

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 632

Representatives Lang, Holmes

Cosponsors: Representatives Carfagna, Riedel, Seitz, Wiggam

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~~

(4) "Consumer transaction" has the same meaning as in 38
section 1345.01 of the Revised Code. 39

(5) "Contract holder" means the consumer who purchased 40
goods covered by a consumer goods service contract, any 41
authorized transferee or assignee of the consumer, or any other 42
person assuming the consumer's rights under the consumer goods 43
service contract. 44

(6) "Provider" means a person who is contractually 45

obligated to a contract holder under the terms of a consumer goods service contract. 46
47

(7) "Reimbursement insurance policy" means a policy of insurance issued by an insurer authorized or eligible to do business in this state to a provider to pay, on behalf of the provider in the event of the provider's nonperformance, all covered contractual obligations incurred by the provider under the terms and conditions of the consumer goods service contract. 48
49
50
51
52
53

(8) "Supplier" has the same meaning as in section 1345.01 of the Revised Code. 54
55

(B) All consumer goods service contracts issued in this state that provide for the performance of or payment for repairs, replacement, or maintenance of consumer goods due to power surges or accidental damage from handling shall be covered by a reimbursement insurance policy. 56
57
58
59
60

(C) A consumer goods service contract issued by a provider that is required to be covered by a reimbursement insurance policy under division (B) of this section shall conspicuously state all of the following: 61
62
63
64

(1) That the obligations of the provider are guaranteed under a reimbursement insurance policy; 65
66

(2) That if a provider fails to perform or make payment due under the terms of the contract within sixty days after the contract holder requests performance or payment pursuant to the terms of the contract, the contract holder may request performance or payment directly from the provider's reimbursement insurance policy insurer, including, but not limited to, any obligation in the contract by which the provider must refund the contract holder upon cancellation of a contract; 67
68
69
70
71
72
73
74

(3) The name, address, and telephone number of the provider's reimbursement insurance policy insurer. 75
76

(D) A reimbursement insurance policy that is required to be issued under this section shall contain: 77
78

(1) A statement that if a provider fails to perform or make payment due under the terms of the consumer goods service contract within sixty days after the contract holder requests performance or payment pursuant to the terms of the contract, the contract holder may request performance or payment directly from the provider's reimbursement insurance policy insurer, including, but not limited to, any obligation in the contract by which the provider must refund the contract holder upon cancellation of a contract; 79
80
81
82
83
84
85
86
87

(2) A statement that in the event of cancellation of the provider's reimbursement insurance policy, insurance coverage will continue for all contract holders whose consumer goods service contracts were issued by the provider and reported to the insurer for coverage during the term of the reimbursement insurance policy. 88
89
90
91
92
93

(E) The sale or issuance of a consumer goods service contract is a consumer transaction for purposes of sections 1345.01 to 1345.13 of the Revised Code. The provider is the supplier and the contract holder is the consumer for purposes of those sections. 94
95
96
97
98

(F) Unless issued by an insurer authorized or eligible to do business in this state, a consumer goods service contract does not constitute a contract substantially amounting to insurance, or the contract's issuance the business of insurance, under section 3905.42 of the Revised Code. 99
100
101
102
103

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

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

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

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

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

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

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

(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
<u>(iv) Repair or replacement of tires or wheels damaged because of a road hazard;</u>	135 136
<u>(v) Replacement of a lost, stolen, or inoperable key or key fob.</u>	137 138
<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>	139 140 141 142
<u>(c) "Motor vehicle ancillary product protection contract" does not include any of the following:</u>	143 144
<u>(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;</u>	145 146 147 148 149 150 151
<u>(ii) A vehicle protection product warranty as defined in section 3905.421 of the Revised Code;</u>	152 153
<u>(iii) A home service contract as defined in section 3905.422 of the Revised Code;</u>	154 155
<u>(iv) A consumer goods service contract as defined in section 3905.423 of the Revised Code;</u>	156 157
<u>(v) A motor vehicle tire or wheel road hazard contract as defined in section 3905.425 of the Revised Code for pre-paid routine, scheduled maintenance only.</u>	158 159 160

(4) "Motor vehicle service contract" means a 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, with or without additional provisions for incidental payment of indemnity under limited circumstances, including, without limitation, towing, rental, and emergency road services, that is effective for a specified duration and paid for by means other than the purchase of a motor vehicle. 161
162
163
164
165
166
167
168
169
170

(5) "Provider" means a person who is contractually obligated to a contract holder under the terms of a motor vehicle ancillary product protection contract. 171
172
173

~~(5)~~(6) "Road hazard" means a condition that may cause damage or wear and tear to a tire or wheel on a public or private roadway, roadside, driveway, or parking lot or garage, including potholes, nails, glass, road debris, and curbs. "Road hazard" does not include fire, theft, vandalism or malicious mischief, or other perils normally covered by automobile physical damage insurance. 174
175
176
177
178
179
180

(7) "Reimbursement insurance policy" means a policy of insurance issued by an insurer authorized or eligible to do business in this state to a provider to pay, on behalf of the provider in the event of the provider's nonperformance, all covered contractual obligations incurred by the provider under the terms and conditions of the motor vehicle ancillary product protection contract. 181
182
183
184
185
186
187

~~(6)~~(8) "Supplier" has the same meaning as in section 1345.01 of the Revised Code. 188
189

(B) All motor vehicle ancillary product protection 190
contracts issued in this state shall be covered by a 191
reimbursement insurance policy. 192

(C) A motor vehicle ancillary product protection contract 193
issued by a provider that is required to be covered by a 194
reimbursement insurance policy under division (B) of this 195
section shall conspicuously state all of the following: 196

(1) "This contract is not insurance and is not subject to 197
the insurance laws of this state." 198

(2) That the obligations of the provider are guaranteed 199
under a reimbursement insurance policy; 200

(3) That if a provider fails to perform or make payment 201
due under the terms of the contract within sixty days after the 202
contract holder requests performance or payment pursuant to the 203
terms of the contract, the contract holder may request 204
performance or payment directly from the provider's 205
reimbursement insurance policy insurer, including any obligation 206
in the contract by which the provider must refund the contract 207
holder upon cancellation of a contract; 208

(4) The name, address, and telephone number of the 209
provider's reimbursement insurance policy insurer. 210

(D) A motor vehicle ancillary product protection contract 211
that includes repair or replacement of glass on a motor vehicle 212
as provided in division (A) (3) (a) (i) of this section, shall 213
conspicuously state: "This contract may provide a duplication of 214
coverage already provided by your automobile physical damage 215
insurance policy." 216

(E) A reimbursement insurance policy that is required to 217
be issued under this section shall contain: 218

(1) A statement that if a provider fails to perform or 219
make payment due under the terms of the motor vehicle ancillary 220
product protection contract within sixty days after the contract 221
holder requests performance or payment pursuant to the terms of 222
the contract, the contract holder may request performance or 223
payment directly from the provider's reimbursement insurance 224
policy insurer, including any obligation in the contract by 225
which the provider must refund the contract holder upon 226
cancellation of a contract. 227

(2) A statement that in the event of cancellation of the 228
provider's reimbursement insurance policy, insurance coverage 229
will continue for all contract holders whose motor vehicle 230
ancillary product protection contracts were issued by the 231
provider and reported to the insurer for coverage during the 232
term of the reimbursement insurance policy. 233

(F) The sale or issuance of a motor vehicle ancillary 234
product protection contract is a consumer transaction for 235
purposes of sections 1345.01 to 1345.13 of the Revised Code. The 236
provider is the supplier and the contract holder is the consumer 237
for purposes of those sections. 238

(G) Unless issued by an insurer authorized or eligible to 239
do business in this state, a motor vehicle ancillary product 240
protection contract does not constitute a contract substantially 241
amounting to insurance, or the contract's issuance the business 242
of insurance, under section 3905.42 of the Revised Code. 243

(H) The contracts identified in divisions (A) (3) (c) (i) to 244
(v) of this section are not insurance and are not subject to any 245
provision of the insurance laws of this state unless expressly 246
made so. 247

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

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

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

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

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

(4) The procedure for making a claim under the contract or agreement, including a toll-free telephone number for claims service and a procedure for obtaining emergency repairs or replacements performed outside normal business hours.

Section 2. That existing sections 3905.423 and 3905.426 and section 3905.425 of the Revised Code are hereby repealed.