

STATE OF NEW YORK

8589

IN SENATE

May 10, 2018

Introduced by Sen. SEWARD -- 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 theft protection products

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 79-A
2 to read as follows:

ARTICLE 79-A

THEFT PROTECTION PRODUCTS

Section 7951. Scope and purpose.

6 7952. Definitions.

7 7953. Warrantor registration required.

8 7954. Warrantor financial requirements.

9 7955. Theft protection program warranty receipt required.

10 7956. Required disclosures.

11 7957. Required disclosures; reimbursement insurance policy.

12 7958. Theft protection program warranty not insurance.

13 7959. Prohibited acts.

14 7960. Record-keeping requirements.

15 7961. Cancellation of reimbursement insurance policy.

16 7962. Obligation of reimbursement insurance policy insurers.

17 7963. Enforcement provisions.

18 7964. Premium taxes.

19 7965. Severability.

20 7966. Applicability.

21 7967. Effect on current business.

22 § 7951. Scope and purpose. (a) The purpose of this article is to
23 create a legal framework within which theft protection program warran-
24 ties, as defined in this article, are regulated and may be offered in
25 this state. Notwithstanding any other section of law, including but not
26 limited to section three thousand four-hundred forty-six of this chap-
27 ter, theft protection program warranties shall not be subject to any

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

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1 laws, rules, or regulations related to the offering, sale, or issuance
2 of insurance in this state.

3 (b) The following are exempt from this article:

4 (1) Maintenance agreements as defined under section three hundred
5 ninety-five-a of the general business law;

6 (2) Service contracts as defined in article seventy-nine of this chap-
7 ter;

8 (3) Motor clubs; and

9 (4) GAP waiver agreements as covered under section three hundred twoA
10 of the personal property law.

11 § 7952. Definitions. As used in this section: (a) "Administrator"
12 means the person who is responsible for the administration of the theft
13 protection program warranty.

14 (b) "Incidental costs" means expenses specified in a theft protection
15 program warranty that are incurred by the warranty holder due to the
16 failure of a theft protection program to perform as provided in the
17 theft protection program warranty. Incidental costs may include, without
18 limitation, insurance policy deductibles, rental vehicle charges, the
19 difference between the actual value of the stolen vehicle at the time of
20 theft and the cost of a replacement vehicle, sales taxes, registration
21 fees, transaction fees, and mechanical inspection fees. Incidental
22 costs may be reimbursed in either a fixed amount specified in the theft
23 protection program warranty or by use of a formula itemizing specific
24 incidental costs incurred by the warranty holder.

25 (c) "Motor vehicle" means self-propelled or towed vehicles designed
26 for personal or commercial use, including but not limited to automo-
27 biles, trucks, motorcycles, recreational vehicles, all-terrain vehicles,
28 snowmobiles, campers, boats, personal watercraft, and motorcycle, boat,
29 camper, and personal watercraft trailers.

30 (d) "Theft protection program" means a device or system that (1) is
31 installed on or applied to a motor vehicle, (2) is designed to prevent
32 loss or damage to a motor vehicle from theft, and (3) includes a theft
33 protection program warranty. For purposes of this section, the term
34 theft protection program shall include, but not be limited to, alarm
35 systems, body part marking products, steering locks, window etch
36 products, pedal and ignition locks, fuel and ignition kill switches, and
37 electronic, radio, and satellite tracking devices. Theft protection
38 program does not include fuel additives, oil additives, or other chemi-
39 cal products applied to the engine, transmission, or fuel system, or
40 interior or exterior surfaces of a motor vehicle.

41 (e) "Theft protection program warranty" means a written agreement by a
42 warrantor that provides if the theft protection program fails to prevent
43 loss or damage to a motor vehicle from theft, that the warrantor will
44 pay to or on behalf of the warranty holder specified incidental costs as
45 a result of the failure of the theft protection program to perform
46 pursuant to the terms of the theft protection program warranty.

47 (f) "Person" means an individual, company, association, organization,
48 partnership, business trust, corporation, or any other form of legal
49 entity.

50 (g) "Reimbursement insurance policy" means a policy of insurance
51 issued to a warrantor to either provide reimbursement to the warrantor
52 under the terms of the designated theft protection program warranties
53 issued by the warrantor, in the event of the warrantor's non-perfor-
54 mance, to pay on behalf of the warrantor all covered theft protection
55 program warranty obligations incurred by the warrantor under the terms
56 of the insured theft protection program warranties.

1 (h) "Warranty holder" means the person who purchases a theft
2 protection program, any authorized transferee or assignee of the
3 purchaser, or any other person legally assuming the purchaser's rights
4 under the anti-theft protection program theft protection program warran-
5 ty.

6 (i) "Warrantor" means a person who is obligated to the warranty holder
7 under the terms of the theft protection program warranty.

8 § 7953. Warrantor registration required. (a) Each warrantor intending
9 to issue theft protection program warranties in this state shall file a
10 registration with the superintendent consisting of their name, full
11 corporate address, telephone number and contact person and designate a
12 person in this state for service of process. Each warrantor shall pay to
13 the superintendent a fee in the amount of two hundred dollars upon
14 initial registration and every year thereafter. Said registration need
15 only be updated by written notification to the superintendent if materi-
16 al changes occur in the registration on file.

17 (b) A warrantor may, but is not required to, appoint an administrator
18 or other designee to be responsible for any or all of the administration
19 of its theft protection program warranties and compliance with this
20 article.

21 (c) Other than the warrantor registration requirements in this
22 section, warrantors and related theft protection program sellers, admin-
23 istrators, and other persons marketing, selling, offering to sell or
24 issuing theft protection programs are exempt from any licensing require-
25 ments of this state in order to conduct theft protection program warran-
26 ty business.

27 § 7954. Warrantor financial requirements. (a) In order to assure the
28 faithful performance of a warrantor's obligations to its warrant hold-
29 ers, each warrantor shall be responsible for complying with the require-
30 ments of one of the following provisions:

31 (1) Insure all theft protection program warranties under a reimburse-
32 ment insurance policy issued by an insurer licensed, registered, or
33 otherwise authorized to do business in this state, and either:

34 (A) at the time the policy is filed with the superintendent, and
35 continuously thereafter, (i) maintain surplus as to policyholders and
36 paid-in capital of at least fifteen million dollars and (ii) annually
37 file copies of the insurer's financial statements, its NAIC annual
38 statement, and the actuarial certification required by and filed in the
39 insurer's state of domicile; or

40 (B) at the time the policy is filed with the superintendent, and
41 continuously thereafter, (i) maintain surplus as to policyholders and
42 paid-in capital of less than fifteen million dollars but at least equal
43 to ten million dollars, (ii) demonstrate to the satisfaction of the
44 superintendent that the company maintains a ratio of net written premi-
45 ums, wherever written, to surplus as to policyholders and paid-in capi-
46 tal of not greater than three to one, and (iii) annually file copies of
47 the insurer's audited financial statements, its NAIC annual statement,
48 and the actuarial certification required by and filed in the insurer's
49 state of domicile; or

50 (2)(A) Maintain a funded reserve account for its obligations under its
51 theft protection program warranties issued and outstanding in this
52 state. The reserves shall not be less than forty percent of gross
53 consideration received, less claims paid, on the sale of the theft
54 protection program warranty for all in-force theft protection program
55 warranties. The reserve account shall be subject to examination and
56 review by the superintendent; and

(B) Place in trust with the superintendent a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the theft protection program warranty for all theft protection program warranties issued and in-force, but not less than twenty-five thousand dollars consisting of one of the following:

- (i) a surety bond issued by an authorized surety;
- (ii) securities of the type eligible for deposit by authorized insurers in this state;
- (iii) cash;
- (iv) a letter of credit issued by a qualified financial institution;
- or
- (v) another form of security prescribed by regulations issued by the superintendent.

(b) Except for the requirements specified in this section, no other financial security requirements shall be required by the superintendent for warrantors.

§ 7955. Theft protection program warranty receipt required. (a) Theft protection program warranties shall not be issued in this state unless the warrantor provides a copy of the theft protection program warranty to the warranty holder within a reasonable period of time from the date of purchase. A warranty may comply with this provision by providing the holder with a physical copy of the complete terms and conditions of the theft protection program warranty, by directing the consumer to a website containing a copy of the complete terms and conditions of the theft protection program warranty, or by delivering a copy of the complete terms and conditions of the theft protection program warranty via electronic mail.

(b) A warrantor shall provide a consumer with a complete sample copy of the theft protection program warranty terms and conditions prior to the time of sale upon a request for the same by the consumer. A warrantor may comply with this provision by providing the consumer with a complete sample copy of the terms and conditions or by directing the consumer to a website containing a complete sample of the terms and conditions of the theft protection program warranty.

§ 7956. Required disclosures. (a) Theft protection program warranties offered, issued, made, proposed to be made, or administered in this state shall be written, printed, or typed in clear, understandable language that is easy to read, and shall disclose the following requirements, as applicable:

(1) the name and address of the warrantor, the seller of the theft protection program, and the warranty holder;

(2) the total purchase price of the theft protection program and the terms under which it is to be paid, however, the purchase price is not required to be preprinted on the theft protection program warranty and may be negotiated with the consumer at the time of sale;

(3) the procedure for making a claim, including a telephone number for the warrantor or administrator responsible for processing the claim;

(4) 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. 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;

1 (5) the obligations and duties of the warranty holder such as the duty
2 to protect against any further damage to the vehicle, the obligation to
3 notify the warrantor in advance of any repair, or other similar require-
4 ments, if any;

5 (6) any terms, restrictions, or conditions governing transferability
6 and cancellation of the warranty, if any;

7 (7) a disclosure that reads substantially as follows: "This agreement
8 is not insurance."

9 (b) A theft protection program warranty that is insured by a
10 reimbursement insurance policy under section seven thousand nine hundred
11 fifty-four of this article shall conspicuously state all of the follow-
12 ing:

13 (1) "This theft protection program warranty is not insurance and is
14 not subject to the insurance laws of the State of New York."

15 (2) That the obligations of the warrantor are insured under a
16 reimbursement insurance policy;

17 (3) That if a warrantor fails to perform or make payment due under the
18 terms of the warranty within sixty days after the warranty holder
19 requests performance or payment pursuant to the terms of the warranty,
20 the warranty holder may request performance or payment directly from the
21 warrantor's reimbursement insurance policy insurer;

22 (4) The name, address, and telephone number of the warrantor's
23 reimbursement insurance policy insurer.

24 (c) Theft protection program warranties not insured under a reimburse-
25 ment insurance policy pursuant to section seven thousand nine hundred
26 fifty-four of this article shall contain a statement in substantially
27 the following form: "The obligations of the warrantor under this warran-
28 ty are backed by the full faith and credit of the warrantor."

29 (d) A warrantor may only cancel a theft protection program warranty if
30 the warranty holder does any of the following:

31 (1) fails to pay for the theft protection program;

32 (2) makes a material misrepresentation to the seller of the theft
33 protection program or to the warrantor;

34 (3) commits fraud related to the purchase of the theft protection
35 program, registration of the theft protection program warranty, or a
36 claim made under the theft protection program warranty;

37 (4) substantially breaches the warranty holder's duties under the
38 warranty;

39 (5) fails to make required payments on the vehicle such that the vehi-
40 cle is repossessed; or

41 (6) damages the vehicle such that the vehicle is deemed a total loss.

42 § 7957. Required disclosures; reimbursement insurance policy. A
43 reimbursement insurance policy that is required to be issued under this
44 article shall contain:

45 (a) A statement that if a warrantor fails to perform or make payment
46 due under the terms of the theft protection program warranty within
47 sixty days after the warranty holder requests performance or payment
48 pursuant to the terms of the theft protection program warranty, the
49 warranty holder may request performance or payment directly from the
50 warrantor's reimbursement insurance policy insurer.

51 (b) A statement that in the event of cancellation of the warrantor's
52 reimbursement insurance policy, insurance coverage will continue for all
53 ancillary product holders whose theft protection program warranties were
54 issued by the warrantor and reported to the insurer for coverage during
55 the term of the reimbursement insurance policy.

1 § 7958. Theft protection program warranty not insurance. Notwith-
2 standing section three thousand four hundred forty-six of this chapter
3 and any other provision of law, the marketing, sale, offering for sale,
4 issuance, making, proposing to make, and administration of theft
5 protection programs by warrantors and related theft protection program
6 sellers, administrators, and other persons shall be exempt from all
7 provisions of this chapter other than this article.

8 § 7959. Prohibited acts. (a) A warrantor shall not use in its name the
9 words insurance, casualty, surety, mutual or any other words descriptive
10 of the insurance, casualty or surety business; or a name deceptively
11 similar to the name or description of any insurance or surety corpo-
12 ration or to the name of any other warrantor. The word "guaranty" or
13 similar word may be used by a warrantor. This section shall not apply
14 to a company that was using any of the prohibited language in its name
15 prior to the effective date of this article. However, a company using
16 the prohibited language in its name shall include in its theft
17 protection program warranties a statement in substantially the following
18 form: "This agreement is not an insurance contract."

19 (b) A warrantor or its representative shall not in its theft
20 protection program warranties, warranties or literature make, permit or
21 cause to be made any false or misleading statement, or deliberately omit
22 any material statement that would be considered misleading if omitted.

23 (c) A person, such as a bank, savings and loan association, lending
24 institution, manufacturer, or seller of any product, shall not require
25 the purchase of a theft protection program warranty as a condition of a
26 loan or a condition for the sale of any motor vehicle or other property.

27 (d) A warrantor or its representative shall not, directly or indirect-
28 ly, represent in any manner, whether by written solicitation or telemar-
29 keting, a false, deceptive or misleading statement with respect to:

30 (1) such warrantor's affiliation with a motor vehicle manufacturer;

31 (2) such warrantor's possession of information regarding a motor vehi-
32 cle owner's current motor vehicle manufacturer's original equipment
33 warranty;

34 (3) the expiration of a motor vehicle owner's current motor vehicle
35 manufacturer's original equipment warranty; or

36 (4) a requirement that a motor vehicle owner register for a new theft
37 protection program warranty with a warrantor in order to maintain cover-
38 age under the motor vehicle owner's current theft protection program
39 warranty or manufacturer's original equipment warranty.

40 § 7960. Record-keeping requirements. (a) Books and records:

41 (1) A warrantor shall keep accurate accounts, books, and records
42 concerning transactions regulated under this article.

43 (2) The warrantor's accounts, books, and records shall include the
44 following:

45 (A) Copies of each type of theft protection program warranty sold or
46 issued;

47 (B) The name and address of each ancillary product holder to the
48 extent that the name and address have been furnished by the ancillary
49 product holder;

50 (C) A list of the locations where theft protection program warranties
51 are issued, marketed, sold, or offered for sale; and

52 (D) Written claims files which shall contain at least the dates and
53 description of claims related to the theft protection program warran-
54 ties.

55 (3) Except as provided in subsection (b) of this section, the warran-
56 tor shall retain all records required to be maintained by this section

1 for at least one year after the specified period of coverage has
2 expired.

3 (4) The records required under this section may be, but are not
4 required to be, maintained on a computer disk or other record-keeping
5 technology. If the records are maintained in other than hard copy, the
6 records shall be capable of duplication to legible hard copy at the
7 request of the superintendent.

8 (b) A warrantor discontinuing business in this state shall maintain
9 its records until it furnishes the superintendent satisfactory proof
10 that it has discharged all obligations to ancillary product holders in
11 this state.

12 § 7961. Cancellation of reimbursement insurance policy. As applicable,
13 an insurer that issued a reimbursement insurance policy required under
14 this article shall not terminate the policy until a notice of termi-
15 nation has been mailed or delivered to the superintendent. The termi-
16 nation of a reimbursement insurance policy shall not reduce the issuer's
17 responsibility for theft protection program warranties issued by insured
18 warrantors prior to the date of the termination.

19 § 7962. Obligation of reimbursement insurance policy insurers. (a)
20 Insurers issuing reimbursement insurance to warrantors are deemed to
21 have received the premiums for such insurance upon the payment of
22 warrantor fees by consumers for theft protection program warranties
23 issued by such insured warrantors.

24 (b) This article shall not prevent or limit the right of an insurer
25 which issued a reimbursement insurance policy to seek indemnification or
26 subrogation against a warrantor if the insurer pays or is obligated to
27 pay the ancillary product holder sums that the warrantor was obligated
28 to pay pursuant to the provisions of the theft protection program
29 warranty.

30 § 7963. Enforcement provisions. (a) The superintendent may conduct
31 examinations of warrantors, administrators, insurers or other persons to
32 enforce the provisions of this article and protect ancillary product
33 holders in this state. Upon request of the superintendent, the warrant-
34 or shall make available to the superintendent all accounts, books, and
35 records concerning theft protection program warranties sold or issued by
36 the warrantor which are necessary to enable the superintendent to
37 reasonably determine compliance or noncompliance with this article.

38 (b) The superintendent may take action which is necessary or appropri-
39 ate to enforce the provisions of this article and the superintendent's
40 regulations and orders, and to protect ancillary product holders in this
41 state.

42 (1) If a warrantor has violated this article or the superintendent's
43 regulations or orders, the superintendent may issue an order directed to
44 that warrantor to cease and desist from committing violations of this
45 article or the superintendent's regulations or orders; may issue an
46 order prohibiting a warrantor from issuing, selling or offering for sale
47 theft protection program warranties in violation of this article; or may
48 issue an order imposing a civil penalty on that warrantor, or any combi-
49 nation of the foregoing, as applicable.

50 (A) A person aggrieved by an order issued under this paragraph may
51 request a hearing before the superintendent. The hearing request shall
52 be filed with the superintendent within twenty days of the date the
53 superintendent's order is effective.

54 (B) If a hearing is requested, an order issued by the superintendent
55 under this section shall be suspended from the original effective date

1 of the order until completion of the hearing and final decision of the
2 superintendent.

3 (C) At the hearing, the burden shall be on the superintendent to show
4 why the order issued pursuant to this paragraph is justified. The
5 provisions of this section shall apply to a hearing requested under this
6 section.

7 (2) The superintendent may bring an action in any court of competent
8 jurisdiction for an injunction or other appropriate relief to enjoin
9 threatened or existing violations of this article or of the superinten-
10 dent's orders or regulations. An action filed under this paragraph may
11 also seek restitution on behalf of persons aggrieved by a violation of
12 this article or orders or regulations of the superintendent.

13 (3) A person who is found to have violated this article or orders or
14 regulation of the superintendent may be assessed a civil penalty in an
15 amount determined by the superintendent of not more than five hundred
16 dollars per violation and no more than ten thousand dollars in the
17 aggregate for all violations of a similar nature. For purposes of this
18 section, violations shall be of a similar nature if the violation
19 consists of the same or similar course of conduct, action, or practice,
20 irrespective of the number of times the act, conduct, or practice which
21 is determined to be a violation of this article occurred.

22 § 7964. Premium taxes. (a) Warrantor fees collected on theft
23 protection program shall not be subject to premium taxes.

24 (b) Premiums for reimbursement insurance policies shall be subject to
25 applicable premium taxes.

26 § 7965. Severability. If any provision of this article, or the appli-
27 cation of the provision to any person or circumstance, shall be held
28 invalid, the remainder of this article, and the application of the
29 provision to person or circumstances other than those as to which it is
30 held invalid, shall not be affected.

31 § 7966. Applicability. This article applies to all theft protection
32 program warranties issued, on or after January first, two thousand nine-
33 teen. The failure of any person to comply with this article prior to
34 January first, two thousand nineteen, shall not be admissible in any
35 court proceeding, administrative proceeding, arbitration, or alternative
36 dispute resolution proceeding and may not otherwise be used to prove
37 that the action of any person or the affected theft protection program
38 warranty was unlawful or otherwise improper. The adoption of this arti-
39 cle does not imply that a theft protection program warranty was insur-
40 ance prior to January first, two thousand nineteen. The penalty
41 provisions of this article do not apply to any violation of this article
42 relating to or in connection with the sale or failure to disclose in a
43 retail installment theft protection program warranty or lease, or theft
44 protection program warranty or agreement that provides for payments
45 under a theft protection program warranty as long as the sale of such
46 product, theft protection program warranty, or agreement was otherwise
47 disclosed to the purchaser in writing at the time of the purchase or
48 lease. In the event of a violation for which the penalty provisions of
49 this article do not apply, the court shall award actual damages and
50 costs, including reasonable attorney's fees. Nothing in this section
51 shall be construed to require the application of the penalty provisions
52 where this section is not applicable.

53 § 7967. Effect on current business. A person engaged in the theft
54 protection program warranty business, as a warrantor or otherwise, in
55 this state on or before the effective date of this article, who regis-
56 ters as a warrantor pursuant to this article within thirty days after

1 the superintendent makes the registration form available, may continue
2 to engage in business as a warrantor in this state until final agency
3 action is taken by the superintendent regarding the registration and all
4 rights to administrative judicial review have been exhausted or expired.

5 § 2. This act shall take effect January 1, 2019.