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**HOUSE BILL NO. 1541**

Offered January 18, 2008

*A BILL to amend and reenact §§ 38.2-100 and 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 33.1, consisting of sections numbered 59.1-434.1 through 59.1-434.12, relating to vehicle protection product warranties; penalty.*

Patron—Hugo

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-100 and 59.1-200 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 33.1, consisting of sections numbered 59.1-434.1 through 59.1-434.12, as follows:**

§ 38.2-100. Definitions.

As used in this title:

"Alien company" means a company incorporated or organized under the laws of any country other than the United States.

"Commission" means the State Corporation Commission.

"Commissioner" or "Commissioner of Insurance" means the administrative or executive officer of the division or bureau of the Commission established to administer the insurance laws of this Commonwealth.

"Company" means any association, aggregate of individuals, business, corporation, individual, joint-stock company, Lloyds type of organization, organization, partnership, receiver, reciprocal or interinsurance exchange, trustee or society.

"Domestic company" means a company incorporated or organized under the laws of this Commonwealth.

"Foreign company" means a company incorporated or organized under the laws of the United States, or of any state other than this Commonwealth.

"Health services plan" means any arrangement for offering or administering health services or similar or related services by a corporation licensed under Chapter 42 (§ 38.2-4200 et seq.) of this title.

"Insurance" means the business of transferring risk by contract wherein a person, for a consideration, undertakes (i) to indemnify another person, (ii) to pay or provide a specified or ascertainable amount of money, or (iii) to provide a benefit or service upon the occurrence of a determinable risk contingency. Without limiting the foregoing, "insurance" shall include (i) each of the classifications of insurance set forth in Article 2 (§ 38.2-101 et seq.) of this chapter and (ii) the issuance of group and individual contracts, certificates, or evidences of coverage by any health services plan as provided for in Chapter 42 (§ 38.2-4200 et seq.) of this title, health maintenance organization as provided for in Chapter 43 (§ 38.2-4300 et seq.) of this title, legal services organization or legal services plan as provided for in Chapter 44 (§ 38.2-4400 et seq.) of this title, dental or optometric services plan as provided for in Chapter 45 (§ 38.2-4500 et seq.) of this title, and dental plan organization as provided for in Chapter 61 (§ 38.2-6100 et seq.) of this title. "Insurance" shall not include any activity involving (i) a vehicle protection product warranty that is subject to regulation pursuant to Chapter 33.1 (§ 59.1-434.1 et seq.) of Title 59.1, (ii) an extended service contract that is subject to regulation pursuant to Chapter 34 (§ 59.1-435 et seq.) of Title 59.1, or (iii) a warranty made by a manufacturer, seller, lessor, or builder of a product or service.

"Insurance company" means any company engaged in the business of making contracts of insurance.

"Insurance transaction," "insurance business," and "business of insurance" include solicitation, negotiations preliminary to execution, execution of an insurance contract, and the transaction of matters subsequent to execution of the contract and arising out of it.

"Insurer" means an insurance company.

"Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendment of 1965, as amended.

"Person" means any association, aggregate of individuals, business, company, corporation, individual, joint-stock company, Lloyds type of organization, organization, partnership, receiver, reciprocal or interinsurance exchange, trustee or society.

"Rate" or "rates" means any rate of premium, policy fee, membership fee or any other charge made by an insurer for or in connection with a contract or policy of insurance. The terms "rate" or "rates" shall not include a membership fee paid to become a member of an organization or association, one of

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59 the benefits of which is the purchasing of insurance coverage.

60 "Rate service organization" means any organization or person, other than a joint underwriting  
61 association under § 38.2-1915 or any employee of an insurer including those insurers under common  
62 control or management, who assists insurers in ratemaking or filing by:

63 (a) Collecting, compiling, and furnishing loss or expense statistics;

64 (b) Recommending, making or filing rates or supplementary rate information; or

65 (c) Advising about rate questions, except as an attorney giving legal advice.

66 "State" means any commonwealth, state, territory, district or insular possession of the United States.

67 "Surplus to policyholders" means the excess of total admitted assets over the liabilities of an insurer,  
68 and shall be the sum of all capital and surplus accounts, including any voluntary reserves, minus any  
69 impairment of all capital and surplus accounts.

70 Without otherwise limiting the meaning of or defining the following terms, "insurance contracts" or  
71 "insurance policies" shall include contracts of fidelity, indemnity, guaranty and suretyship.

72 § 59.1-200. Prohibited practices.

73 A. The following fraudulent acts or practices committed by a supplier in connection with a consumer  
74 transaction are hereby declared unlawful:

75 1. Misrepresenting goods or services as those of another;

76 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

77 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or  
78 services, with another;

79 4. Misrepresenting geographic origin in connection with goods or services;

80 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or  
81 benefits;

82 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

83 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,  
84 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first  
85 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods  
86 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"  
87 irregulars, imperfects or "not first class";

88 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell  
89 at the price or upon the terms advertised.

90 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or  
91 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms  
92 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph  
93 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such  
94 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or  
95 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement  
96 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

97 9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts  
98 of price reductions;

99 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts  
100 installed;

101 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice  
102 or bill for merchandise or services previously ordered;

103 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"  
104 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the  
105 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in  
106 manufacturing the goods or services advertised or offered for sale;

107 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of  
108 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,  
109 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,  
110 or under federal statutes or regulations;

111 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection  
112 with a consumer transaction;

113 15. Violating any provision of § 3.1-796.78, 3.1-796.79, or 3.1-796.82, relating to the sale of certain  
114 animals by pet dealers which is described in such sections, is a violation of this chapter;

115 16. Failing to disclose all conditions, charges, or fees relating to:

116 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign  
117 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be  
118 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does  
119 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
120 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not

less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this title;

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.) of this title;

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.) of this title;

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.) of this title;

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et seq.) of this title;

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.) of this title;

26. Violating any provision of § 3.1-949.1, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this title;

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of this title;

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.) of this title;

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.) of this title;

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this title;

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.1-444 et seq.) of Title 6.1;

37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

40. Violating any provision of Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1;

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;

- 182 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;  
 183 43. Violating any provision of § 59.1-443.2;  
 184 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title; ~~and~~  
 185 45. Violating any provision of Chapter 20 (§ 6.1-474 et seq.) of Title 6.1; ~~and~~  
 186 46. *Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.) of this title.*

187 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or  
 188 lease solely by reason of the failure of such contract or lease to comply with any other law of the  
 189 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation  
 190 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable  
 191 such contract or lease.

#### 192 CHAPTER 33.1.

#### 193 VEHICLE PROTECTION PRODUCT WARRANTY ACT.

##### 194 § 59.1-434.1. Definitions.

195 "Administrator" means a third party other than the warrantor who is designated by the warrantor to  
 196 be responsible for the administration of vehicle protection product warranties.

197 "Board" means the Virginia Board of Agriculture and Consumer Services.

198 "Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services  
 199 or his designee.

200 "Incidental costs" means expenses specified in the warranty incurred by the warranty holder related  
 201 to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs  
 202 may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference  
 203 between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle,  
 204 sales taxes, registration fees, transaction fees, and mechanical inspection fees.

205 "Vehicle protection product" means a vehicle protection device, system, or service that (i) is installed  
 206 on or applied to a vehicle, (ii) is designed to prevent loss or damage to a vehicle from a specific cause,  
 207 and (iii) includes a written warranty. Vehicle protection products include, without limitation, alarm  
 208 systems, body part marking products, steering locks, window etch products, pedal and ignition locks,  
 209 fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

210 "Vehicle protection product warrantor" or "warrantor" means a person who is contractually  
 211 obligated to the warranty holder under the terms of the vehicle protection product warranty agreement.  
 212 Warrantor does not include an authorized insurer providing a warranty reimbursement insurance policy,  
 213 nor does it include any dealer in goods or vehicles that does not make its own warranty of a vehicle  
 214 protection product to the purchaser.

215 "Vehicle protection product warranty" or "warranty" means a written agreement by a warrantor that  
 216 provides if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific  
 217 cause, that the warrantor will pay to or on behalf of the warranty holder specified incidental costs as a  
 218 result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty.

219 "Warranty holder" means a person who purchases a vehicle protection product or who is a permitted  
 220 transferee.

221 "Warranty reimbursement insurance policy" means a policy of insurance that is issued to the vehicle  
 222 protection product warrantor to provide reimbursement to the warrantor or to pay on behalf of the  
 223 warrantor all covered contractual obligations incurred by the warrantor under the terms and conditions  
 224 of the insured vehicle protection product warranties issued by the warrantor.

##### 225 § 59.1-434.2. Scope; exemptions.

226 A. No vehicle protection product may be sold or offered for sale in the Commonwealth unless the  
 227 seller, warrantor, and administrator, if any, comply with the provisions of this chapter.

228 B. Vehicle protection product warrantors and related vehicle protection product sellers and warranty  
 229 administrators complying with this chapter are not required to comply with, and are not subject to, any  
 230 provision of Title 38.2.

231 C. Service contract providers who do not sell vehicle protection products are not subject to the  
 232 requirements of this chapter. Sales of vehicle protection products are exempt from the requirements of  
 233 the Extended Service Contract Act (§ 59.1-435 et seq.).

234 D. Motor vehicle dealers who do not warrant vehicle protection products are not subject to the  
 235 requirements of this chapter.

236 E. Warranties, indemnity agreements, and guarantees that are not provided as a part of a vehicle  
 237 protection product are not subject to the provisions of this chapter.

##### 238 § 59.1-434.3. Registration and filing requirements of warrantors.

239 A. No person may operate as a warrantor or represent to the public that the person is a warrantor  
 240 unless the person is registered with the Department on a form prescribed by the Commissioner.

241 B. Warrantor registration records shall be filed annually and shall be updated within 30 days of any  
 242 change. The registration records shall contain the following information:

- 243 1. The warrantor's name, any fictitious names under which the warrantor does business in the

Commonwealth, principal office address, and telephone number, and a description of the nature of the business of the warrantor;

2. The name and address of the warrantor's agent for service of process in the Commonwealth if other than the warrantor;

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

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

5. A copy of the warranty reimbursement insurance policy or policies or other financial information required by § 59.1-434.5;

6. A copy of each warranty the warrantor proposes to use in the Commonwealth; and

7. A statement indicating under which provision of § 59.1-434.4 the warrantor qualifies to do business as a warrantor in the Commonwealth.

C. The Commissioner may charge each registrant a reasonable fee to offset the cost of processing the registration and maintaining the records in an amount not to exceed \$300 annually. The information in subdivisions B 1 and B 2 shall be made available to the public. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

D. If a registrant fails to re-register by the renewal deadline, the Director shall give it written notice of the failure and the registrant will have 30 days to complete the renewal of its registration before they are suspended from registration.

E. An administrator or person who sells or solicits a sale of a vehicle protection product but who is not a warrantor shall not be required to register as a warrantor.

§ 59.1-434.4. Financial responsibility.

No vehicle protection product shall be sold or offered for sale in the Commonwealth unless the warrantor ensures adequate performance under the warranty by satisfying either of the following conditions:

1. The vehicle protection product warrantor is insured under a warranty reimbursement insurance policy issued by an insurer authorized to do business in the Commonwealth which provides that the insurer will pay to, or on behalf of, the warrantor 100 percent of all sums that the warrantor is legally obligated to pay according to the warrantor's contractual obligations under the warrantor's vehicle protection product warranty in accordance with the requirements of § 59.1-434.5; or

2. The vehicle protection product warrantor:

a. Maintains, or its parent company in accordance with subdivision 2 b maintains, a net worth or stockholders' equity of \$50 million; and

b. Provides the Commissioner with 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 Securities and Exchange Commission within the last calendar year or, if the warrantor does not file with the Securities and Exchange Commission, a copy of the warrantor's or the warrantor's parent company's audited financial statements that show a net worth of the warrantor or its parent company of at least \$50 million. If the warrantor's parent company's Form 10-K, Form 20-F, or audited financial statements are filed to meet the warrantor's financial stability requirement, then the parent company shall agree to guarantee the obligations of the warrantor relating to warranties issued by the warrantor in the Commonwealth. The financial information filed under this subdivision shall be confidential as a trade secret of the entity filing the information and not subject to public disclosure.

No financial security requirements or financial standards other than as set forth in this section shall be required of warrantors.

§ 59.1-434.5. Warranty reimbursement policy requirements.

A warranty reimbursement insurance policy used to ensure adequate performance under a warranty shall:

1. State that the issuer of the policy will reimburse or pay on behalf of the vehicle protection product warrantor all covered sums which the warrantor is legally obligated to pay or will 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. State that in the event payment due under the terms of the warranty is not provided by the warrantor within 60 days after proof of loss has been filed according to the terms of the warranty by the warranty holder, the warranty holder may file directly with the warranty reimbursement insurance company for reimbursement;

3. Provide that a warranty reimbursement insurance company that insures a warranty shall be deemed to have received payment of the premium if the warranty holder paid for the vehicle protection product, and the insurer's liability under the policy shall not be reduced or relieved by a failure of the

warrantor, for any reason, to report the issuance of a warranty to the insurer;

4. Contain the following provisions regarding cancellation of the policy:

a. The issuer of a reimbursement insurance policy shall not cancel such policy until a notice of cancellation in writing has been mailed or delivered to the Commissioner and each insured warrantor;

b. The cancellation of a reimbursement insurance policy shall not reduce the insurer's responsibility for vehicle protection products sold prior to the date of cancellation;

c. If an insurer cancels a policy that a warrantor has filed with the Commissioner, the warrantor shall either (i) file a copy of a new policy with the Commissioner before the termination of the prior policy, providing no lapse in coverage following the termination of the prior policy or (ii) discontinue offering warranties as of the termination date of the policy until a new policy becomes effective and is accepted by the Commissioner.

§ 59.1-434.6. Disclosure to warranty holder.

A. No vehicle protection product warranty shall be sold or offered for sale in the Commonwealth unless the warranty:

1. States that:

a. "The obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy," if the warrantor elects to meet its financial responsibility obligations under subdivision 1 of § 59.1-434.4; or

b. "The obligations of the warrantor under this warranty are backed by the full faith and credit of the warrantor," if the warrantor elects to meet its financial responsibility obligations under subdivision 2 of § 59.1-434.4;

2. States that if a warranty holder makes a claim against a party other than the warranty reimbursement insurance policy issuer, the warranty holder is entitled to make a direct claim against the insurer upon the failure of the warrantor to pay any claim or meet any obligation under the terms of the warranty within 60 days after proof of loss has been filed with the warrantor, if the warrantor elects to meet its financial responsibility obligations under subdivision 1 of § 59.1-434.4;

3. States the name and address of the issuer of the warranty reimbursement insurance policy, if the warrantor elects to meet its financial responsibility obligations under subdivision 1 of § 59.1-434.4; however, if this information is not preprinted on the warranty form, it may be added to or stamped on the warranty form;

4. Identifies the warrantor, the seller, and the warranty holder;

5. Sets forth the total purchase price and the terms under which it is to be paid, however, the purchase price is not required to be preprinted on the vehicle protection product warranty form and may be negotiated with the consumer at the time of sale;

6. Sets forth the procedure for making a claim, including a telephone number;

7. Specifies the payments or performance to be provided under the warranty including payments for incidental costs, the manner of calculation or determination of payments or performance, and any limitations, exceptions, or exclusions;

8. Sets forth all of the obligations and duties of the warranty holder, including but not limited to the duty to protect against any further damage to the vehicle and the obligation to notify the warrantor in advance of any repair;

9. Sets forth the terms, restrictions, or conditions governing transferability and cancellation of the warranty, if any; and

10. Contains a disclosure that reads substantially as follows: "This agreement is a product warranty and is not insurance."

B. Incidental costs may be reimbursed under the provisions of the warranty in either a fixed amount specified in the warranty or sales agreement or by the use of a formula itemizing specific incidental costs incurred by the warranty holder.

§ 59.1-434.7. Prohibited acts.

A. Unless licensed as an insurance company, a vehicle protection product warrantor shall not use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other vehicle protection product warrantor. A warrantor may use the term "guaranty" or similar word in the warrantor's name.

B. A vehicle protection product seller or warrantor may not require as a condition of financing that a retail purchaser of a motor vehicle purchase a vehicle protection product.

§ 59.1-434.8. Recordkeeping.

A. All vehicle protection product warrantors shall keep accurate accounts, books, and records concerning transactions regulated under this chapter.

B. A vehicle protection product warrantor's accounts, books, and records shall include:

1. Copies of all vehicle protection product warranties;

2. The name and address of each warranty holder; and

3. The dates, amounts, and descriptions of all receipts, claims, and expenditures.

C. A vehicle protection product warrantor shall retain all required accounts, books, and records pertaining to each warranty holder for at least two years after the specified period of coverage has expired. A warrantor discontinuing business in the Commonwealth shall maintain its records until it furnishes the Commissioner satisfactory proof that it has discharged all obligations to warranty holders in the Commonwealth.

D. Vehicle protection product warrantors shall make all accounts, books, and records concerning transactions regulated under this act available to the Commissioner for examination.

§ 59.1-434.9. Investigations.

A. The Commissioner may, with respect to vehicle protection product warranties:

1. Make necessary public and private investigations within or without the Commonwealth to determine whether any person has violated the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation; and

3. Administer oaths or affirmations, and upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain material evidence, shall take place within the City of Richmond.

C. If any person fails to obey the subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

§ 59.1-434.10. Regulations.

The Board is authorized to prescribe reasonable regulations in order to implement provisions in this chapter relating to vehicle protection product warranties. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

§ 59.1-434.11. Production of records.

Every vehicle protection product warrantor, upon written request of the Commissioner, shall make available to the Commissioner its vehicle protection product warranty records for inspection and copying to enable the Commissioner to reasonably determine compliance with this chapter. Every warrantor shall maintain a true copy of each warranty executed between the warrantor and a warranty holder, and each warranty shall be maintained for its term.

§ 59.1-434.12. Violations of chapter; penalty.

A. Any vehicle protection product warrantor who knowingly and willfully violates any provision of this chapter shall be guilty of a Class 3 misdemeanor.

B. Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) of this title.

2. That the failure of any person to comply with the provisions of Chapter 33.1 (§ 59.1-434.1 et seq.) of Title 59.1 of the Code of Virginia prior to its effective date shall not be admissible in any court proceeding, administrative proceeding, arbitration, or alternative dispute resolution proceeding and may not otherwise be used to prove that the action of any person or the affected vehicle protection product was unlawful or otherwise improper. The enactment of Chapter 33.1 of Title 59.1 of the Code of Virginia shall not be construed to imply that a vehicle protection product warranty was insurance prior to the effective date of this act.