

2218

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to licensing requirements for persons who offer warranties for motor vehicles and appliances

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

1 Section 1. The insurance law is amended by adding a new article 21-A  
2 to read as follows:

3 ARTICLE 21-A

4 ADMINISTRATION OF PRODUCT WARRANTIES

5 SECTION 2150. DEFINITIONS.

6 2151. ADMINISTRATOR'S LICENSE REQUIRED.

7 2152. PENALTIES.

8 2153. PROMULGATION OF REGULATIONS.

9 S 2150. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS  
10 SHALL HAVE THE FOLLOWING MEANINGS:

11 (A) "PERSON" MEANS ANY INDIVIDUAL, FIRM, ASSOCIATION, CORPORATION,  
12 PARTNERSHIP, JOINT-STOCK COMPANY, JOINT VENTURE, ANY OTHER ENTITY, OR  
13 ANY AGGREGATION OF ANY OF THE FOREGOING.

14 (B) "WARRANTY" MEANS ANY CONTRACT, WARRANTY OR GUARANTY, ANY EXTENDED  
15 WARRANTY OR SERVICE CONTRACT, OR ANY AGREEMENT THAT PROMISES REPLACEMENT  
16 OR REPAIR OF COVERED PARTS IN THE EVENT OF THE BREAKDOWN OF SUCH PART IN  
17 A MOTOR VEHICLE, A MECHANICAL OR ELECTRONIC APPLIANCE, OFFERED TO THE  
18 CONSUMER FOR A SEPARATELY STATED CHARGE AS AN INCIDENT TO THE SELLING OR  
19 LEASING OF SUCH PRODUCTS.

20 (C) "SELLER" MEANS ANY PERSON WHO SELLS A MOTOR VEHICLE OR MECHANICAL  
21 OR ELECTRONIC APPLIANCE TO A CONSUMER.

22 (D) "CONSUMER" MEANS A PERSON WHO PURCHASES A PRODUCT FOR PURPOSES  
23 OTHER THAN THE RESALE THEREOF AS PART OF HIS OCCUPATIONAL OR BUSINESS  
24 ACTIVITY.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD07056-01-1

1 (E) "ADMINISTRATOR" MEANS ANY PERSON WHO ISSUES WARRANTIES ON BEHALF  
2 OF THE SELLER, COLLECTS AND MAINTAINS CLAIMS REPAIR RESERVES, AND ADMIN-  
3 ISTERS THE REPAIR OR REPLACEMENT OF PARTS PURSUANT TO THE TERMS OF THE  
4 UNDERLYING WARRANTY.

5 S 2151. ADMINISTRATOR'S LICENSE REQUIRED. (A) NO PERSON SHALL BE AN  
6 ADMINISTRATOR OF WARRANTIES IN THIS STATE NOR SHALL ANY PERSON BE AN  
7 ADMINISTRATOR OF WARRANTIES OUTSIDE THIS STATE FOR ANY PERSON WITHIN  
8 THIS STATE UNLESS SUCH PERSON HAS BEEN LICENSED BY THE DEPARTMENT PURSU-  
9 ANT TO THE PROVISIONS OF THIS ARTICLE.

10 (B) THE DEPARTMENT SHALL ISSUE SUCH A LICENSE TO ANY APPLICANT THERE-  
11 FOR THAT MEETS THE FOLLOWING CRITERIA:

12 (1) THE APPLICANT MUST SUBMIT TO THE DEPARTMENT A COMPLETED APPLICA-  
13 TION ON A FORM TO BE PRESCRIBED BY THE DEPARTMENT TOGETHER WITH A FEE OF  
14 FIVE HUNDRED DOLLARS;

15 (2) THE APPLICANT, AND ITS OFFICERS AND MANAGERS, MUST BE OF GOOD  
16 CHARACTER AND EXHIBIT A BUSINESS HISTORY OF HIGH INTEGRITY;

17 (3) THE APPLICANT MUST INDICATE A NET WORTH, ACCORDING TO GENERALLY  
18 ACCEPTED PRINCIPLES OF ACCOUNTING, OF NOT LESS THAN ONE HUNDRED FIFTY  
19 THOUSAND DOLLARS AT THE TIME OF THE MAKING OF THE APPLICATION;

20 (4) THE APPLICANT MUST SWEAR THAT HE WILL AT ALL TIMES DURING HIS  
21 LICENSURE ACTUALLY MAINTAIN AN ADDRESS WITHIN THIS STATE FOR THE TRANS-  
22 ACTION OF BUSINESS AND A LOCAL TELEPHONE NUMBER WITHIN THE STATE OR A  
23 TOLL FREE TELEPHONE NUMBER FOR PURPOSES OF PROCESSING CLAIMS MADE BY NEW  
24 YORK STATE CONSUMERS;

25 (5) THE APPLICANT SHALL AGREE THAT HE WILL AT ALL TIMES DURING HIS  
26 LICENSURE MAINTAIN IN FORCE AND EFFECT AN INSURANCE POLICY ISSUED ONLY  
27 BY A LICENSED NEW YORK INSURER THAT GUARANTEES TO INDEMNIFY PROMPTLY THE  
28 ADMINISTRATOR AND THE SELLER PERFORMING FOR THE ADMINISTRATOR AND THE  
29 PURCHASER OF THE WARRANTY IN THE EVENT OF THE LOSS OR DEPLETION OF THE  
30 CLAIMS RESERVE ACCOUNT PAID TO AND HELD BY THE ADMINISTRATOR FOR THE  
31 PAYMENT OF REPAIR CLAIMS UNDER THE TERMS AND CONDITIONS OF THE WARRANT-  
32 TIES. SUCH POLICY SHALL BE AUTHORIZED IN THE FORM OF "CONTRACTUAL  
33 LIABILITY" INSURANCE, OR IN SUCH OTHER FORM AS APPROVED BY THE DEPART-  
34 MENT, AND SHALL BE ISSUED TO THE ADMINISTRATOR, AND SHALL GUARANTEE THE  
35 PERFORMANCE OF THE ADMINISTRATOR TO THE SELLER AND THE PURCHASER AND  
36 GUARANTEE THAT THE CLAIMS RESERVES PAID TO THE ADMINISTRATOR SHALL AT  
37 ALL TIMES BE ADEQUATE TO PAY FOR ALL REPAIR CLAIMS ARISING UNDER THE  
38 WARRANTIES. PROOF OF SUCH INSURANCE SHALL BE PROVIDED BY THE ADMINISTRA-  
39 TOR TO EACH SELLER. THE APPLICANT SHALL PROVIDE THE DEPARTMENT WITH THE  
40 NAME OF THE INSURER PROVIDING THE POLICY ON HIS APPLICATION.

41 S 2152. PENALTIES. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS  
42 ARTICLE SHALL BE GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE OF UP TO  
43 FIVE HUNDRED DOLLARS FOR THE FIRST VIOLATION AND UP TO ONE THOUSAND  
44 DOLLARS AND A TERM OF IMPRISONMENT OF UP TO ONE YEAR FOR EACH SUCCEEDING  
45 VIOLATION.

46 S 2153. PROMULGATION OF REGULATIONS. THE DEPARTMENT SHALL PROMULGATE  
47 ALL RULES AND REGULATIONS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS  
48 ARTICLE.

49 S 2. This act shall take effect on the first of January next succeed-  
50 ing the date on which it shall have become a law, except that any rules  
51 and regulations necessary for the timely implementation of this act on  
52 its effective date shall be promulgated on or before such date.