



January 25, 2008

HOUSE BILL No. 1214

DIGEST OF HB 1214 (Updated January 23, 2008 1:42 pm - DI 97)

Citations Affected: IC 27-18; noncode.

Synopsis: Vehicle protection products. Provides that a vehicle protection product warrantor (warrantor) must register with the department of insurance before doing business, and provides for a fee for issuance of a registration. Specifies conditions for sale of a vehicle protection product by a warrantor, including that a warrantor must be insured under a warranty reimbursement insurance policy before a sale may occur. Specifies: (1) conditions for a warranty reimbursement insurance policy; and (2) terms of a vehicle protection product warranty. Provides for sanctions and administrative penalties for failure to comply with these requirements, terms, and conditions.

Effective: July 1, 2008.

GiaQuinta

January 14, 2008, read first time and referred to Committee on Insurance.
January 24, 2008, reported — Do Pass.

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January 25, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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HOUSE BILL No. 1214



A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-18 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2008]:

4 **ARTICLE 18. VEHICLE PROTECTION PRODUCTS**

5 **Chapter 1. Definitions**

6 **Sec. 1. The definitions in this chapter apply throughout this**
7 **article.**

8 **Sec. 2. "Administrator" means a third party other than the**
9 **warrantor that is designated by the warrantor to be responsible for**
10 **the administration of vehicle protection product warranties.**

11 **Sec. 3. "Commissioner" refers to the insurance commissioner**
12 **appointed under IC 27-1-1-2.**

13 **Sec. 4. "Department" refers to the department of insurance**
14 **created by IC 27-1-1-1.**

15 **Sec. 5. "Incidental costs" means the expenses specified in the**
16 **warranty incurred by the warranty holder related to the failure of**
17 **the vehicle protection product to perform as provided in the**

HB 1214—LS 6742/DI 96+



- 1 warranty. Incidental costs include, but are not limited to:
- 2 (1) insurance policy deductibles;
- 3 (2) rental vehicle charges;
- 4 (3) the difference between the:
- 5 (A) actual value of the stolen vehicle at the time of theft;
- 6 and
- 7 (B) cost of a replacement vehicle;
- 8 (4) sales taxes;
- 9 (5) registration fees;
- 10 (6) transaction fees; and
- 11 (7) mechanical inspection fees.

12 Sec. 6. "Vehicle protection product" means a vehicle protection
 13 device, system, or service that:

- 14 (1) is installed on or applied to a vehicle;
- 15 (2) is designed to prevent loss or damage to a vehicle from a
 16 specific cause; and
- 17 (3) includes a written warranty.

18 The term includes, but is not limited to, alarm systems, body part
 19 marking products, steering locks, window etch products, pedal and
 20 ignition locks, fuel and ignition kill switches, and electronic, radio,
 21 and satellite tracking devices.

22 Sec. 7. (a) "Vehicle protection product warrantor" or
 23 "warrantor" means a person that is contractually obligated to the
 24 warrantor holder under the terms of the vehicle protection product
 25 warranty agreement.

26 (b) The term does not include an authorized insurer providing
 27 a warranty reimbursement insurance policy.

28 Sec. 8. "Vehicle protection product warranty" or "warranty"
 29 means a written agreement by a warrantor that provides that if the
 30 vehicle protection product fails to prevent loss or damage to a
 31 vehicle from a specific cause, the warrantor will pay to or on behalf
 32 of the warrantor holder specified incidental costs as a result of the
 33 failure of the vehicle protection product to perform under the
 34 terms of the warranty.

35 Sec. 9. "Warranty holder" means a person that:
 36 (1) purchases a vehicle protection product; or
 37 (2) is a permitted transferee of the vehicle protection product.

38 Sec. 10. "Warranty reimbursement insurance policy" means a
 39 policy of insurance that is issued to the vehicle protection product
 40 warrantor to:

- 41 (1) provide reimbursement to the warrantor for; or
- 42 (2) pay on behalf of the warrantor;

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1 all covered contractual obligations incurred by the warrantor
2 under the terms and conditions of the insured protection product
3 warranties issued by the warrantor.

4 Chapter 2. Applicability

5 Sec. 1. A vehicle protection product may not be sold or offered
6 for sale unless a seller, warrantor, or administrator complies with
7 this article.

8 Sec. 2. A warranty, indemnity agreement, or guarantee that is
9 not provided as a part of a vehicle protection product is not subject
10 to the provisions of this article.

11 Chapter 3. Registration of Vehicle Protection Product
12 Warrantors

13 Sec. 1. Except as provided in section 5 of this chapter, a person
14 may not:

- 15 (1) operate as a warrantor; or
 - 16 (2) represent to the public that the person is a warrantor;
- 17 unless the person is registered with the department under this
18 chapter.

19 Sec. 2. (a) A person who:

- 20 (1) operates as a warrantor; or
 - 21 (2) represents to the public that the person is a warrantor;
- 22 must register with the department by filing an application on a
23 form prescribed by the commissioner.

24 (b) An application filed under subsection (a) must contain the
25 following information:

- 26 (1) The warrantor's name, any fictitious name under which
27 the warrantor does business in Indiana, and the principal
28 office address and telephone number of the warrantor.
- 29 (2) The name and address of the agent of the warrantor for
30 service of process in Indiana, if other than the warrantor.
- 31 (3) The names of the warrantor's executive officer or officers
32 directly responsible for the warrantor's vehicle protection
33 product business.
- 34 (4) The name, address, and telephone number of any
35 administrators designated by the warrantor to be responsible
36 for the administration of vehicle protection product
37 warranties.
- 38 (5) A copy of the warranty reimbursement insurance policy or
39 policies or other financial information required by
40 IC 27-18-4-1.
- 41 (6) A copy of each warranty that the warrantor proposed to
42 use.

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1 (7) A statement indicating under which subdivision of
2 IC 27-18-4-1 the warrantor qualifies to do business as a
3 warrantor.

4 Sec. 3. (a) A registration must be:

5 (1) updated not later than thirty (30) days after any change in
6 the information provided under section 2(b) of this chapter;
7 and

8 (2) renewed on an annual basis.

9 (b) If a warrantor registered under section 2 of this chapter fails
10 to renew the registration by the registration deadline, the
11 department shall give written notice of the failure to renew to the
12 warrantor or agent of the warrantor for service of process. If a
13 renewal is not filed within thirty (30) days after receipt of the
14 notice from the department, the warrantor shall be suspended
15 from being registered by the commissioner.

16 Sec. 4. The department shall establish a fee for the issuance of
17 a registration and a fee for the renewal of registration under this
18 chapter. The fee may not exceed two hundred fifty dollars (\$250)
19 for either the initial registration or the annual renewal of
20 registration. Fees collected under this section shall be deposited in
21 the department of insurance fund established by IC 27-1-3-28.

22 Sec. 5. An administrator or person that sells or solicits a sale of
23 a vehicle protection product but is not a warrantor is not required
24 to register as a warrantor or to be licensed under this title to sell a
25 vehicle protection product.

26 Chapter 4. Financial Responsibility

27 Sec. 1. A vehicle protection product shall not be sold or offered
28 for sale unless the warrantor meets one (1) of the following
29 conditions in order to ensure adequate performance under the
30 warranty:

31 (1) The vehicle protection product warrantor is insured under
32 a warranty reimbursement insurance policy that is issued by
33 an insurer authorized to do business in Indiana and that
34 provides that:

35 (A) the insurer will pay to, or on behalf of, the warrantor
36 one hundred percent (100%) of all sums that the
37 warrantor legally is obligated to pay according to the
38 warrantor's contractual obligations under the warrantor's
39 vehicle protection product warranty;

40 (B) a true and exact copy of the warranty reimbursement
41 insurance policy has been filed with the department by the
42 warrantor; and

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C) the policy contains the provisions required under IC 27-18-5-1.

(2) The:

(A) vehicle protection product warrantor or its parent company maintains a net worth or stockholders' equity of fifty million dollars (\$50,000,000); and

(B) the warrantor provides the commissioner with:

(i) a copy of the warrantor's or the warrantor's parent company's most recent Form 10-K or Form 20-F filed with the federal Securities and Exchange Commission in the previous calendar year; or

(ii) if the warrantor or the warrantor's parent company does not file with the federal Securities and Exchange Commission, a copy of the warrantor's or the warrantor's parent company's audited financial statements that shows a net worth of the warrantor or the warrantor's parent company of at least fifty million dollars (\$50,000,000).

If the Form 10-K, Form 20-F, or audited financial statements of the warrantor's parent company are filed to meet the warrantor's financial stability requirement, the parent company shall agree to guarantee the obligations of the warrantor relating to warranties issued by the warrantor. The financial information filed under this subdivision is confidential as a trade secret of the entity filing the information.

No other financial security requirements or financial standards for warrantors are required under this section.

Chapter 5. Warranty Reimbursement Policy Requirements

Sec. 1. A warranty reimbursement insurance policy may not be issued, sold, or offered for sale unless the policy meets the following conditions:

(1) The policy states that the issuer of the policy will:

(A) reimburse or pay on behalf of the vehicle protection product warrantor all covered sums that the warrantor is legally obligated to pay; or

(B) provide all service that the warrantor is legally obligated to perform according to the warrantor's contractual obligations under the provisions of the insured warranties issued by the warrantor.

(2) The policy states that if payment due under the terms of the warranty is not provided by the warrantor within sixty

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1 (60) days after proof of loss has been filed according to the
2 terms of the warranty by the warranty holder, the warranty
3 holder may file directly with the warranty reimbursement
4 insurance company for reimbursement.

5 (3) The policy provides that:

6 (A) a warranty reimbursement insurance company that
7 insures a warranty shall be considered to have received
8 payment of the premium, if the warranty holder paid for
9 the vehicle protection product; and

10 (B) the insurer's liability under the policy shall not be
11 reduced or relieved by a failure of the warrantor, for any
12 reason, to report the issuance of a warranty to the insurer.

13 (4) The policy has the following provisions regarding
14 cancellation of the policy:

15 (A) The issuer of a reimbursement insurance policy may
16 not cancel the policy until a notice of cancellation in
17 writing has been mailed or delivered to the commissioner
18 and each insured warrantor.

19 (B) The cancellation of a reimbursement insurance policy
20 may not reduce the issuer's responsibility for vehicle
21 protection products sold before the date of cancellation.

22 (C) If an insurer cancels a policy that a warrantor has filed
23 with the commissioner, the warrantor shall do one (1) of
24 the following:

25 (i) File a copy of a new policy with the commissioner
26 before the termination of the prior policy, to ensure that
27 there is no lapse in coverage following the termination of
28 the prior policy.

29 (ii) Discontinue offering warranties as of the termination
30 date of the policy until a new policy becomes effective
31 and is accepted by the commissioner.

32 **Chapter 6. Disclosure to Warranty Holder; Incidental Costs**

33 **Sec. 1. No vehicle protection product warranty may be sold or**
34 **offered unless the warranty does the following:**

35 (1) States:

36 (A) "The obligations of the warrantor to the warranty
37 holder are guaranteed under a warranty reimbursement
38 insurance policy" if the warrantor elects to meet its
39 financial responsibility obligations under IC 27-18-4-1(1);
40 or

41 (B) "The obligations of the warrantor under this warranty
42 are backed by the full faith and credit of the warrantor" if

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- 1 the warrantor elects to meet its financial responsibility
2 obligations under IC 27-18-4-1(2).
- 3 **(2) States that if a warranty holder must make a claim against**
4 **a party other than the warranty reimbursement insurance**
5 **policy holder, the warranty holder may make a direct claim**
6 **against the insurer upon the failure of the warrantor to pay**
7 **any claim or meet any obligation under the terms of the**
8 **warranty within sixty (60) days after proof of loss has been**
9 **filed with the warrantor, if the warrantor elects to meet its**
10 **financial obligations under IC 27-18-4-1(1).**
- 11 **(3) States the name and address of the issuer of the warranty**
12 **reimbursement insurance policy. (This information does not**
13 **need to be preprinted on the warranty form, but may be**
14 **added to or stamped on the warranty, if the warrantor elects**
15 **to meet its financial obligations under IC 27-18-4-1(1).)**
- 16 **(4) Identifies the:**
- 17 **(A) warrantor;**
18 **(B) seller; and**
19 **(C) warranty holder.**
- 20 **(5) Sets forth the total purchase price and the terms under**
21 **which the purchase price is to be paid. (However, the**
22 **purchase price is not required to be preprinted on the vehicle**
23 **protection product warranty and may be negotiated with the**
24 **consumer at the time of sale.)**
- 25 **(6) Sets forth the procedure for making a claim, and includes**
26 **a telephone number of a contact representing the warrantor.**
- 27 **(7) Sets forth the payments or performance to be provided**
28 **under the warranty including:**
- 29 **(A) payment for incidental costs;**
30 **(B) the manner of calculation or determination of payment**
31 **or performance; and**
32 **(C) any limitations, exceptions, or exclusions.**
- 33 **(8) Sets forth all the obligations and duties of the warranty**
34 **holder, including:**
- 35 **(A) the duty to protect against any further damage to the**
36 **vehicle;**
37 **(B) the obligation to notify the warrantor in advance of**
38 **any repair; or**
39 **(C) a similar requirement.**
- 40 **(9) Sets forth any terms, restrictions, or conditions governing**
41 **transferability and cancellation of the warranty, if any.**
- 42 **(10) Contains a disclosure that reads substantially as follows:**

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1 **"This agreement is a product warranty and is not**
2 **insurance."**

3 **Sec. 2. Incidental costs may be reimbursed under the provisions**
4 **of the warranty by:**

5 **(1) a fixed amount specified in the warranty or sales**
6 **agreement; or**

7 **(2) the use of a formula itemizing specific incidental costs**
8 **incurred by the warranty holder.**

9 **Chapter 7. Record Keeping**

10 **Sec. 1. All vehicle protection product warrantors shall keep**
11 **accurate accounts, books, and records concerning transactions**
12 **subject to this article.**

13 **Sec. 2. A vehicle protection product warrantor's accounts, books**
14 **and records must include:**

- 15 **(1) copies of all vehicle protection product warranties;**
- 16 **(2) the name and address of each warranty holder; and**
- 17 **(3) the dates, amounts, and descriptions of all receipts, claims,**
18 **and expenditures.**

19 **Sec. 3. A vehicle protection product warrantor shall retain all**
20 **required accounts, books, and records related to each warranty**
21 **holder for at least two (2) years after the specified period of**
22 **coverage has expired. A warrantor discontinuing business shall**
23 **maintain the records of the business until the warrantor furnishes**
24 **satisfactory proof to the commissioner that the warrantor has**
25 **discharged all obligations to warranty holders in Indiana.**

26 **Sec. 4. Vehicle protection product warrantors shall make all**
27 **accounts, books, and records concerning transactions regulated**
28 **under this article available to the commissioner for examination.**

29 **Chapter 8. Rulemaking**

30 **Sec. 1. The department may adopt rules under IC 4-22-2 to**
31 **implement this article. If rules are adopted, they must address the**
32 **following issues:**

- 33 **(1) Disclosures for the benefit of the warranty holder.**
- 34 **(2) Record keeping.**
- 35 **(3) Procedures for public complaints.**
- 36 **(4) Conditions under which surplus line insurers may be**
37 **rejected for the purpose of underwriting vehicle protection**
38 **product warranty agreements.**

39 **Chapter 9. Prohibited Acts**

40 **Sec. 1. A vehicle protection product warrantor shall not use in**
41 **the name, contracts, or literature of the vehicle protection product**
42 **warrantor the words "insurance", "casualty", "surety", "mutual",**

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1 or other words descriptive of the insurance, casualty, or surety
2 business or deceptively similar to the name or description of an
3 insurance or a surety corporation, or another vehicle protection
4 product warrantor.

5 Sec. 2. A vehicle protection product seller or warrantor may not
6 require that a retail purchaser of a vehicle purchase a vehicle
7 protection product as a condition of financing.

8 Chapter 10. Sanctions and Administrative Penalties

9 Sec. 1. The commissioner may:

- 10 (1) conduct examinations of warrantors, administrators, or
- 11 other persons to enforce this article; and
- 12 (2) take action necessary or appropriate to enforce this article
- 13 and the rules of the department;
- 14 to protect warranty holders.

15 Sec. 2. If a warrantor engages in a pattern or practice of
16 conduct that appears to violate this article and that the
17 commissioner reasonably believes threatens to render the
18 warrantor insolvent or cause irreparable loss or injury to the
19 property or business of a person, the commissioner shall:

- 20 (1) notify the warrantor in writing specifically stating the
- 21 alleged grounds for sanctions; and
- 22 (2) hold a hearing under IC 4-21.5.

23 Sec. 3. If, after a hearing under section 2 of this chapter, the
24 commissioner finds grounds for sanction, the commissioner may
25 issue:

- 26 (1) an order directed to the warrantor to cease and desist
- 27 from engaging in further acts, practices, or transactions that
- 28 are causing the conduct that violates this article;
- 29 (2) an order prohibiting the warrantor from selling or
- 30 offering for sale vehicle protection products in violation of
- 31 this article;
- 32 (3) an order imposing a civil penalty on the warrantor; or
- 33 (4) a combination of orders under subdivisions (1) through
- 34 (3), as applicable.

35 Sec. 4. The decision, determination, or order of the
36 commissioner under section 3 of this chapter is subject to judicial
37 review under IC 4-21.5.

38 Sec. 5. The commissioner may bring a civil action in the name
39 of the state through the attorney general, in a circuit or superior
40 court having jurisdiction in a county in which the warrantor does
41 business or in which the property or business of a person may
42 suffer loss or injury from the warrantor, to restrain the warrantor

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1 from commencing or continuing to violate any of the following:

- 2 (1) This article.
- 3 (2) A rule adopted under this article.
- 4 (3) An order entered under this article.

5 **Sec. 6. In addition to an order issued against a warrantor under**
 6 **section 3 of this chapter, the commissioner may order the**
 7 **warrantor to pay the department a civil penalty in an amount**
 8 **determined by the commissioner of not more than five hundred**
 9 **dollars (\$500) per violation and not more than ten thousand dollars**
 10 **(\$10,000) total for all violations of a similar nature. For purposes**
 11 **of this section, violations are of a similar nature if the violations**
 12 **consist of the same or similar course of conduct, action, or practice,**
 13 **regardless of the number of times the conduct, action, or practice**
 14 **that is determined to be a violation of this article occurred. Civil**
 15 **penalties collected under this section shall be deposited in the**
 16 **department of insurance fund established by IC 27-1-3-28.**

17 **SECTION 2. [EFFECTIVE JULY 1, 2008] (a) As used in this**
 18 **SECTION, "vehicle protection product" has the meaning set forth**
 19 **in IC 27-18-1-6, as added by this act.**

20 **(b) IC 27-18, as added by this act, applies only to a vehicle**
 21 **protection product sold or offered for sale after June 30, 2008.**

22 **SECTION 3. [EFFECTIVE JULY 1, 2008] (a) The definitions in**
 23 **IC 27-18-1, as added by this act, apply throughout this SECTION.**

24 **(b) The failure of a person to comply with IC 27-18, as added by**
 25 **this act, before July 1, 2008, is not admissible in a court**
 26 **proceeding, an administrative proceeding, arbitration, or an**
 27 **alternative dispute resolution proceeding, and may not be used to**
 28 **prove that the action of a person or the affected vehicle protection**
 29 **product was unlawful or otherwise improper.**

30 **(c) The enactment of IC 27-18, as added by this act, does not**
 31 **imply that a vehicle protection product warranty was insurance**
 32 **before July 1, 2008.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1214, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

FRY, Chair

Committee Vote: yeas 7, nays 2.

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