S T A T E O F N E W Y O R K

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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:

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

ARTICLE 21-A

ADMINISTRATION OF PRODUCT WARRANTIES

SECTION 2150. DEFINITIONS.
2151. ADMINISTRATOR'S LICENSE REQUIRED.
2152. PENALTIES.
2153. PROMULGATION OF REGULATIONS.

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

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

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

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

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

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

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

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

(B) THE DEPARTMENT SHALL ISSUE SUCH A LICENSE TO ANY APPLICANT THEREFOR THAT MEETS THE FOLLOWING CRITERIA:

(1) THE APPLICANT MUST SUBMIT TO THE DEPARTMENT A COMPLETED APPLICATION ON A FORM TO BE PRESCRIBED BY THE DEPARTMENT TOGETHER WITH A FEE OF FIVE HUNDRED DOLLARS;

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

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

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

(5) THE APPLICANT SHALL AGREE THAT HE WILL AT ALL TIMES DURING HIS LICENSURE MAINTAIN IN FORCE AND EFFECT AN INSURANCE POLICY ISSUED ONLY BY A LICENSED NEW YORK INSURER THAT GUARANTEES TO INDEMNIFY PROMPTLY THE ADMINISTRATOR AND THE SELLER PERFORMING FOR THE ADMINISTRATOR AND THE PURCHASER OF THE WARRANTY IN THE EVENT OF THE LOSS OR DEPLETION OF THE CLAIMS RESERVE ACCOUNT PAID TO AND HELD BY THE ADMINISTRATOR FOR THE PAYMENT OF REPAIR CLAIMS UNDER THE TERMS AND CONDITIONS OF THE WARRANTIES. SUCH POLICY SHALL BE AUTHORIZED IN THE FORM OF "CONTRACTUAL LIABILITY" INSURANCE, OR IN SUCH OTHER FORM AS APPROVED BY THE DEPARTMENT, AND SHALL BE ISSUED TO THE ADMINISTRATOR, AND SHALL GUARANTEE THE PERFORMANCE OF THE ADMINISTRATOR TO THE SELLER AND THE PURCHASER AND GUARANTEE THAT THE CLAIMS RESERVES PAID TO THE ADMINISTRATOR SHALL AT ALL TIMES BE ADEQUATE TO PAY FOR ALL REPAIR CLAIMS ARISING UNDER THE WARRANTIES. PROOF OF SUCH INSURANCE SHALL BE PROVIDED BY THE ADMINISTRATOR TO EACH SELLER. THE APPLICANT SHALL PROVIDE THE DEPARTMENT WITH THE NAME OF THE INSURER PROVIDING THE POLICY ON HIS APPLICATION.

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

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

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