

As Reported by the House Transportation and Public Safety Committee

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Am. H. B. No. 632

Representatives Lang, Holmes

Cosponsors: Representatives Carfagna, Riedel, Seitz, Wiggam, Green, Miller

A BILL

To amend sections 3905.423 and 3905.426 and to 1
repeal section 3905.425 of the Revised Code 2
regarding motor vehicle ancillary product 3
protection contracts and motor vehicle service 4
contracts. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3905.423 and 3905.426 of the 6
Revised Code be amended to read as follows: 7

Sec. 3905.423. (A) As used in this section: 8

(1) "Consumer" has the same meaning as in section 1345.01 9
of the Revised Code. 10

(2) "Consumer goods" means goods sold, leased, assigned, 11
awarded by chance, or transferred to a consumer in a consumer 12
transaction. 13

(3) "Consumer goods service contract" means a contract or 14
agreement to perform or pay for repairs, replacement, or 15
maintenance of consumer goods due to a defect in materials or 16
workmanship, normal wear and tear, power surges, or accidental 17

damage from handling, that is effective for a specified duration 18
and paid for by means other than the purchase of the consumer 19
goods. "Consumer goods service contract" does not include any of 20
the following: 21

(a) ~~A motor vehicle service contract or agreement to 22~~
~~perform or pay for the repair, replacement, or maintenance of a 23~~
~~motor vehicle or utility vehicle, as defined in section 4501.01- 24~~
~~3905.426 of the Revised Code, due to a defect in materials or 25~~
~~workmanship, normal wear and tear, mechanical or electrical 26~~
~~breakdown, or failure of parts or equipment of a motor vehicle 27~~
~~that is effective for a specified duration and paid for by means 28~~
~~other than the purchase of a motor vehicle or utility vehicle; 29~~

(b) A vehicle protection product as defined in section 30
3905.421 of the Revised Code; 31

(c) A home service contract as defined in section 3905.422 32
of the Revised Code; 33

~~(d) A motor vehicle tire or wheel road hazard contract as 34~~
~~defined in section 3905.425 of the Revised Code; 35~~

~~(e) A motor vehicle ancillary product protection contract 36~~
as defined in section 3905.426 of the Revised Code; 37

(e) A contract for pre-paid routine, scheduled maintenance 38
only. 39

(4) "Consumer transaction" has the same meaning as in 40
section 1345.01 of the Revised Code. 41

(5) "Contract holder" means the consumer who purchased 42
goods covered by a consumer goods service contract, any 43
authorized transferee or assignee of the consumer, or any other 44
person assuming the consumer's rights under the consumer goods 45

service contract. 46

(6) "Provider" means a person who is contractually 47
obligated to a contract holder under the terms of a consumer 48
goods service contract. 49

(7) "Reimbursement insurance policy" means a policy of 50
insurance issued by an insurer authorized or eligible to do 51
business in this state to a provider to pay, on behalf of the 52
provider in the event of the provider's nonperformance, all 53
covered contractual obligations incurred by the provider under 54
the terms and conditions of the consumer goods service contract. 55

(8) "Supplier" has the same meaning as in section 1345.01 56
of the Revised Code. 57

(B) All consumer goods service contracts issued in this 58
state that provide for the performance of or payment for 59
repairs, replacement, or maintenance of consumer goods due to 60
power surges or accidental damage from handling shall be covered 61
by a reimbursement insurance policy. 62

(C) A consumer goods service contract issued by a provider 63
that is required to be covered by a reimbursement insurance 64
policy under division (B) of this section shall conspicuously 65
state all of the following: 66

(1) That the obligations of the provider are guaranteed 67
under a reimbursement insurance policy; 68

(2) That if a provider fails to perform or make payment 69
due under the terms of the contract within sixty days after the 70
contract holder requests performance or payment pursuant to the 71
terms of the contract, the contract holder may request 72
performance or payment directly from the provider's 73
reimbursement insurance policy insurer, including, but not 74

limited to, any obligation in the contract by which the provider 75
must refund the contract holder upon cancellation of a contract; 76

(3) The name, address, and telephone number of the 77
provider's reimbursement insurance policy insurer. 78

(D) A reimbursement insurance policy that is required to 79
be issued under this section shall contain: 80

(1) A statement that if a provider fails to perform or 81
make payment due under the terms of the consumer goods service 82
contract within sixty days after the contract holder requests 83
performance or payment pursuant to the terms of the contract, 84
the contract holder may request performance or payment directly 85
from the provider's reimbursement insurance policy insurer, 86
including, but not limited to, any obligation in the contract by 87
which the provider must refund the contract holder upon 88
cancellation of a contract; 89

(2) A statement that in the event of cancellation of the 90
provider's reimbursement insurance policy, insurance coverage 91
will continue for all contract holders whose consumer goods 92
service contracts were issued by the provider and reported to 93
the insurer for coverage during the term of the reimbursement 94
insurance policy. 95

(E) The sale or issuance of a consumer goods service 96
contract is a consumer transaction for purposes of sections 97
1345.01 to 1345.13 of the Revised Code. The provider is the 98
supplier and the contract holder is the consumer for purposes of 99
those sections. 100

(F) Unless issued by an insurer authorized or eligible to 101
do business in this state, a consumer goods service contract 102
does not constitute a contract substantially amounting to 103

insurance, or the contract's issuance the business of insurance, 104
under section 3905.42 of the Revised Code. 105

(G) The rights of a contract holder against a provider's 106
reimbursement insurance policy insurer as provided in this 107
section apply only in regard to a reimbursement insurance policy 108
issued under this section. This section does not create any 109
contractual rights in favor of a person that does not qualify as 110
an insured under any other type of insurance policy described in 111
Title XXXIX of the Revised Code. 112

Sec. 3905.426. (A) As used in this section: 113

(1) "Contract holder" means the person who purchased a 114
motor vehicle ancillary product protection contract, any 115
authorized transferee or assignee of the purchaser, or any other 116
person assuming the purchaser's rights under the motor vehicle 117
ancillary product protection contract. 118

(2) "Motor vehicle" has the same meaning as in section 119
4501.01 of the Revised Code and also includes utility vehicles 120
as defined in that section. 121

(3) (a) "Motor vehicle ancillary product protection 122
contract" means a contract or agreement that is effective for a 123
specified duration and paid for by means other than the purchase 124
of a motor vehicle, or its parts or equipment, to perform any 125
one or more of the following services: 126

(i) Repair or replacement of glass on a motor vehicle 127
necessitated by wear and tear or damage caused by a road hazard; 128

(ii) Removal of a dent, ding, or crease without affecting 129
the existing paint finish using paintless dent removal 130
techniques but which expressly excludes replacement of vehicle 131
body panels, sanding, bonding, or painting; 132

(iii) Repair to the interior components of a motor vehicle necessitated by wear and tear but which expressly excludes replacement of any part or component of a motor vehicle's interior;	133 134 135 136
<u>(iv) Repair or replacement of tires or wheels damaged because of a road hazard;</u>	137 138
<u>(v) Replacement of a lost, stolen, or inoperable key or key fob.</u>	139 140
<u>(b) A motor vehicle ancillary product protection contract may, but is not required to, provide for incidental payment of indemnity under limited circumstances, including, without limitation, towing, rental, and emergency road services.</u>	141 142 143 144
<u>(c) "Motor vehicle ancillary product protection contract" does not include any of the following:</u>	145 146
(i) A motor vehicle service contract or agreement to perform or pay for the repair, replacement, or maintenance of a motor vehicle due to defect in materials or workmanship, normal wear and tear, mechanical or electrical breakdown, or failure of parts or equipment of a motor vehicle that is effective for a specified duration and paid for by means other than the purchase of a motor vehicle;	147 148 149 150 151 152 153
(ii) A vehicle protection product warranty as defined in section 3905.421 of the Revised Code;	154 155
(iii) A home service contract as defined in section 3905.422 of the Revised Code;	156 157
(iv) A consumer goods service contract as defined in section 3905.423 of the Revised Code;	158 159
(v) A motor vehicle tire or wheel road hazard contract as	160

~~defined in section 3905.425 of the Revised Code for pre-paid~~ 161
~~routine, scheduled maintenance only.~~ 162

(4) "Motor vehicle service contract" means a contract or 163
agreement to perform or pay for the repair, replacement, or 164
maintenance of a motor vehicle due to defect in materials or 165
workmanship, normal wear and tear, mechanical or electrical 166
breakdown, or failure of parts or equipment of a motor vehicle, 167
with or without additional provisions for incidental payment of 168
indemnity under limited circumstances, including, without 169
limitation, towing, rental, and emergency road services, that is 170
effective for a specified duration and paid for by means other 171
than the purchase of a motor vehicle. 172

(5) "Provider" means a person who is contractually 173
obligated to a contract holder under the terms of a motor 174
vehicle ancillary product protection contract. 175

~~(5)~~ (6) "Road hazard" means a condition that may cause 176
damage or wear and tear to a tire or wheel on a public or 177
private roadway, roadside, driveway, or parking lot or garage, 178
including potholes, nails, glass, road debris, and curbs. "Road 179
hazard" does not include fire, theft, vandalism or malicious 180
mischievous, or other perils normally covered by automobile 181
physical damage insurance. 182

(7) "Reimbursement insurance policy" means a policy of 183
insurance issued by an insurer authorized or eligible to do 184
business in this state to a provider to pay, on behalf of the 185
provider in the event of the provider's nonperformance, all 186
covered contractual obligations incurred by the provider under 187
the terms and conditions of the motor vehicle ancillary product 188
protection contract. 189

(6) <u>(8)</u> "Supplier" has the same meaning as in section	190
1345.01 of the Revised Code.	191
(B) All motor vehicle ancillary product protection	192
contracts issued in this state shall be covered by a	193
reimbursement insurance policy.	194
(C) A motor vehicle ancillary product protection contract	195
issued by a provider that is required to be covered by a	196
reimbursement insurance policy under division (B) of this	197
section shall conspicuously state all of the following:	198
(1) "This contract is not insurance and is not subject to	199
the insurance laws of this state."	200
(2) That the obligations of the provider are guaranteed	201
under a reimbursement insurance policy;	202
(3) That if a provider fails to perform or make payment	203
due under the terms of the contract within sixty days after the	204
contract holder requests performance or payment pursuant to the	205
terms of the contract, the contract holder may request	206
performance or payment directly from the provider's	207
reimbursement insurance policy insurer, including any obligation	208
in the contract by which the provider must refund the contract	209
holder upon cancellation of a contract;	210
(4) The name, address, and telephone number of the	211
provider's reimbursement insurance policy insurer.	212
(D) A motor vehicle ancillary product protection contract	213
that includes repair or replacement of glass on a motor vehicle	214
as provided in division (A) (3) (a) (i) of this section, shall	215
conspicuously state: "This contract may provide a duplication of	216
coverage already provided by your automobile physical damage	217
insurance policy."	218

(E) A reimbursement insurance policy that is required to	219
be issued under this section shall contain:	220
(1) A statement that if a provider fails to perform or	221
make payment due under the terms of the motor vehicle ancillary	222
product protection contract within sixty days after the contract	223
holder requests performance or payment pursuant to the terms of	224
the contract, the contract holder may request performance or	225
payment directly from the provider's reimbursement insurance	226
policy insurer, including any obligation in the contract by	227
which the provider must refund the contract holder upon	228
cancellation of a contract.	229
(2) A statement that in the event of cancellation of the	230
provider's reimbursement insurance policy, insurance coverage	231
will continue for all contract holders whose motor vehicle	232
ancillary product protection contracts were issued by the	233
provider and reported to the insurer for coverage during the	234
term of the reimbursement insurance policy.	235
(F) The sale or issuance of a motor vehicle ancillary	236
product protection contract is a consumer transaction for	237
purposes of sections 1345.01 to 1345.13 of the Revised Code. The	238
provider is the supplier and the contract holder is the consumer	239
for purposes of those sections.	240
(G) Unless issued by an insurer authorized or eligible to	241
do business in this state, a motor vehicle ancillary product	242
protection contract does not constitute a contract substantially	243
amounting to insurance, or the contract's issuance the business	244
of insurance, under section 3905.42 of the Revised Code.	245
(H) <u>Unless issued by an issuer authorized or eligible to</u>	246
<u>do business in this state, a contract identified in division (A)</u>	247

(3)(c)(i) or (v) of this section does not constitute a contract 248
substantially amounting to insurance, or the contract's issuance 249
the business of insurance, under section 3905.42 of the Revised 250
Code. 251

(I) The rights of a contract holder against a provider's 252
reimbursement insurance policy insurer as provided in this 253
section apply only in regard to a reimbursement insurance policy 254
issued under this section. This section does not create any 255
contractual rights in favor of a person that does not qualify as 256
an insured under any other type of insurance policy described in 257
Title XXXIX of the Revised Code. This section does not prohibit 258
the insurer of a provider's reimbursement insurance policy from 259
assuming liability for contracts issued prior to the effective 260
date of the policy or ~~this statute~~ July 1, 2009. 261

(J) A contract or agreement described in division (A)(3) 262
(a)(iv) of this section in which the provider is a tire 263
manufacturer shall be exempt from the requirements of division 264
(B) of this section if the contract or agreement conspicuously 265
states all of the following: 266

(1) That the contract or agreement is not an insurance 267
contract; 268

(2) That any covered obligations or claims under the 269
contract or agreement are the responsibility of the provider; 270

(3) The name, address, and telephone number of any 271
administrator responsible for the administration of the contract 272
or agreement, the provider obligated to perform under the 273
contract or agreement, and the contract seller; 274

(4) The procedure for making a claim under the contract or 275
agreement, including a toll-free telephone number for claims 276

<u>service and a procedure for obtaining emergency repairs or</u>	277
<u>replacements performed outside normal business hours.</u>	278
Section 2. That existing sections 3905.423 and 3905.426	279
and section 3905.425 of the Revised Code are hereby repealed.	280