

House Bill 3386

Sponsored by COMMITTEE ON BUSINESS AND LABOR

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires person offering for sale or selling vehicle protection product with warranty to make certain disclosures to consumer. Requires warrantor to indemnify seller for obligations under warranty.

Requires warrantor to register with Director of Department of Consumer and Business Services and obtain reimbursement insurance for warranty issued. Specifies requirements for reimbursement insurance policy.

Permits warrantor to designate person as administrator for warranties and provides that administrator is liable for violation of Act to same extent as warrantor is liable. Requires warrantor to maintain accurate accounts and make records available to director for inspection.

Specifies conditions under which warrantor may cancel warranty before warranty expires. Prohibits warrantor from taking certain actions and using certain terms in warrantor's name.

Permits Attorney General to enforce violation of Act as unlawful trade practice at director's request.

Specifies that Act becomes operative on January 1, 2008.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to vehicle protection products; creating new provisions; amending ORS 646.608; and de-
3 claring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. As used in sections 1 to 14 of this 2007 Act:**

6 (1) **"Consumer" means a person in this state who purchases a vehicle protection product**
7 **or who possesses a vehicle protection product and is entitled to enforce a warranty for the**
8 **product by reason of the person's possession.**

9 (2) **"Reimbursement insurance policy" means an insurance policy issued to a warrantor**
10 **that:**

11 (a) **Reimburses the warrantor for expenses or other obligations the warrantor incurs in**
12 **complying with the terms and conditions in a vehicle protection product warranty; or**

13 (b) **Pays on a warrantor's behalf all obligations due under the terms and conditions of the**
14 **warrantor's vehicle protection product warranty.**

15 (3) **"Reimbursement insurer" means an insurer that issues a reimbursement insurance**
16 **policy.**

17 (4) **"Seller" means a person engaged in the business of offering a vehicle protection**
18 **product for sale to a consumer.**

19 (5) **"Vehicle identification number" means a number or mark a manufacturer uniquely**
20 **associates with a vehicle for the purpose of identifying the vehicle.**

21 (6) **"Vehicle protection product" means a product, system or service that is designed to**
22 **prevent a particular type of loss or damage to a vehicle, and that is:**

23 (a) **Provided as a product or system that is installed in or applied to a vehicle or provided**
24 **as a service for a specific vehicle; and**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) Accompanied by a written warranty.

2 (7) "Warrantor" means a person named under the terms of a vehicle protection product
3 warranty as the contractual obligor to the consumer.

4 **SECTION 2.** (1) Sections 1 to 14 of this 2007 Act apply to vehicle protection product
5 warranties that:

6 (a) Accompany vehicle protection products delivered to consumers in this state; and

7 (b) Require the warrantor, to the extent set forth in the warranty, to pay to the con-
8 sumer expenses related to the loss of or damage to the vehicle.

9 (2) A vehicle protection product warranty subject to sections 1 to 14 of this 2007 Act is
10 not a service contract and is not subject to the provisions of ORS 646.263 to 646.285. A sell-
11 er's or warrantor's selling or providing a warranty for a vehicle protection product in com-
12 pliance with sections 1 to 14 of this 2007 Act does not subject the seller or warrantor to ORS
13 646.263 to 646.285.

14 (3) A vehicle protection product warranty subject to sections 1 to 14 of this 2007 Act is
15 not insurance and is not subject to the provisions of the Insurance Code. A seller's or
16 warrantor's selling or providing a warranty for a vehicle protection product in compliance
17 with sections 1 to 14 of this 2007 Act does not subject the seller or warrantor to the Insur-
18 ance Code.

19 (4) If a vehicle protection product feature requires a seller or another person to apply a
20 serial number, identification number or other mark to a vehicle or vehicle component, the
21 seller or other person shall incorporate the correct vehicle identification number into or
22 along with the serial number, identification number or other mark. For purposes of this
23 subsection, the correct vehicle identification number is:

24 (a) The vehicle identification number that the vehicle's manufacturer assigned to the
25 vehicle before the vehicle's initial sale to a consumer; and

26 (b) The vehicle identification number used to identify the vehicle on a registration docu-
27 ment filed with the Department of Transportation.

28 **SECTION 3.** (1) A person may not offer for sale or sell a vehicle protection product that
29 includes a vehicle protection product warranty unless, at the time of the sale, the seller or
30 a warrantor provides to the consumer:

31 (a) A copy of the vehicle protection product warranty for the vehicle protection product;
32 or

33 (b) A receipt for, or other written evidence of, the consumer's purchase of the vehicle
34 protection product.

35 (2) A warrantor who complies with subsection (1)(b) of this section shall provide to the
36 consumer a copy of the vehicle protection product warranty within 30 days after the date
37 of purchase.

38 (3) The vehicle protection product warranty must:

39 (a) Be written and printed or typed in clear, understandable and easy-to-read language;

40 (b) List, either preprinted on the warranty document or, if negotiated at the time of sale,
41 in a separate addition to the warranty document, the purchase price and terms of sale for
42 the vehicle protection product;

43 (c) List the name, address, phone number and other available contact information for the
44 warrantor;

45 (d) List, either preprinted on the warranty document or in a separate addition to the

1 warranty document at the time of sale, the name of and contact information for the admin-
 2 istrator for the vehicle protection product warranty, if any, the name of the seller and the
 3 name of the consumer, if the consumer has provided the consumer's name to the warrantor;

4 (e) Specify the nature or contents of the vehicle protection product or the services in-
 5 cluded with the product and any limitations, exceptions or exclusions;

6 (f) Describe the procedure for making a claim under the warranty and provide an address
 7 and telephone number for submitting claims;

8 (g) Specify any restrictions governing the transferability of the vehicle protection prod-
 9 uct or the vehicle protection product warranty;

10 (h) Disclose the items for which the warrantor will pay incidental expenses, along with
 11 any formula the warrantor uses to calculate the expenses, or provide for a fixed sum for
 12 payment of incidental expenses;

13 (i) State the consumer's duties, including any duty to protect against further damage to
 14 the vehicle and any requirement to follow the warranty's instructions;

15 (j) State that a reimbursement insurance policy guarantees the obligations to the con-
 16 sumer set forth in the warranty;

17 (k) List the name and address and other available contact information for the re-
 18 imbursement insurer and state that if the warrantor does not provide a covered service
 19 within 60 days after the date the consumer provides proof of loss or damage, the consumer
 20 may apply directly to the reimbursement insurer for reimbursement;

21 (L) List the name, mailing address and telephone number for the Department of Con-
 22 sumer and Business Services and state that the consumer may address unresolved com-
 23 plaints concerning a warrantor or questions concerning the regulation of a warrantor to the
 24 department; and

25 (m) State that the vehicle protection product warranty is a product warranty and not
 26 insurance.

27 **SECTION 4.** A warrantor shall indemnify a seller who pays or is obligated to pay a con-
 28 sumer any money the warrantor is obligated to pay under the terms of a vehicle protection
 29 product warranty, including damages, reasonable attorney fees and costs.

30 **SECTION 5.** (1) A person may not conduct business as a warrantor in this state or make
 31 a representation that the person is a warrantor in this state unless the person registers in
 32 writing with the Director of the Department of Consumer and Business Services in a form
 33 the director prescribes by rule. For purposes of this section, a person who offers for sale or
 34 sells a vehicle protection product but does not offer a warranty with the product or is not
 35 contractually obligated to any performance under the terms and conditions of a warranty
 36 that accompanies the product is not a warrantor subject to this section.

37 (2) A registration form submitted to the director under this section shall contain the
 38 following information:

39 (a) The warrantor's name and telephone number and the address of the warrantor's
 40 principal office;

41 (b) The name, address and telephone number of the warrantor's agent for the service of
 42 process in this state if the agent is not the warrantor;

43 (c) The identities of the warrantor's executive officer and officers directly responsible for
 44 the warrantor's business operations related to vehicle protection product warranties;

45 (d) The name, address and telephone number of any person the warrantor designates to

1 administer the warrantor's vehicle protection product warranties in this state;

2 (e) A copy of each warranty form the warrantor proposes to use in this state; and

3 (f) A copy of a warranty reimbursement insurance policy the warrantor intends to use
4 to demonstrate the warrantor's financial responsibility in accordance with section 6 of this
5 2007 Act.

6 (3) A warrantor shall report any changes to the information provided in this section to
7 the director not later than 30 days after the information has changed.

8 (4) A registration under this section expires on December 31 of each year. The director
9 by rule shall prescribe a procedure for renewing a registration under this section.

10 (5) A warrantor shall pay a fee in an amount the director sets by rule for each regis-
11 tration or renewal under this section. The fee must be in an amount that, when aggregated
12 with all other fees collected under this section, is sufficient to pay the expenses of adminis-
13 tering and enforcing sections 1 to 14 of this 2007 Act.

14 **SECTION 6.** (1) A warrantor shall obtain a reimbursement insurance policy from a
15 qualified reimbursement insurer for each vehicle protection product warranty a warrantor
16 issues. A qualified reimbursement insurer is:

17 (a) An insurer authorized to transact insurance in this state under a certificate of au-
18 thority issued in accordance with the Insurance Code; or

19 (b) A surplus lines licensee subject to the Insurance Code.

20 (2) The Department of Consumer and Business Services may not require any other fi-
21 nancial security requirements or financial standards for warrantors.

22 **SECTION 7.** (1) A reimbursement insurance policy for a warranty issued in accordance
23 with sections 1 to 14 of this 2007 Act shall have the following provisions:

24 (a) The reimbursement insurer that issues the policy will reimburse or pay on behalf of
25 the warrantor any amounts the warrantor is legally obligated to pay or will provide any
26 service that the warrantor is legally obligated to perform under the vehicle protection prod-
27 uct warranty.

28 (b) If the warrantor does not pay or provide to the consumer the amounts or the service
29 for which the warrantor is legally obligated within 60 days after the date the consumer pro-
30 vides proof of loss or damage, the reimbursement insurer will pay the amount or provide the
31 service directly to the consumer.

32 (c) A reimbursement insurer may not defend against a consumer's claim for payment of
33 an amount or performance of a service described in paragraph (a) of this subsection on the
34 basis that the consumer did not pay the premium for the reimbursement insurance policy.
35 For the purposes of any claim a consumer makes under the policy, the consumer's payment
36 for the vehicle protection product shall constitute payment of the premium for the re-
37 imbursement insurance policy.

38 (d) The warrantor to whom a reimbursement insurer issued a reimbursement insurance
39 policy is an agent or representative of the reimbursement insurer for the purpose of obli-
40 gating the reimbursement insurer to the consumer under the terms and conditions of the
41 reimbursement insurance policy.

42 (2) A reimbursement insurer may not cancel a reimbursement insurance policy until the
43 insurer delivers to the warrantor a written notice of cancellation. The warrantor shall pro-
44 vide the Director of the Department of Consumer and Business Services with a copy of the
45 cancellation notice not later than 15 business days after the date the notice is delivered to

1 the warrantor.

2 (3) A reimbursement insurer that cancels a reimbursement insurance policy does not
 3 reduce the reimbursement insurer's responsibility for vehicle protection products that the
 4 warrantor issued and insured under the policy before the cancellation date.

5 (4) A warrantor that receives a cancellation notice for a reimbursement insurance policy
 6 shall:

7 (a) Obtain new reimbursement insurance from a reimbursement insurer qualified in ac-
 8 cordance with section 6 of this 2007 Act and file proof with the Director of the Department
 9 of Consumer and Business Services that the warrantor has obtained new insurance; or

10 (b) Discontinue offering vehicle protection product warranties as of the date of cancel-
 11 lation and until the warrantor obtains new reimbursement insurance from a reimbursement
 12 insurer qualified in accordance with section 6 of this 2007 Act.

13 **SECTION 8.** A warrantor may designate a person as an administrator for the warrantor's
 14 vehicle protection product warranties under sections 1 to 14 of this 2007 Act. The adminis-
 15 trator is liable for the administrator's violation of sections 1 to 14 of this 2007 Act to the
 16 same extent that the warrantor is liable for violations of sections 1 to 14 of this 2007 Act.

17 **SECTION 9.** (1) A warrantor shall maintain accurate accounts, books and other records
 18 for transactions regulated under sections 1 to 14 of this 2007 Act and shall make the records
 19 available to the Director of the Department of Consumer and Business Services for in-
 20 spection during normal business hours. The warrantor's records shall include:

21 (a) A copy of the warranty for each unique form of vehicle protection product sold;

22 (b) The name and address of each consumer;

23 (c) A list of the locations where the warrantor's vehicle protection products are offered
 24 for sale or sold; and

25 (d) Dates, descriptions, amounts and receipts for payments to consumers for claims re-
 26 lated to the vehicle protection product warranty or any expenditures related to providing the
 27 vehicle protection product warranty.

28 (2) Except as provided in subsection (4) of this section, a warrantor shall retain all re-
 29 cords required under subsection (1) of this section for at least two years after the period of
 30 coverage specified in the vehicle protection product warranty has expired.

31 (3) A warrantor may maintain records required under this section in an electronic form.
 32 If the warrantor maintains a record in a format other than paper, the warrantor shall re-
 33 format the record into a legible paper copy at the director's request.

34 (4) A warrantor that no longer conducts business in this state shall maintain the
 35 warrantor's records until 10 years after the date of the last sale of a vehicle protection
 36 product that includes the warrantor's warranty.

37 **SECTION 10.** (1) A vehicle protection product warranty shall state the terms, restrictions
 38 or conditions, if any, governing the warrantor's cancellation of the warranty before the
 39 warranty's expiration date. A warrantor may cancel a vehicle protection product warranty
 40 only if:

41 (a) The consumer fails to pay for the vehicle protection product;

42 (b) The consumer makes a material misrepresentation to or attempts to defraud the
 43 warrantor; or

44 (c) The consumer breaches the consumer's duties under the warranty.

45 (2) If a warrantor intends to cancel a vehicle protection product warranty, the

1 warrantor, at least 30 days before canceling the warranty, shall mail a written cancellation
 2 notice to the consumer at the most recent address the warrantor has for the consumer in
 3 the warrantor's records. The notice shall state the effective date of the cancellation and the
 4 reason for the cancellation.

5 **SECTION 11.** (1) A warrantor may not use in the warrantor's name:

6 (a) "Casualty," "surety," "insurance," "mutual" or any other word descriptive of the
 7 casualty, insurance or surety business; or

8 (b) A name deceptively similar to the name or description of any insurance company,
 9 surety corporation or other warrantor.

10 (2) A warrantor may use the word "guaranty" or a similar word in the warrantor's name.

11 **SECTION 12.** (1) A warrantor or a warrantor's representative, in the warrantor's vehicle
 12 protection product warranty or in an advertisement or literature for the warranty, may not:

13 (a) Make, permit or cause to be made any false or misleading statement; or

14 (b) Intentionally omit a material statement that would be considered misleading if omit-
 15 ted.

16 (2) A seller or warrantor may not require, as a condition of sale or financing, that a re-
 17 tail purchaser of a motor vehicle purchase a vehicle protection product that is not installed
 18 on the motor vehicle at the time of sale.

19 **SECTION 13.** (1) The Director of the Department of Consumer and Business Services
 20 may adopt rules to implement and enforce sections 1 to 14 of this 2007 Act.

21 (2) The director may investigate warrantors or other persons as reasonably necessary to
 22 enforce sections 1 to 14 of this 2007 Act and to protect consumers in this state.

23 **SECTION 14.** The Attorney General, at the request of the Director of the Department
 24 of Consumer and Business Services, may enforce violations of sections 1 to 14 of this 2007
 25 Act under ORS 646.608.

26 **SECTION 15.** ORS 646.608 is amended to read:

27 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
 28 ness, vocation or occupation the person does any of the following:

29 (a) Passes off real estate, goods or services as those of another.

30 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
 31 proval, or certification of real estate, goods or services.

32 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
 33 ciation with, or certification by, another.

34 (d) Uses deceptive representations or designations of geographic origin in connection with real
 35 estate, goods or services.

36 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
 37 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
 38 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

39 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
 40 reconditioned, reclaimed, used or secondhand.

41 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
 42 or that real estate or goods are of a particular style or model, if they are of another.

43 (h) Disparages the real estate, goods, services, property or business of a customer or another
 44 by false or misleading representations of fact.

45 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or

1 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
 2 a limitation of quantity.

3 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
 4 or amounts of price reductions.

5 (k) Makes false or misleading representations concerning credit availability or the nature of the
 6 transaction or obligation incurred.

7 (L) Makes false or misleading representations relating to commissions or other compensation to
 8 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
 9 stration purposes or in exchange for submitting names of potential customers.

10 (m) Performs service on or dismantles any goods or real estate when not authorized by the
 11 owner or apparent owner thereof.

12 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
 13 vides the information required under ORS 646.611.

14 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
 15 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
 16 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
 17 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
 18 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
 19 tomer enters into the transaction.

20 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
 21 cize a product, business or service.

22 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
 23 not to deliver them as promised.

24 (r) Organizes or induces or attempts to induce membership in a pyramid club.

25 (s) Makes false or misleading representations of fact concerning the offering price of, or the
 26 person's cost for real estate, goods or services.

27 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
 28 known material defect or material nonconformity.

29 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

30 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
 31 ORS 698.640, whether in a commercial or noncommercial situation.

32 (w) Manufactures mercury fever thermometers.

33 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
 34 law, or is:

35 (A) Prescribed by a person licensed under ORS chapter 677; and

36 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 37 on the proper cleanup of mercury should breakage occur.

38 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
 39 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 40 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 41 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 42 graph, "thermostat" means a device commonly used to sense and, through electrical communication
 43 with heating, cooling or ventilation equipment, control room temperature.

44 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
 45 mercury light switches.

- 1 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 2 (bb) Violates ORS 646.850 (1).
- 3 (cc) Violates any requirement of ORS 646.661 to 646.686.
- 4 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 5 (ee) Violates ORS 646.883 or 646.885.
- 6 (ff) Violates any provision of ORS 646.195.
- 7 (gg) Violates ORS 646.569.
- 8 (hh) Violates the provisions of ORS 646.859.
- 9 (ii) Violates ORS 759.290.
- 10 (jj) Violates ORS 646.872.
- 11 (kk) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 12 (LL) Violates ORS 646.563.
- 13 (mm) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 14 (nn) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 15 thereto.
- 16 (oo) Violates ORS 646.892 or 646.894.
- 17 (pp) Violates any provision of ORS 646.249 to 646.259.
- 18 (qq) Violates ORS 646.384.
- 19 (rr) Violates ORS 646.871.
- 20 (ss) Violates ORS 822.046.
- 21 (tt) Violates ORS 128.001.
- 22 (uu) Violates ORS 646.649 (2) to (4).
- 23 (vv) Violates ORS 646.877 (2) to (4).
- 24 (ww) Violates ORS 87.686.
- 25 (xx) Violates ORS 646.651.
- 26 (yy) Violates ORS 646.879.
- 27 (zz) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.
- 28 (aaa) Violates ORS 180.440 (1).
- 29 (bbb) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 30 (ccc) Violates ORS 87.007 (2) or (3).
- 31 (ddd) Violates ORS 92.405 (1), (2) or (3).
- 32 (eee) Engages in an unlawful practice under ORS 646.648.

33 **(fff) Violates sections 1 to 14 of this 2007 Act.**

34 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
35 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

36 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
37 need not prove competition between the parties or actual confusion or misunderstanding.

38 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
39 torney General has first established a rule in accordance with the provisions of ORS chapter 183
40 declaring the conduct to be unfair or deceptive in trade or commerce.

41 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
42 under subsection (1)(aaa) of this section by a person other than a prosecuting attorney, relief is
43 limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

44 **SECTION 16. (1) Sections 1 to 14 of this 2007 Act and the amendments to ORS 646.608**
45 **by section 15 of this 2007 Act apply to persons conducting business in this state as**

1 warrantors on or after the operative date of this 2007 Act.

2 (2) Sections 1 to 14 of this 2007 Act and the amendments to ORS 646.608 by section 15 of
3 this 2007 Act apply to insurers that offer reimbursement insurance policies in this state on
4 or after the operative date of this 2007 Act.

5 (3) Sections 1 to 14 of this 2007 Act and the amendments to ORS 646.608 by section 15 of
6 this 2007 Act apply to transactions for vehicle protection products conducted on or after the
7 operative date of this 2007 Act.

8 SECTION 17. (1) Sections 1 to 14 of this 2007 Act and the amendments to ORS 646.608
9 by section 15 of this 2007 Act become operative on January 1, 2008.

10 (2) The Director of the Department of Consumer and Business Services may take any
11 action before the operative date specified in this section that is necessary to enable the di-
12 rector to exercise, on and after the operative date of this 2007 Act, all the duties, functions
13 and powers conferred on the director by sections 1 to 14 of this 2007 Act and the amendments
14 to ORS 646.608 by section 15 of this 2007 Act.

15 SECTION 18. This 2007 Act being necessary for the immediate preservation of the public
16 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
17 on its passage.

18