

STATE OF NEW YORK

3580

2021-2022 Regular Sessions

IN SENATE

January 30, 2021

Introduced by Sen. BRESLIN -- 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.

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7958. Theft protection program warranty not insurance.

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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

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

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1 limited to section three thousand four hundred forty-six of this chap-
2 ter, theft protection program warranties shall not be subject to any
3 laws, rules, or regulations related to the offering, sale, or issuance
4 of insurance in this state.

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

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

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

10 (3) Motor clubs; and

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

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

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

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

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

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

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

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

1 program warranty obligations incurred by the warrantor under the terms
2 of the insured theft protection program warranties.

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

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

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

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

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

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

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

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

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

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

1 warranties. The reserve account shall be subject to examination and
2 review by the superintendent; and

3 (B) Place in trust with the superintendent a financial security depos-
4 it, having a value of not less than five percent of the gross consider-
5 ation received, less claims paid, on the sale of the theft protection
6 program warranty for all theft protection program warranties issued and
7 in-force, but not less than twenty-five thousand dollars consisting of
8 one of the following:

9 (i) a surety bond issued by an authorized surety;

10 (ii) securities of the type eligible for deposit by authorized insur-
11 ers in this state;

12 (iii) cash;

13 (iv) a letter of credit issued by a qualified financial institution;
14 or

15 (v) another form of security prescribed by regulations issued by the
16 superintendent.

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

20 § 7955. Theft protection program warranty receipt required. (a) Theft
21 protection program warranties shall not be issued in this state unless
22 the warrantor provides a copy of the theft protection program warranty
23 to the warranty holder within a reasonable period of time from the date
24 of purchase. A warranty may comply with this provision by providing the
25 holder with a physical copy of the complete terms and conditions of the
26 theft protection program warranty, by directing the consumer to a
27 website containing a copy of the complete terms and conditions of the
28 theft protection program warranty, or by delivering a copy of the
29 complete terms and conditions of the theft protection program warranty
30 via electronic mail.

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

38 § 7956. Required disclosures. (a) Theft protection program warranties
39 offered, issued, made, proposed to be made, or administered in this
40 state shall be written, printed, or typed in clear, understandable
41 language that is easy to read, and shall disclose the following require-
42 ments, as applicable:

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

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

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

51 (4) the payments or performance to be provided under the warranty
52 including payments for incidental costs, the manner of calculation or
53 determination of payments or performance, and any limitations,
54 exceptions or exclusions. Incidental costs may be reimbursed under the
55 provisions of the warranty in either a fixed amount specified in the

1 warranty or sales agreement or by the use of a formula itemizing specif-
2 ic incidental costs incurred by the warranty holder;

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (4) substantially breaches the warranty holder's duties under the
40 warranty;

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

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

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

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

53 (b) A statement that in the event of cancellation of the warrantor's
54 reimbursement insurance policy, insurance coverage will continue for all
55 ancillary product holders whose theft protection program warranties were

1 issued by the warrantor and reported to the insurer for coverage during
2 the term of the reimbursement insurance policy.

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

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

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

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

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

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

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

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

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

42 § 7960. Record-keeping requirements. (a) Books and records:

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

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

47 (A) Copies of each type of theft protection program warranty sold or
48 issued;

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

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

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

1 (3) Except as provided in subsection (b) of this section, the warrantor shall retain all records required to be maintained by this section for at least one year after the specified period of coverage has expired.

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

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

4 § 7961. Cancellation of reimbursement insurance policy. As applicable, an insurer that issued a reimbursement insurance policy required under this article shall not terminate the policy until a notice of termination has been mailed or delivered to the superintendent. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for theft protection program warranties issued by insured warrantors prior to the date of the termination.

5 § 7962. Obligation of reimbursement insurance policy insurers. (a) Insurers issuing reimbursement insurance to warrantors are deemed to have received the premiums for such insurance upon the payment of warrantor fees by consumers for theft protection program warranties issued by such insured warrantors.

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

7 § 7963. Enforcement provisions. (a) The superintendent may conduct examinations of warrantors, administrators, insurers or other persons to enforce the provisions of this article and protect ancillary product holders in this state. Upon request of the superintendent, the warrantor shall make available to the superintendent all accounts, books, and records concerning theft protection program warranties sold or issued by the warrantor which are necessary to enable the superintendent to reasonably determine compliance or noncompliance with this article.

8 (b) The superintendent may take action which is necessary or appropriate to enforce the provisions of this article and the superintendent's regulations and orders, and to protect ancillary product holders in this state.

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

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

1 (B) If a hearing is requested, an order issued by the superintendent
2 under this section shall be suspended from the original effective date
3 of the order until completion of the hearing and final decision of the
4 superintendent.

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

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

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

24 § 7964. Premium taxes. (a) Warrantor fees collected on theft
25 protection program shall not be subject to premium taxes.

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

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

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

55 § 7967. Effect on current business. A person engaged in the theft
56 protection program warranty business, as a warrantor or otherwise, in

1 this state on or before the effective date of this article, who regis-
2 ters as a warrantor pursuant to this article within thirty days after
3 the superintendent makes the registration form available, may continue
4 to engage in business as a warrantor in this state until final agency
5 action is taken by the superintendent regarding the registration and all
6 rights to administrative judicial review have been exhausted or expired.

7 § 2. This act shall take effect January 1, 2022.