

North Dakota MVPPA Testimony

Chairman Klein and Members of the Senate Industry, Business and Labor Committee thank you for the opportunity to present before you regarding Senate Bill 2150.

With this bill, the Motor Vehicle Protection Product Association (“MVPPA”) is seeking an amendment to North Dakota Century Code § 9-01-21 regarding service contracts.

By way of background, MVPPA is a national trade association with member companies that include providers, retailers, administrators, and insurers of vehicle service contracts and theft protection programs. MVPPA’s primary goal is to establish a uniform, balanced regulatory landscape that minimizes confusion or dispute about the regulatory status of these products. MVPPA’s member companies offer over 80% of the protection products available in the marketplace today and include Ally Insurance, AmTrust Financial Services, Assurant Solutions, Toyota Motor Insurance Services, and CNA National Warranty Company.

The proposed legislation amends the definition of “property service contract” currently found in North Dakota Century Code § 9-01-21 to expressly authorize a number of products which may be offered as a service contract —tire and wheel repair or replacement, windshield repair or replacement, paintless dent repair, lost, stolen, inoperable key or key-fob replacement and excess wear and use coverage for repairs or maintenance in conjunction with a vehicle lease. It is our understanding that many of these coverages are offered in North Dakota today as service contracts and that this legislation merely crystalizes in statue the current regulatory treatment of these products.

Typically, these products provide consumers with benefits either not covered under their traditional automobile insurance policy or where the benefit would be less than their traditional automobile insurance policy’s deductible. For example, often times the cost of replacing a vehicle’s key-fob in the event it is lost or stolen, although costly, is less than a consumer’s insurance deductible and so the consumer may be left paying the cost out of pocket. Instead, a consumer could elect to purchase a service contact with key-fob replacement coverage to avoid the possibility of paying this cost out of pocket.

The legislation also defines vehicle theft protection product and clarifies that a warranty that accompanies the product is not subject to the provisions of the Insurance Code.

Finally, the legislation adds clarifying definitions.

This bill seeks to bring North Dakota's statutes in line with how these products are treated in the majority of other states. The bill's language has been discussed at length with the North Dakota Insurance Department as well as the Attorney General's Office, and private side stake holders including the Automobile Dealers Association of North Dakota, North Dakota Bankers Association and multiple insurance interests, including the American Property Casualty Insurance Association which supports the bill.

Sixty-seventh
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

Senator Klein

1 A BILL for an Act to amend and reenact section 9-01-21 of the North Dakota Century Code,
2 relating to vehicle theft protection product warranties.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 9-01-21 of the North Dakota Century Code is amended
5 and reenacted as follows:

6 **9-01-21. Property service contracts - Exemption.**

7 1. The marketing, selling, offering for sale, issuing, making, providing, or proposing to
8 make and the administering of a property service contract or vehicle theft protection
9 product warranty is not subject to the provisions of title 26.1.

10 2. A property service contract is a contract or agreement for a separately stated
11 consideration, for a specific duration, to provide for the repair, replacement, or
12 maintenance or for the indemnification for the repair, replacement, or maintenance of
13 new or used property if an operational or structural failure is due to a defect in
14 materials, manufacturing, or normal wear and tear. Property covered under a property
15 service contract may include motor vehicles; residential appliances; residential
16 systems, including plumbing, electrical, heating, cooling, and ventilation; and other
17 residential property. The contract may provide coverage for:

18 a. Damage to property resulting from power surges;

19 b. Accidental damage to property resulting from handling; and

20 c. Payment of indemnity for incidental damages, such as food spoilage, towing, and
21 rental and emergency road service;

22 d. The repair or replacement of tires and wheels on a motor vehicle damaged as a
23 result of coming into contact with a road hazard;

- e. The removal of dents, dings, or creases on a motor vehicle which can be repaired using the process of paintless dent removal without affecting the existing paint finish and without sanding, bonding, painting, or replacing a vehicle body panel;
 - f. The repair of small motor vehicle windshield chips or cracks which may include replacement of the windshield for chips or cracks that cannot be repaired;
 - g. The replacement of a motor vehicle key or key fob if the key or key fob becomes inoperable, lost, or stolen; or
 - h. In conjunction with a motor vehicle leased for use, the repair, replacement, or maintenance of property; or indemnification for repair, replacement, or maintenance; due to excess wear and use or damage to items including tires, paint cracks or chips, missing interior or exterior parts; or excess mileage resulting in a lease-end charge; or any other charge for damage deemed excess wear and use by a lessor under a motor vehicle lease, provided the payment may not exceed the purchase price of the vehicle.
3. Under a vehicle theft protection program warranty, incidental costs may be reimbursed in either a fixed amount specified in the warranty or by use of a formula itemizing specific incidental costs incurred by the warranty holder. Payments may not duplicate any benefits or expenses paid to the warranty holder by an insurer providing comprehensive coverage under a motor vehicle insurance policy covering the stolen motor vehicle. However, the payment of incidental costs at a preestablished, flat amount of seven thousand five hundred dollars or less does not duplicate any benefits or expenses payable under the comprehensive motor vehicle insurance policy.
 4. For the purpose of this section, unless the context otherwise requires:
 - a. "Incidental costs" means expenses specified in a vehicle theft protection program warranty and incurred by the warranty holder due to the failure of a vehicle theft protection program to perform as provided in the contract.
 - b. "Vehicle theft protection product" means a device or system installed on or applied to a motor vehicle, which is designed to prevent loss or damage to a motor vehicle from theft, and includes a vehicle theft protection program warranty.

- 1 c. "Vehicle theft protection product warranty" means a written agreement by a
2 warrantor which provides, if the vehicle theft protection product fails to prevent
3 loss or damage to a motor vehicle from theft, the warrantor will pay to or on
4 behalf of the warranty holder specified incidental costs resulting from the failure
5 or the vehicle theft protection product to perform pursuant to the terms of the
6 vehicle theft protection product warranty.
- 7 d. "Road hazard" means a hazard encountered while driving a motor vehicle which
8 includes potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or
9 composite scraps.