provisions of this chapter:*

32 (a) *Do not apply to:*

33 (1) *A provider of a service contract who does not sell vehicle protection*
34 *products.*

35 (2) *Warranties, indemnity agreements and guarantees that are not*
36 *provided as a part of a vehicle protection product.*

37 (b) *Do not require sellers or administrators to register pursuant to this*
38 *chapter.*

39 (c) ~~*Are*~~ *Except as otherwise provided in subsection 3, are the exclusive*
40 *regulatory requirements applicable to sellers, warrantors and administrators*
41 *under the Code in connection with the marketing, offering for sale, sale, making,*
42 *issuance or administration of vehicle protection products, including, without*
43 *limitation, the provisions of chapter 690C of NRS.*

44 3. *Sellers, warrantors and administrators in connection with the marketing,*
45 *offering for sale, sale, making, issuance or administration of vehicle protection*
46 *products are not subject to the provisions of title 57 of NRS, including, without*
47 *limitation, the provisions of chapters 680A and 690C of NRS, except, when*
48 *applicable, the provisions of:*

49 (a) *NRS 679A.190;*

50 (b) *NRS 679B.020 to 679B.300, inclusive;*

51 (c) *NRS 679B.310 to 679B.370, inclusive;*

52 (d) *NRS 679B.600 to 679B.690, inclusive;*

53 (e) *NRS 685B.090 to 685B.190, inclusive;*

(f) NRS 686A.010 to 686A.090, inclusive;
(g) NRS 686A.160 to 686A.187, inclusive; and
(h) NRS 686A.260, 686A.270, 686A.280 and 686A.310.

Sec. 17. 1. A person may not act as a warrantor or represent to the public that he is a warrantor unless the person is registered with the Division.

2. The Commissioner shall prescribe the form for registration, which must include the following information:

(a) The warrantor's name, any fictitious names under which the warrantor does business in the State, and the mailing or street address and telephone number of the warrantor's principal office.

(b) The name and address of the warrantor's agent for service of process in the State if other than the warrantor.

(c) The names of the warrantor's executive officer or officers directly responsible for the warrantor's vehicle protection product business.

(d) 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 this State.

(e) A statement establishing proof of financial responsibility by the warrantor and accompanied by:

(1) A copy of the warranty reimbursement insurance policy or policies;
or

(2) Other supporting documents and information required by this chapter.

(f) A copy of each warranty the warrantor proposes to use in this State.

Any proprietary financial information required by subparagraph (2) of paragraph (e) must be accepted and maintained by the Division as confidential and not subject to public disclosure.

3. Each registration must be renewed annually by the warrantor in accordance with regulations adopted by the Commissioner.

4. If a warrantor fails to renew its registration by the deadline prescribed by regulation, the Division shall issue written notice of such failure to the warrantor by first-class mail to its last known address. The warrantor must renew the registration within 30 days after the date of the notice. The Commissioner shall terminate the registration of any person who fails to renew his registration within the period prescribed by this subsection.

5. The warrantor shall submit in writing any change in the information required by subsection 2 within 30 days after such change.

6. The Commissioner may charge each warrantor a reasonable fee, not to exceed ~~(\$250)~~ \$1,000 annually, for the cost of processing the initial registration and annual renewals and for maintaining necessary records.

Sec. 18. 1. No vehicle protection product may be marketed, offered for sale, sold, made, issued or administered in this State unless the warrantor submits to the Commissioner satisfactory proof of financial responsibility.

2. No financial requirements or standards of responsibility may be imposed on warrantors by the Division or the Commissioner other than that required pursuant to subsection 1.

Sec. 19. No warranty reimbursement insurance policy may be marketed, offered for sale, sold, made, issued or administered in this State unless the policy contains in substance the following provisions:

1. The issuer of the policy shall reimburse or pay on behalf of the warrantor all covered sums which the warrantor is legally obligated to pay or shall provide the services that the warrantor is legally obligated to perform according to the contractual obligations under the provisions of the warranty;

2. If payment due under the terms of the warranty is not provided by the warrantor within 60 days after ~~[proof of loss has been filed]~~ the warrantor has been notified of a claim by the warranty holder according to the terms of the warranty, ~~[by the warranty holder]~~ the warranty holder may file directly with the issuer of the policy for reimbursement;

3. The issuer of the policy that insures a warranty shall be deemed to have received payment of the premium if the warranty holder paid for the vehicle protection product and the insurer's liability under the policy may not be reduced or relieved by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer; and

4. With regard to the cancellation of the policy:

(a) The issuer of the policy shall not cancel the policy until a notice of cancellation in writing has been delivered to the Commissioner and sent by first-class mail to each insured warrantor.

(b) The cancellation of the policy must not reduce the issuer's responsibility for vehicle protection products sold before the date of cancellation.

(c) If an insurer cancels a policy that a warrantor has filed with the Commissioner, the warrantor shall:

(1) File a copy of a new policy with the Commissioner, before the termination of the prior policy, providing no lapse in coverage following the termination of the prior policy; or

(2) Discontinue offering warranties as of the termination date of the policy until a new policy becomes effective and is accepted by the Commissioner.

Sec. 20. 1. Every warranty marketed, offered for sale, sold, made, issued or administered in this State must state:

(a) The names of the warrantor, the seller and the warranty holder and, if applicable, the administrator.

(b) The address of the warrantor and, if applicable, the administrator.

(c) The total purchase price and the terms under which it is to be paid.

(d) The procedure for making a claim, including the telephone number for use by the warranty holder in submitting a claim.

(e) The payments or performance to be provided under the warranty, including payments for incidental costs, the manner of calculation or determination of payments or performance, and any limitations, exceptions or exclusions.

(f) All the obligations and duties of the warranty holder, including, without limitation, the duty to protect against any further damage to the vehicle and the obligation to notify the warrantor in advance of any repair, or other similar requirements, if any.

(g) Any terms, restrictions or conditions governing transferability and cancellation of the warranty, if any.

(h) A disclosure that reads substantially as follows:

This agreement is a product warranty and is not insurance.

(i) Whether performance of the obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy or subject to the general creditworthiness of the warrantor established by proof of financial responsibility pursuant to this chapter.

(j) If the obligations of the warrantor are subject to a warranty reimbursement insurance policy:

(1) The warranty holder is entitled to make a direct claim against the issuer of the warranty reimbursement insurance policy 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 has been filed with]~~ the warrantor ~~[and has been notified of a claim by the warranty holder according to the terms of the warranty]; and~~

(2) The name and address of the issuer of the warranty reimbursement insurance policy.

2. Disclosures of the purchase price as required by paragraph (c) of subsection 1 and information concerning the issuer of the warranty reimbursement insurance policy as required by paragraph (j) of subsection 1 may be added at the time of sale of the vehicle protection product and are not required to be preprinted on the written form of warranty.

3. Incidental costs may be reimbursed under the provisions of the warranty in either a fixed amount specified in the warranty or sales agreement or by the use of a formula itemizing specific incidental costs incurred by the warranty holder.

Sec. 21. 1. A vehicle protection product is not ~~[and must not be interpreted to be]~~ a form of insurance.

2. Unless otherwise licensed as an insurance company, a warrantor shall not use in its name, contracts or literature any of the words "insurance," "casualty," "surety" or "mutual," or any other words descriptive of the insurance, casualty or surety business or deceptively similar to the name or description of any insurance or surety corporation or any other warrantor. A warrantor may use the term "guaranty" or a similar word in the warrantor's name.

3. A seller or warrantor may not require as a condition of financing that a retail purchaser of a vehicle purchase a vehicle protection product.

4. No person may require the purchase of a vehicle protection product as a condition for the approval of a loan or for the purchase of a vehicle.

Sec. 22. 1. All warrantors shall keep accurate accounts, books and records concerning transactions subject to the requirements of this chapter.

2. A warrantor's accounts, books and records must include:

(a) Copies of all warranties;

(b) The name and address of each warranty holder; and

(c) The dates, amounts and descriptions of all receipts, claims and expenditures.

3. A warrantor shall retain all required accounts, books and records pertaining to each warranty holder for at least 2 years after the specified period of coverage has expired. A warrantor discontinuing business in this State shall maintain its records until it furnishes the Commissioner satisfactory proof that it has discharged all obligations to warranty holders in this State.

4. Warrantors shall make all accounts, books and records concerning transactions regulated under this chapter available to the Commissioner for examination.

Sec. 23. The Commissioner ~~[shall]~~ may adopt regulations;

1. ~~[May adopt regulations which]~~ Which are consistent with and necessary to implement the provisions of this chapter.

2. ~~[Shall adopt regulations prescribing]~~ Prescribing the conditions under which surplus lines insurers may be prohibited from underwriting a warranty.

Sec. 24. 1. The Division may conduct examinations of warrantors, sellers and administrators to enforce the provisions of this chapter and protect the interests of warranty holders in this State.

2. Upon reasonable prior written request of the Commissioner, a warrantor shall make available to the Division for examination and duplication all

accounts, books and records concerning vehicle protection products sold by the warrantor that are reasonably necessary to determine compliance with this chapter.

Sec. 25. ~~[1. Except as otherwise provided in section 26 of this act, whenever it appears to the Commissioner that a warrantor, seller or administrator has committed or is about to commit a violation of any provision of this chapter, or of any regulation or order of the Commissioner relating thereto, the Commissioner may issue an order:~~

~~(a) Directing the warrantor, seller or administrator to cease and desist from engaging in further acts, practices or transactions that violate the provisions or requirements of this chapter;~~

~~(b) Prohibiting the warrantor, seller or administrator from marketing, offering for sale, selling, making, issuing or administering vehicle protection products in violation of this chapter;~~

~~(c) Imposing an administrative penalty on that warrantor, seller or administrator pursuant to section 29 of this act;~~

~~2. Before issuing any order pursuant to subsection 1, the Commissioner must:~~

~~(a) Serve a written notice and specificity of charges upon the warrantor, seller or administrator;~~

~~(b) Conduct a hearing upon reasonable prior written notice of not less than 30 days after service of the notice and specificity of charges; and~~

~~(c) Establish by substantial evidence a violation of this chapter by the warrantor, seller or administrator.] (Deleted by amendment.)~~

Sec. 26. ~~[1. The Commissioner may, without prior notice and hearing, issue an emergency order suspending the registration of a warrantor from marketing, offering for sale, selling, making, issuing or administering vehicle protection products if the Commissioner reasonably believes that the warrantor has become, or is about to become, insolvent.~~

~~2. A person aggrieved by an emergency order issued pursuant to subsection 1 may request a hearing before the Commissioner. The hearing request must be filed with the Division within 20 days after the date the emergency order is effective, and unless agreed upon by the parties to the proceeding, the Commissioner must conduct the hearing within 15 days after receipt of the hearing request.] (Deleted by amendment.)~~

Sec. 27. ~~[A person aggrieved by a final order of the Commissioner pursuant to section 25 or 26 of this act may petition for judicial review pursuant to chapter 233B of NRS.] (Deleted by amendment.)~~

Sec. 28. ~~[The Commissioner may bring an action in district court to:~~

~~1. Enjoin threatened or existing violations of this chapter or of any regulation or order of the Commissioner relating thereto; and~~

~~2. Recover restitution on behalf of persons aggrieved by any such violations.] (Deleted by amendment.)~~

Sec. 29. 1. A person who is found to have violated this chapter or any regulation or order of the Commissioner relating thereto may be ordered to pay to the Division an administrative penalty in an amount, determined by the Commissioner, of not more than \$500 per violation and not more than \$10,000 in the aggregate for all violations of a similar nature.

2. As used in this section, "violations of a similar nature" means violations consisting of the same or a similar course of conduct, action or practice, without regard to the number of occurrences of the conduct, action or practice, that are determined to be a violation of this chapter.

1 **Sec. 30.** This act applies to all vehicle protection products marketed, offered
2 for sale, sold, made, issued or administered on or after January 1, 2008. The
3 adoption of this act must not be interpreted or construed to mean that a vehicle
4 protection product warranty was insurance under or otherwise regulated by the
5 Nevada Insurance Code before January 1, 2008. The failure of any person to
6 comply with this act before January 1, 2008, is not admissible in any court
7 proceeding, administrative proceeding, arbitration or alternative dispute resolution
8 proceeding and may not otherwise be used to prove that the action of any person or
9 the affected vehicle protection product was unlawful or otherwise improper.

10 **Sec. 31.** The Commissioner of Insurance shall adopt ~~any~~ regulations
11 **considered** necessary to implement **sections 17, 18 and 19 of** this act on or before
12 ~~October~~ **December** 1, 2007.

13 **Sec. 32.** This act becomes effective:

- 14 1. For the purposes of the adoption of regulations by the Commissioner of
15 Insurance, upon passage and approval.
16 2. For all other purposes, on January 1, 2008.