



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

Bulletin PC-45-03
October 30, 2003
(Replacement of PC-45 12/20/00)

To: **ALL EXTENDED WARRANTY PROVIDERS**

Subject: **EXTENDED WARRANTY CONTRACTS**

Public Act 03-50, which became effective July 1, 2003, now subjects Automobile Extended Warranty products to the requirements of Conn. Gen. Stat. §42-260. Public Act 03-50 also expands the definitions of "Extended Warranty" and "Providers of Extended Warranty" set out in Conn. Gen. Stat. §42-260.

Insurance Department Bulletin PC-45 dated December 20, 2000, is hereby withdrawn and replaced by this bulletin. All Extended Warranty Providers marketing Extended Warranties in Connecticut are hereby advised to become familiar with their obligations pursuant to Conn. Gen. Stat. §42-260 as amended by Public Act 03-50.

I. APPLICABILITY AND DEFINITIONS

Conn. Gen. Stat. §42-260, as amended by Public Act 03-50 applies to extended warranties, which are defined as "a contract or agreement to either perform or provide indemnification for the repair, replacement or maintenance of a product because of operational or structural failure of such product due to a defect in materials, skill or workmanship or normal wear and tear given for consideration over and above the lease or purchase price of a product." This law does not apply to extended warranties where there is no consideration for the extended warranty, such as those provided at no cost through use of a major credit card. Nor does this law apply to home warranty contracts or home warranty service agreements, which are regulated by Conn. Gen. Stat. §38a-320, or to regulated utilities. While prior to the enactment of Public Act 03-50 the law relating to extended warranties provided an exception for contracts applicable to repair services of automobiles, such exception has been eliminated as of July 1, 2003, consequently, contract for the repair, replacement or maintenance of automobiles are considered to be "Extended Warranty" contracts subject to the requirements of Conn. Gen. Stat. §42-260.

"Extended Warranty Provider" is defined as "a person who issues, makes, provides or offers to provide an extended warranty to a buyer and who is contractually obligated to provide service under such extended warranty, excluding a retail seller of an extended warranty if such seller: (A) is the manufacturer of the product covered under the extended warranty; or a subsidiary of the manufacturer; (B) sells or offers an extended warranty for a product obligating the manufacturer, a subsidiary of the manufacturer, a distributor or

an importer to provide the service or indemnification arising under the extended warranty; or (C) performs at least ninety percent of the repair service provided to buyers pursuant to extended warranties purchased from such seller." Extended warranty providers should also examine subsection (a) of the §42-260 for definitions of "buyer" and "extended warranty reimbursement policy."

II. INSURANCE AND RESERVE REQUIREMENTS

Pursuant to Conn. Gen. Stat. §42-260(d), an extended warranty "shall not be issued, sold or offered for sale unless the Extended Warranty Provider is insured under an extended warranty reimbursement insurance policy issued by an insurer authorized to do business in this state or the Extended Warranty Provider can demonstrate that reserves for claims contained in the Provider's financial statements are not in excess of one-half of a Provider's audited net worth. If such reserves are in excess of one-half of a provider's net worth, the reserves shall be held in trust by an independent trustee and certified as adequate by an actuary."

The extended warranty reimbursement insurance policy is to cover the obligations under the extended warranty sold by the Extended Warranty Provider during the period of time that the Provider's insurance policy is in force.

III. FILING REQUIREMENTS -- CONTENT

Extended Warranty Providers, prior to the sale of extended warranty contracts in this State, shall file with the Insurance Department's Property & Casualty Division, in accordance with the instructions contained herein, the following:

1. A copy of the extended warranty contract form issued by the Extended Warranty Provider. This contract form shall obligate the Extended Warranty Provider to supply to the buyer all services and functional parts that may be necessary to repair the product for the duration of the extended warranty without additional charge, except as otherwise expressly provided. Additionally, the extended warranty contract form shall contain all of the following:
 - a. A clear description and identification of the product.
 - b. The day when the extended warranty commences, and its duration, and, if the extended warranty is for less than one year, include a provision for the automatic extension of a warranty while the product is in the custody of an Extended Warranty Provider for repair under such warranty.
 - c. A description of the limits on transfer or assignment of the extended warranty if the enforceability of an extended warranty is limited to the original buyer or

is limited to persons other than every consumer owner of the covered product during the term of the extended warranty.

- d. A statement of the obligation of the Extended Warranty Provider, including statements of:
 - (1) Any services, parts, components, defects, malfunctions, conditions, repairs or remedies that are excluded from the scope of the extended warranty;
 - (2) Any limits on the obligations of the Extended Warranty Provider;
 - (3) Any additional services which the Extended Warranty Provider will supply;
 - (4) Whether the buyer has the responsibility of any other obligations and, if so, the nature and frequency of such obligations, and the consequences of any noncompliance.

- e. A step-by-step explanation of the procedure which the buyer is to follow in order to obtain performance of any obligation under the extended warranty including:
 - (1) The full legal and business name of the Extended Warranty Provider;
 - (2) The mailing address of the Extended Warranty Provider;
 - (3) The person or class of persons that are authorized to perform service;
 - (4) The name or title of, and address of, any agent, employee or department of the Extended Warranty Provider that is responsible for the performance of any obligations;
 - (5) The method of giving notice to the Extended Warranty Provider of the need for service;
 - (6) Whether in-home service is provided or, if not, whether the costs of transporting the product for service or repairs will be paid by the Extended Warranty Provider;
 - (7) If the product must be transported to the Extended Warranty Provider, either the place where the product may be delivered for service or repairs or a toll-free telephone number which the buyer may call to obtain that information;
 - (8) All other steps which the buyer must take to obtain service; and
 - (9) All fees, charges and other costs that the buyer must pay to obtain service.

- f. A description of the services the Extended Warranty Provider will supply under the extended warranty.
- g. A statement of a right to cancel the warranty if the buyer returns the product or the product is sold, lost, stolen or destroyed, or a statement that there is no right to cancel.
- h. Pursuant to subsection (f) of §42-260 extended warranty contracts are also to contain the name and address of the insurers insuring the obligations and liabilities of the warranty and instructions on how the buyer of the product, or the successor to the buyer's rights, may file a claim with the insurer if the Extended Warranty Provider fails to perform according to the terms of the extended warranty.

2. File either:

- a. A complete copy of the Provider's extended warranty reimbursement insurance policy form issued to the Extended Warranty Provider by an insurer authorized to do business in Connecticut, and upon expiration of said policy, a complete copy of any replacement or renewal policy upon receipt. Pursuant to §42-260, such policy shall contain a provision that the insurer of an extended warranty shall not refuse to renew any such policy unless the insurer or its agent sends at least 60 days advance notice of its intention not to renew, by registered mail, certified mail, or by mail evidenced by a certificate of mailing or delivery, to the Insurance Commissioner, specifying the reason for the non-renewal.

or

- b. A certification by a certified public accountant ("CPA") attesting to the adequacy of the reserves for claims reported on the Provider's audited financial statements or contained in the provider's trust account. Pursuant to subsection (d) §42-260, if the Extended Warranty Provider's reserves for claims are in excess on one-half of the Provider's net worth, "the reserves shall be held in trust by an independent trustee and certified as adequate by an actuary." In connection with such certification, which shall be filed no less than annually, there shall also be filed with the Insurance Commissioner:

- (1) the following audited financial statements of the Extended Warranty Provider: balance sheet, statement of income, stockholders' equity and statement of changes in financial position for the previous year, and notes to such financial statements, all prepared in accordance with generally accepted accounting principles;

- (2) a letter prepared by the CPA for submission with the Extended Warranty Provider's filing with the Insurance Commissioner, stating:
- (a) That the CPA is independent with respect to the Extended Warranty Provider and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the Rules of Professional Conduct of the Connecticut Board of Public Accountancy, or similar code.
 - (b) That the CPA understands that the certification attesting to the adequacy of the reserves for claims reported on the Extended Warranty Provider's financial statements or contained in the Provider's trust account established pursuant to Conn. Gen. Stat. §42-260 will be filed with the Insurance Commissioner of the State of Connecticut in compliance with Conn. Gen. Stat. §42-260 and that the Commissioner and the general public will be relying on this information in the monitoring of Extended Warranty Providers' compliance with the provisions of this public act.
 - (c) A representation that the CPA is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants.
- (3) A copy of the trust instrument established pursuant to Conn. Gen. Stat. §42-260 which shall consist of funds in trust in an amount not less than the Extended Warranty Provider's aggregate liabilities attributable to reserves for claims under extended warranty contracts. Such trust instrument shall provide that:
- (a) legal title to the assets of the trust shall be vested in the trustee for the sole benefit of those persons, their assigns and successors in interest, who purchase an extended warranty from the Extended Warranty Provider;
 - (b) the trustee shall be independent of the Extended Warranty Provider, the CPA, and any parent, subsidiary, affiliate, or officer of either the Provider or CPA;
 - (c) contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;
 - (d) the trust shall remain in effect for as long as the Extended Warranty Provider has outstanding obligations under any extended warranty

contract that is not otherwise insured under an extended warranty reimbursement insurance policy issued to the Provider;

- (e) that at least thirty (30) days, but no more than sixty (60) days, prior to termination of the trust, written notification of termination shall be delivered by the trustee to the Insurance Department;
- (f) the trust agreement shall be made subject to and governed by the laws of the State in which the trust is established;
- (g) the trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee;
- (h) the trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith;
- (i) stipulate that assets deposited in the trust account shall be valued according to their current market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets.

3. Extended Warranty Providers shall file the documents described above before the extended warranty contracts are sold in Connecticut. The documents will not be considered to be filed pursuant to Conn. Gen. Stat. §42-260 if such filing is found by the Insurance Department to be deficient.

IV. PROCEDURE FOR FILING

The procedural requirements for the filings required by Conn. Gen. Stat. §42-260 and Conn. Gen. Stat. §38a-11 are that each Extended Warranty should be:

1. Filed by the Extended Warranty Provider.
2. Each Extended Warranty contract submitted must be accompanied by a check in the amount of \$15 payable to: Treasurer, State of Connecticut.
3. Sent to:
 - State of Connecticut
 - Insurance Department
 - Property & Casualty Division
 - P.O. Box 816
 - Hartford, CT 06142-0816

4. In an easily readable condition. Only one copy of the filing is required to be filed and shall be retained by the Insurance Department. However, where a Provider wishes to have a complete copy of the filing and transmittal letter returned to it, filings in duplicate are permitted.
5. Included with a duplicate transmittal letter, unless the Provider elects to send a duplicate of the entire filing, along with a self-addressed stamped envelope.
6. The filing transmittal letter is to contain the following information: (i) identity of service contract provider; (ii) brief identification of the program to which the filing pertains; (iii) a brief description of the purpose of the filing; (iv) the file number where the provider maintains file numbers. All subsequent correspondence should include the same caption as appeared in the original filing and refer to the date of the original filing transmittal letter.
7. Any filing which includes changes of a previously submitted filing is to include an explanatory memorandum describing the changes.
8. All Extended Warranties should include a provision for resolution of disputes stating the contract holder's rights to file a complaint to the Insurance Department as outlined by Regulations of Connecticut State Agencies §42-260-3.

V. INSURANCE DEPARTMENT REVIEW OF FILINGS

Forms will initially be screened by the Insurance Department to determine if they are complete or deficient for purposes of review. If a filing is deficient, the applicant will be notified of the specific items which must be provided to make the filing complete. The Insurance Department will review the filings in chronological order based on when they were received. In exceptional circumstances, the Commissioner may direct immediate review of a filing. After a form is accepted for review, the Insurance Department will review the form and either record it effective or disapprove it. If, upon review of the filing, the Insurance Department determines that additional information from the Provider is necessary, the Insurance Department will make that request to the provider. The Provider will have 30 days to provide the additional information or to request an extension of time, not to exceed 60 days, in which to provide the information. If the Provider fails to comply with the request for additional information within the allotted time, the Insurance Department will consider the filing voluntarily withdrawn and will close its file without further action.

The Insurance Department will disapprove the use of any form or filing if it does not comply with the provisions of §42-260 or any other provision of law, or if it contains a provision which is unfair or deceptive, or encourages misrepresentation of the extended warranty.

Forms that are not disapproved will have the extra copy of the transmittal letter returned stamped "Recorded Effective" with the effective date of the filing, the name and signature of the staff member who acted on the filing and the date the filing was stamped.

VI. ARBITRATION REGULATIONS

Regulations of Connecticut State Agencies §42-260-1 through §42-260-5, establish requirements for all extended warranty providers marketing "extended warranties" in Connecticut. Regulations establish an arbitration process to settle disputes between extended warranty providers and buyers arising from extended warranty contracts. Extended warranty providers must include notice of the arbitration process in their "Extended Warranty." A "Resolution of Disputes" section shall advise the buyer that a written complaint may be mailed to: State of Connecticut, Insurance Department, P.O. Box 816, Hartford, CT 06142-0816, Attn. Consumer Affairs. The written complaint must contain a description of the dispute, the purchase or lease price of the product, the cost of repair of the product and a copy of the warranty contract.


Susan F. Cogswell
Insurance Commissioner