

SECOND REGULAR SESSION

# HOUSE BILL NO. 1977

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES FAITH (Sponsor), MUNZLINGER,  
RICHARD AND WILSON (130) (Co-sponsors).

Read 1st time February 4, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4719L.01I

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### AN ACT

To amend chapter 385, RSMo, by adding thereto thirteen new sections relating to the vehicle protection product act, with penalty provisions and an effective date.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 385, RSMo, is amended by adding thereto thirteen new sections, to  
2 be known as sections 385.400, 385.403, 385.406, 385.409, 385.412, 385.415, 385.418, 385.421,  
3 385.424, 385.427, 385.430, 385.433, and 385.436, to read as follows:

**385.400. Sections 385.400 to 385.436 shall be known and may be cited as the**  
2 **"Missouri Vehicle Protection Product Act".**

**385.403. As used in sections 385.400 to 385.436, the following terms shall mean:**

2 **(1) "Administrator", a third party other than the warrantor who is designated by**  
3 **the warrantor to be responsible for the administration of vehicle protection product**  
4 **warranties;**

5 **(2) "Department", the department of insurance, financial institutions and**  
6 **professional registration;**

7 **(3) "Director", the director of the department of insurance, financial institutions**  
8 **and professional registration;**

9 **(4) "Incidental costs", expenses specified in the warranty incurred by the warranty**  
10 **holder related to the failure of the vehicle protection product to perform as provided in the**  
11 **warranty. Incidental costs may include, without limitation, insurance policy deductibles,**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 rental vehicle charges, the difference between the actual value of the stolen vehicle at the  
13 time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction  
14 fees, and mechanical inspection fees;

15 (5) "Premium", the consideration paid to an insurer for a reimbursement  
16 insurance policy;

17 (6) "Service contract", a contract or agreement for a separately stated  
18 consideration or for a specific duration to perform the repair, replacement, or maintenance  
19 of a motor vehicle or indemnification for repair, replacement, or maintenance, for the  
20 operational or structural failure due to a defect in materials, workmanship, or normal  
21 wear and tear, with or without additional provision for incidental payment of indemnity  
22 under limited circumstances, including but not limited to towing, rental, and emergency  
23 road service, but does not include mechanical breakdown insurance or maintenance  
24 agreements;

25 (7) "Vehicle protection product", a vehicle protection device, system, or service  
26 that:

27 (a) Is installed on or applied to a vehicle;

28 (b) Is designed to prevent loss or damage to a vehicle from a specific cause; and

29 (c) Includes a written warranty.

30

31 For purposes of sections 385.400 to 385.436, the vehicle protection product includes,  
32 without limitation, alarm systems, body part marking products, steering locks, window  
33 etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic,  
34 radio, and satellite tracking devices;

35 (8) "Vehicle protection product warranty" or "warranty", a written agreement by  
36 a warrantor that provides that if the vehicle protection product fails to prevent loss or  
37 damage to a vehicle from a specific cause, then the warranty holder shall be paid specified  
38 incidental costs by the warrantor as a result of the failure of the vehicle protection product  
39 to perform pursuant to the terms of the warranty. Incidental costs may be reimbursed  
40 under the provisions of the warranty in either a fixed amount specified in the warranty or  
41 sales agreement or by the use of a formula itemizing specific incidental costs incurred by  
42 the warranty holder;

43 (9) "Vehicle protection product warrantor" or "warrantor", a person who is  
44 contractually obligated to the warranty holder under the terms of the vehicle protection  
45 product warranty agreement. Warrantor does not include an authorized insurer providing  
46 a warranty reimbursement insurance policy;

47           (10) "Warranty holder", the person who purchases a vehicle protection product  
48 or who is a permitted transferee;

49           (11) "Warranty reimbursement insurance policy", a policy of insurance that is  
50 issued to the vehicle protection product warrantor to provide reimbursement to the  
51 warrantor or to pay on behalf of the warrantor all covered contractual obligations  
52 incurred by the warrantor under the terms and conditions of the insured vehicle protection  
53 product warranties sold by the warrantor.

          385.406. 1. No vehicle protection product may be sold or offered for sale in this  
2 state unless the seller, warrantor, and administrator, if any, comply with the provisions of  
3 sections 385.400 to 385.436.

4           2. Vehicle protection product warrantors and related vehicle protection product  
5 sellers and warranty administrators complying with sections 385.400 to 385.436 are not  
6 required to comply with and are not subject to any other provisions of the state insurance  
7 code.

8           3. Service contract providers who do not sell vehicle protection products are not  
9 subject to the requirements of sections 385.400 to 385.436 and sales of vehicle protection  
10 products are exempt from the requirements of sections 407.1200 to 407.1227, RSMo.

11          4. Warranties, indemnity agreements, and guarantees that are not provided as a  
12 part of a vehicle protection product are not subject to the provisions of sections 385.400 to  
13 385.436.

14          5. Notwithstanding the provisions of sections 408.140 and 408.233, RSMo, a  
15 business which is licensed and regulated under sections 367.100 to 367.215, RSMo, may  
16 offer and sell service contracts, as defined in section 384.403, in conjunction with other  
17 transactions.

          385.409. 1. A person shall not operate as a warrantor or represent to the public  
2 that the person is a warrantor unless the person is registered with the department on a  
3 form prescribed by the director.

4           2. Warrantor registration records shall be filed annually and shall be updated  
5 within thirty days of any change. The registration records shall contain the following  
6 information:

7           (1) The warrantor's name, any fictitious names under which the warrantor does  
8 business in the state, principal office address, and telephone number;

9           (2) The name and address of the warrantor's agent for service of process in the  
10 state if other than the warrantor;

11          (3) The names of the warrantor's executive officer or officers directly responsible  
12 for the warrantor's vehicle protection product business;

13           (4) The name, address, and telephone number of any administrators designated by  
14 the warrantor to be responsible for the administration of vehicle protection product  
15 warranties in this state;

16           (5) A copy of the warranty reimbursement insurance policy or policies or other  
17 financial information required by section 385.412;

18           (6) A copy of each warranty the warrantor proposes to use in this state; and

19           (7) A statement indicating under which provision of section 385.412 the warrantor  
20 qualifies to do business in this state as a warrantor.

21           3. The director may charge each registrant a reasonable fee to offset the cost of  
22 processing the registration and maintaining the records in an amount not to exceed five  
23 hundred dollars annually or as set by regulation. The information in subdivisions (1) and  
24 (2) of subsection 2 of this section shall be made available to the public.

25           4. If a registrant fails to register by the renewal deadline, the director shall give the  
26 registrant written notice of the failure and the registrant shall have thirty days to complete  
27 the renewal of his or her registration before the registrant is suspended from being  
28 registered in this state.

29           5. An administrator or person who sells or solicits a sale of a vehicle protection  
30 product but who is not a warrantor shall not be required to register as a warrantor or be  
31 licensed under the insurance laws of this state to sell vehicle protection products.

          385.412. No vehicle protection product shall be sold or offered for sale in this state  
2 unless the warrantor conforms to subdivision (1) or (2) of this section in order to ensure  
3 adequate performance under the warranty. No other financial security requirements or  
4 financial standards for warrantors shall be required. The vehicle protection product's  
5 warrantor may meet the requirements of this section by:

6           (1) Obtaining a warranty reimbursement insurance policy issued by an insurer  
7 authorized to do business within this state which provides that the insurer shall pay to, or  
8 on behalf of, the warrantor one hundred percent of all sums that the warrantor is legally  
9 obligated to pay according to the warrantor's contractual obligations under the  
10 warrantor's vehicle protection product warranty. The warrantor shall file a true and  
11 correct copy of the warranty reimbursement insurance policy with the director. The policy  
12 shall contain the provisions required in section 385.415; or

13           (2) Maintaining a net worth or stockholder's equity of fifty million dollars. The  
14 warrantor shall provide the director with a copy of the warrantor's or warrantor's parent  
15 company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange  
16 Commission within the last calendar year, or if the warrantor does not file with the  
17 Securities and Exchange Commission, a copy of the warrantor or the warrantor's parent

18 company's audited financial statements that shows a net worth of the warrantor or its  
19 parent company of at least fifty million dollars. If the warrantor's parent company's Form  
20 10-K, Form 20-F, or audited financial statements are filed to meet the warrantor's financial  
21 stability requirement, the parent company shall agree to guarantee the obligations of the  
22 warrantor relating to warranties issued by the warrantor in this state. The financial  
23 information filed under this subdivision shall be confidential as a trade secret of the entity  
24 filing the information and not subject to public disclosure if the entity is not required to  
25 file with the Securities and Exchange Commission.

385.415. No warranty reimbursement insurance policy shall be issued, sold, or  
2 offered for sale in this state unless the policy meets the following conditions:

3 (1) The policy states that the issuer of the policy shall reimburse or pay on behalf  
4 of the vehicle protection product warrantor all covered sums which the warrantor is legally  
5 obligated to pay or shall provide that all service that the warrantor is legally obligated to  
6 perform according to the warrantor's contractual obligations under the provisions of the  
7 insured warranties sold by the warrantor;

8 (2) The policy states that in the event payment due under the terms of the warranty  
9 is not provided by the warrantor within sixty days after proof of loss has been filed  
10 according to the terms of the warranty by the warranty holder, the warranty holder may  
11 file directly with the warranty reimbursement insurance company for reimbursement;

12 (3) The policy provides that a warranty reimbursement insurance company that  
13 insures a warranty shall be deemed to have received payment of the premium if the  
14 warranty holder paid for the vehicle protection product and insurer's liability under the  
15 policy shall not be reduced or relieved by a failure of the warrantor, for any reason, to  
16 report the issuance of a warranty to the insurer; and

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

18 (a) The issuer of a reimbursement insurance policy shall not cancel such policy  
19 until a notice of cancellation in writing has been mailed or delivered to the director and  
20 each insured warrantor sixty days prior to cancellation of the policy;

21 (b) The cancellation of a reimbursement insurance policy shall not reduce the  
22 issuer's responsibility for vehicle protection products sold prior to the date of cancellation;  
23 and

24 (c) In the event an insurer cancels a policy that a warrantor has filed with the  
25 director, the warrantor shall do one of the following:

26 a. File a copy of a new policy with the director before the termination of the prior  
27 policy; or

28           **b. Discontinue offering warranties as of the termination date of the policy until a**  
29 **new policy becomes effective and is accepted by the director.**

**385.418. 1. Every vehicle protection product warranty shall be written in clear,**  
2 **understandable language and shall be printed or typed in an easy-to-read point size and**  
3 **font and shall not be issued, sold, or offered for sale in the state unless the warranty:**

4           **(1) States that the obligations of the warrantor to the warranty holder are**  
5 **guaranteed under a warranty reimbursement insurance policy if the warrantor elects to**  
6 **meet its financial responsibility obligations under subdivision (1) of section 385.412, or**  
7 **states the obligations of the warrantor under this warranty are backed by the full faith and**  
8 **credit of the warrantor if the warrantor elects to meet its financial responsibility under**  
9 **subdivision (2) of section 385.412;**

10           **(2) States that in the event a warranty holder must make a claim against a party**  
11 **other than the warrantor, the warranty holder is entitled to make a direct claim against**  
12 **the warranty reimbursement insurer upon the failure of the warrantor to pay any claim**  
13 **or meet any obligation under the terms of the warranty within sixty days after proof of loss**  
14 **has been filed with the warrantor, if the warrantor elects to meet its financial responsibility**  
15 **obligations under subdivision (1) of section 385.412;**

16           **(3) States the name and address of the insurer of the warranty reimbursement**  
17 **insurance policy, and this information need not be preprinted on the warranty form but**  
18 **may be stamped on the warranty, if the warrantor elects to meet its financial responsibility**  
19 **obligations under subdivision (1) of section 385.412;**

20           **(4) Identifies the warrantor, the seller, and the warranty holder;**

21           **(5) Sets forth the total purchase price of the vehicle protection product and the**  
22 **terms under which it is to be paid; however, the purchase price is not required to be**  
23 **preprinted on the vehicle 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, including a telephone number;**

26           **(7) States the existence of a deductible amount, if any;**

27           **(8) Specifies the payments or performance to be provided under the warranty**  
28 **including payments for incidental costs, the manner of calculation or determination of**  
29 **payments or performance, and any limitations, exceptions, or exclusions;**

30           **(9) Sets forth all of the obligations and duties of the warranty holder such as the**  
31 **duty to protect against further damage to the vehicle, the obligation to notify the warrantor**  
32 **in advance of any repair, or other similar requirements, if any;**

33           **(10) Sets forth any terms, restrictions, or conditions governing transferability of the**  
34 **warranty, if any; and**

35           (11) Contains a disclosure that reads substantially as follows: "This agreement is  
36 a product warranty and is not insurance".

37           2. At the time of sale, the seller or warrantor shall provide to the purchaser:

38           (1) A copy of the vehicle protection product warranty; or

39           (2) A receipt or other written evidence of the purchase of the vehicle protection  
40 product and a copy of the warranty within thirty days of the date of purchase.

          385.421. 1. No vehicle protection product may be sold or offered for sale in this  
2 state unless the vehicle protection product warranty states the terms and conditions  
3 governing the cancellation of the sale and warranty, if any.

4           2. The warrantor may only cancel the warranty if the warranty holder does any of  
5 the following:

6           (1) Fails to pay for the vehicle protection product;

7           (2) Makes a material misrepresentation to the seller or warrantor;

8           (3) Commits fraud; or

9           (4) Substantially breaches the warranty holder's duties under the warranty.

10          3. A warrantor canceling a warranty shall mail written notice of cancellation to the  
11 warranty holder at the last known address of the warranty holder in the warrantor's  
12 records at least thirty days prior to the effective date of the cancellation. The notice shall  
13 state the effective date of the cancellation and the reason for the cancellation.

          385.424. 1. Unless licensed as an insurance company, a vehicle protection product  
2 warrantor shall not use in its name, contracts, or literature the words "insurance",  
3 "casualty", "surety", "mutual", or any other word that is descriptive of the insurance,  
4 casualty, or surety business or that is deceptively similar to the name or description of any  
5 insurance or surety corporation or any other vehicle protection product warrantor. A  
6 warrantor may use the term "guaranty" or a similar word in the warrantor's name. A  
7 warrantor or its representative shall not in its vehicle protection product warranties or  
8 literature make, permit, or cause to be made any false or misleading statement, or  
9 deliberately omit any material statement that would be considered misleading if omitted,  
10 in connection with the sale, offer to sell, or advertisement of a vehicle protection product  
11 warranty.

12          2. A vehicle protection product seller or warrantor shall not require as a condition  
13 of financing that a retail purchaser of a motor vehicle purchase a vehicle protection  
14 product.

          385.427. 1. All vehicle protection product warrantors shall keep accurate accounts,  
2 books, and records concerning transactions regulated under sections 385.400 to 385.436.

3           **2. A vehicle protection product warrantor's accounts, books, and records shall**  
4 **include:**

5           **(1) Copies of all vehicle protection product warranties;**

6           **(2) The name and address of each warranty holder; and**

7           **(3) Claims files which shall contain at least the dates, amounts, and descriptions of**  
8 **all receipts, claims, and expenditures.**

9           **3. A vehicle protection product warrantor shall retain all required accounts, books,**  
10 **and records pertaining to each warranty holder for at least three years after the specified**  
11 **period of coverage has expired. A warrantor discontinuing business in the state shall**  
12 **maintain its records until it furnishes the director satisfactory proof that it has discharged**  
13 **all obligations to warranty holders in this state.**

14           **4. Vehicle protection product warrantors shall make all accounts, books, and**  
15 **records concerning transactions regulated under sections 385.400 to 385.436 available to**  
16 **the director for examination.**

**385.430. 1. The director may conduct examinations of warrantors, administrators,**  
2 **or other persons to enforce sections 385.400 to 385.436 and protect warranty holders in this**  
3 **state. Upon request of the director, a warrantor shall make available to the director all**  
4 **accounts, books, and records concerning vehicle protection products provided by the**  
5 **warrantor that are necessary to enable the director to reasonably determine compliance**  
6 **or noncompliance with sections 385.400 to 385.436.**

7           **2. If the director determines that a person has engaged, is engaging, or is about to**  
8 **engage in a violation of sections 385.400 to 385.436 or a rule adopted or order issued**  
9 **thereunder, or a person has materially aided, is materially aiding, or is about to materially**  
10 **aid an act, practice, omission, or course of business constituting a violation of sections**  
11 **385.400 to 385.436 or a rule adopted or order issued thereunder, the director may issue**  
12 **such administrative orders as authorized under section 374.046, RSMo. A violation of**  
13 **these sections is a level two violation under section 374.049, RSMo.**

14           **3. If the director believes that a person has engaged, is engaging, or is about to**  
15 **engage in a violation of sections 385.400 to 385.436 or a rule adopted or order issued**  
16 **thereunder, or that a person has materially aided, is materially aiding, or is about to**  
17 **materially aid an act, practice, omission, or course of business constituting a violation of**  
18 **sections 385.400 to 385.436 or a rule adopted or order issued thereunder, the director may**  
19 **maintain a civil action for relief authorized under section 374.048, RSMo. A violation of**  
20 **these sections is a level two violation under section 374.049, RSMo.**

**385.433. The director may promulgate rules and regulations to implement the**  
2 **provisions of sections 385.400 to 385.436. Such rules and regulations shall include**



3 disclosures for the benefit of the warranty holder, record keeping, and procedures for  
4 public complaints. Any rule or portion of a rule, as that term is defined in section 536.010,  
5 RSMo, that is created under the authority delegated in this section shall become effective  
6 only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and,  
7 if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are  
8 nonseverable and if any of the powers vested with the general assembly pursuant to  
9 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule  
10 are subsequently held unconstitutional, then the grant of rulemaking authority and any  
11 rule proposed or adopted after August 28, 2008, shall be invalid and void.

385.436. Sections 385.400 to 385.436 applies to all vehicle protection products sold  
2 or offered for sale on or after January 1, 2009. The failure of any person to comply with  
3 sections 385.400 to 385.436 prior to January 1, 2009, shall not be admissible in any court  
4 proceeding, administrative proceeding, arbitration, or alternative dispute resolution  
5 proceeding and may not otherwise be used to prove that the action of any person or the  
6 affected vehicle protection product was unlawful or otherwise improper. The adoption of  
7 sections 385.400 to 385.436 does not imply that a vehicle protection product warranty was  
8 insurance prior to January 1, 2009. The penalty provision of sections 385.400 to 385.436  
9 do not apply to any violation of sections 385.400 to 385.436 relating to or in connection with  
10 the sale or failure to disclose in a retail installment contract or lease, or contract or  
11 agreement that provides for payments under a vehicle protection product warranty so long  
12 as the sale of such product, contract, or agreement was otherwise disclosed to the  
13 purchaser in writing at the time of the purchase or lease.

Section B. The provisions of sections 385.400 to 385.436 are severable. If any part of  
2 sections 385.400 to 385.436 is declared invalid or unconstitutional, it is the intent of the  
3 legislature that the remaining portions of sections 385.400 to 385.436 shall remain and be in full  
4 force and effect.

Section C. The enactment of sections 385.400 to 385.436 shall become effective on  
2 January 1, 2009.

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