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Sub. S. B. No. 65

Senator Lang

**Cosponsors: Senators Cirino, DeMora, Hicks-Hudson, Ingram, Johnson, O'Brien,
Patton, Reineke, Reynolds, Roegner, Schaffer, Weinstein**

To amend sections 1317.05, 3905.426, 4509.06, and 1
4509.70 and to enact section 1310.251 of the 2
Revised Code to modify the law governing 3
ancillary product protection contracts, vehicle 4
value protection agreements, and uninsured 5
drivers. 6

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

Section 1. That sections 1317.05, 3905.426, 4509.06, and 7
4509.70 be amended and section 1310.251 of the Revised Code be 8
enacted to read as follows: 9

Sec. 1310.251. (A) (1) As used in this section, "excess 10
wear and use waiver" means a contractual agreement that is part 11
of, or a separate addendum to, a lease agreement for use of a 12
motor vehicle, under which the lessor agrees, with or without a 13
separate charge, to do one or both of the following: 14

(a) Cancel or waive all or part of amounts that may become 15
due under a lessee's lease agreement as a result of excess wear 16
and use of a motor vehicle; 17

(b) Cancel or waive amounts due for excess mileage. 18

(2) "Motor vehicle" has the same meaning as in section 19
4501.01 of the Revised Code and also includes utility vehicles 20
and under-speed vehicles as defined in that section. 21

(B) The terms of a related motor vehicle lease shall not 22
be conditioned upon the consumer's payment for any excess wear 23
and use waiver. Excess wear and use waivers may be discounted or 24
given at no extra charge in connection with the purchase of 25
other noncredit related goods or services. 26

(C) Notwithstanding any provision of the Revised Code to 27
the contrary, an excess wear and use waiver is not an insurance 28
product. 29

Sec. 1317.05. (A) Any retail seller who, in any retail 30
installment contract, has agreed to purchase insurance for the 31
retail buyer and to extend credit for the price thereof, 32
excluding single interest insurance, shall, prior to the due 33
date of the first installment of the retail installment 34
contract, deliver to the retail buyer personally, or mail or 35
cause to be mailed to the retail buyer at the retail buyer's 36
address as shown on the retail installment contract, the policy 37
of insurance, or in lieu thereof a certificate of insurance, or 38
the retail buyer is not liable on the retail buyer's retail 39
installment contract until the policy, or certificate of 40
insurance, is received, or full refund is made of the insurance 41
premium. 42

If the premium for insurance of like kind and amount, as 43
fixed in the published manual of a recognized standard rating 44
bureau designated by the retail seller, is less than the amount 45
charged the retail buyer as fixed in the written instrument in 46
compliance with division (D) of section 1317.04 of the Revised 47
Code, the retail buyer may deduct an amount equal to three times 48

the difference from the amount owed the retail seller, or the 49
retail seller's successor in interest. Sections 1317.01 to 50
1317.11 of the Revised Code do not impair the authority of the 51
superintendent of insurance to grant, renew, or revoke licenses, 52
nor do said sections authorize anyone other than a licensee of 53
the division of insurance to directly or indirectly receive any 54
part of the amount charged for insurance in connection with any 55
retail installment sale. 56

(B) As used in this division, "debt cancellation or debt 57
suspension product" means a contractual agreement in which a 58
retail seller, or its assignee, agrees for a separate charge to 59
cancel or waive all or a part of amounts due on a retail buyer's 60
retail installment contract in the event of a total physical 61
damage loss or unrecovered theft of the motor vehicle that is 62
the subject of the contract. "Debt cancellation or debt 63
suspension product" includes a guaranteed asset protection 64
waiver, guaranteed auto protection waiver, or other similarly 65
named agreement. A "debt cancellation or debt suspension 66
product" may also provide, with or without a separate charge, a 67
benefit that waives an amount, or provides a borrower with a 68
credit, towards the purchase of a replacement motor vehicle. 69

A debt cancellation or debt suspension product, and an 70
addendum to a retail installment contract containing a debt 71
cancellation or debt suspension product, shall be considered a 72
part of the retail installment contract and shall remain a part 73
of that contract upon the assignment, sale, or transfer of that 74
contract. The charge for any optional debt cancellation or debt 75
suspension product shall be listed as a specific good and shall 76
not be considered a finance charge or interest. The purchase 77
price and the terms of the debt cancellation or debt suspension 78
product shall be disclosed in writing to the buyer. The 79

extension of credit, terms of the credit, or the terms of the 80
related motor vehicle sale or lease shall not be conditioned on 81
the purchase of the debt cancellation or debt suspension 82
product. Notwithstanding any other provision of law, a debt 83
cancellation or debt suspension product shall not be considered 84
insurance. 85

(C) Single interest insurance shall be listed as a 86
specific good in a retail installment contract. 87

(D) As used in this section, "single interest insurance" 88
means insurance that covers only the interest of the holder of 89
the retail installment contract. 90

Sec. 3905.426. (A) As used in this section: 91

(1) "Contract holder" means the person who purchased a 92
motor vehicle ancillary product protection contract, any 93
authorized transferee or assignee of the purchaser, or any other 94
person assuming the purchaser's rights under the motor vehicle 95
ancillary product protection contract. 96

(2) "Finance agreement" means a loan or retail installment 97
contract secured by a motor vehicle or a lease contract for the 98
use of a motor vehicle. 99

~~(2)~~ (3) "Motor vehicle" has the same meaning as in section 100
4501.01 of the Revised Code and also includes utility vehicles_ 101
and under-speed vehicles as defined in that section. 102

~~(3)~~ (a) ~~(4)~~ (a) "Motor vehicle ancillary product protection 103
contract" means a contract or agreement that is effective for a 104
specified duration and paid for by means other than the purchase 105
of a motor vehicle, or its parts or equipment, to perform any 106
one or more of the following services: 107

(i) Repair or replacement of glass on a motor vehicle	108
necessitated by wear and tear or damage caused by a road hazard;	109
(ii) Removal of a dent, ding, or crease without affecting	110
the existing paint finish using paintless dent removal	111
techniques but which expressly excludes replacement of vehicle	112
body panels, sanding, bonding, or painting;	113
(iii) Repair to the interior components of a motor vehicle	114
necessitated by wear and tear but which expressly excludes	115
replacement of any part or component of a motor vehicle's	116
interior;	117
(iv) Repair or replacement of tires or wheels damaged	118
because of a road hazard;	119
(v) Replacement of a lost, stolen, or inoperable key or	120
key fob;	121
<u>(vi) In conjunction with a motor vehicle leased for use,</u>	122
<u>the repair, replacement, or maintenance of property, or</u>	123
<u>indemnification for repair, replacement, or maintenance, due to</u>	124
<u>excess wear and use, damage for items such as tires, paint</u>	125
<u>cracks or chips, missing interior or exterior parts, or excess</u>	126
<u>mileage that results in a lease-end charge, or any other charge</u>	127
<u>for damage that is deemed as excess wear and use by a lessor</u>	128
<u>under a motor vehicle lease, provided any such charge shall not</u>	129
<u>exceed the purchase price of the vehicle at the end of the lease</u>	130
<u>term;</u>	131
<u>(vii) Provide a benefit under a vehicle value protection</u>	132
<u>agreement.</u>	133
(b) A motor vehicle ancillary product protection contract	134
may, but is not required to, provide for incidental payment of	135
indemnity under limited circumstances, including, without	136

limitation, towing, rental, and emergency road services.	137
(c) "Motor vehicle ancillary product protection contract"	138
does not include any of the following:	139
(i) A motor vehicle service contract;	140
(ii) A vehicle protection product warranty as defined in	141
section 3905.421 of the Revised Code;	142
(iii) A home service contract as defined in section	143
3905.422 of the Revised Code;	144
(iv) A consumer goods service contract as defined in	145
section 3905.423 of the Revised Code;	146
(v) A contract for prepaid routine, scheduled maintenance	147
only.	148
(4) <u>(5)</u> "Motor vehicle service contract" means a contract	149
or agreement to perform or pay for the repair, replacement, or	150
maintenance of a motor vehicle due to defect in materials or	151
workmanship, normal wear and tear, mechanical or electrical	152
breakdown, or failure of parts or equipment of a motor vehicle,	153
with or without additional provisions for incidental payment of	154
indemnity under limited circumstances, including, without	155
limitation, towing, rental, and emergency road services, that is	156
effective for a specified duration and paid for by means other	157
than the purchase of a motor vehicle.	158
(5) <u>(6)</u> "Provider" means a person who is contractually	159
obligated to a contract holder under the terms of a motor	160
vehicle ancillary product protection contract.	161
(6) <u>(7)</u> "Road hazard" means a condition that may cause	162
damage or wear and tear to a tire or wheel on a public or	163
private roadway, roadside, driveway, or parking lot or garage,	164

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.

~~(7)~~ (8) "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.

~~(8)~~ (9) "Supplier" has the same meaning as in section 1345.01 of the Revised Code.

(10) "Vehicle value protection agreement" includes a contractual agreement that provides a benefit towards either the reduction of some or all of the contract holder's current finance agreement deficiency balance, or towards the purchase or lease of a replacement motor vehicle or motor vehicle services, upon the occurrence of an adverse event to the motor vehicle, including loss, theft, damage, obsolescence, diminished value, or depreciation. "Vehicle value protection agreement" includes trade-in-credit agreements, diminished value agreements, depreciation benefit agreements, or other similar agreements. "Vehicle value protection agreement" does not include a debt suspension or debt cancellation product.

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

(C) A motor vehicle ancillary product protection contract

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)~~ (A) (4) (a) (i) of this 213
section, shall conspicuously state: "This contract may provide a 214
duplication of coverage already provided by your automobile 215
physical damage insurance policy." 216

(E) A vehicle value protection agreement may be canceled 217
by the contract holder within thirty days of the effective date 218
of the agreement, and the contract holder shall be entitled to a 219
full refund of the purchase price paid by the contract holder, 220
if any, so long as no benefits have been provided under the 221
contract. 222

(F) A vehicle value protection agreement that, under the 223
terms of the agreement, may be canceled by the contract holder 224
more than thirty days after the effective date of the agreement 225
must state the conditions under which it may be canceled, 226
including the procedures for requesting any refund of the 227
purchase price paid by the contract holder and the methodology 228
for calculating any refund of the purchase price. 229

(G) The contract provider of the vehicle value protection 230
agreement shall mail a written notice to the contract holder at 231
the last known address of the contract holder contained in the 232
records of the contract provider at least five days prior to 233
cancellation by the contract provider. Prior notice is not 234
required if the reason for cancellation is nonpayment of the 235
provider fee, a material misrepresentation by the contract 236
holder to the contract provider or administrator, or a 237
substantial breach of duties by the contract holder relating to 238
the covered product or the use of the covered product. The 239
notice shall state the effective date of the cancellation and 240
the reason for the cancellation. If a vehicle value protection 241
agreement is canceled by the contract provider for a reason 242
other than nonpayment of the provider fee, the provider shall 243
refund to the contract holder one hundred per cent of the 244
unearned provider fee paid by the contract holder, if any. If 245
coverage under the vehicle value protection agreement continues 246
after a claim, then all claims paid may be deducted from any 247
refund required by this division. A reasonable administrative 248
fee of up to seventy-five dollars may be charged by the contract 249
provider and deducted from any refund due under this division or 250
division (F) of this section. 251

(H) Any refund under divisions (E) and (F) of this section 252
shall be paid to the seller or assignee of a retail installment 253

contract or lease agreement unless otherwise agreed to by the 254
contract holder and the seller or assignee. 255

(I) A reimbursement insurance policy that is required to 256
be issued under this section shall contain: 257

(1) A statement that if a provider fails to perform or 258
make payment due under the terms of the motor vehicle ancillary 259
product protection contract within sixty days after the contract 260
holder requests performance or payment pursuant to the terms of 261
the contract, the contract holder may request performance or 262
payment directly from the provider's reimbursement insurance 263
policy insurer, including any obligation in the contract by 264
which the provider must refund the contract holder upon 265
cancellation of a contract. 266

(2) A statement that in the event of cancellation of the 267
provider's reimbursement insurance policy, insurance coverage 268
will continue for all contract holders whose motor vehicle 269
ancillary product protection contracts were issued by the 270
provider and reported to the insurer for coverage during the 271
term of the reimbursement insurance policy. 272

~~(F)~~ (J) The sale or issuance of a motor vehicle ancillary 273
product protection contract is a consumer transaction for 274
purposes of sections 1345.01 to 1345.13 of the Revised Code. The 275
provider is the supplier and the contract holder is the consumer 276
for purposes of those sections. 277

~~(G)~~ (K) Unless issued by an insurer authorized or eligible 278
to do business in this state, a motor vehicle ancillary product 279
protection contract does not constitute a contract substantially 280
amounting to insurance, or the contract's issuance the business 281
of insurance, under section 3905.42 of the Revised Code. 282

~~(H)~~—(L) Unless issued by an insurer authorized or eligible 283
to do business in this state, a contract identified in division 284
~~(A) (3) (e) (i)~~—(A) (4) (c) (i) or (v) of this section does not 285
constitute a contract substantially amounting to insurance, or 286
the contract's issuance the business of insurance, under section 287
3905.42 of the Revised Code. 288

~~(I)~~—(M) The rights of a contract holder against a 289
provider's reimbursement insurance policy insurer as provided in 290
this section apply only in regard to a reimbursement insurance 291
policy issued under this section. This section does not create 292
any contractual rights in favor of a person that does not 293
qualify as an insured under any other type of insurance policy 294
described in Title XXXIX of the Revised Code. This section does 295
not prohibit the insurer of a provider's reimbursement insurance 296
policy from assuming liability for contracts issued prior to the 297
effective date of the policy or July 1, 2009. 298

~~(J)~~—(N) A contract or agreement described in division (A) 299
(3) (a) (iv) of this section in which the provider is a tire 300
manufacturer shall be exempt from the requirements of division 301
(B) of this section if the contract or agreement conspicuously 302
states all of the following: 303

(1) That the contract or agreement is not an insurance 304
contract; 305

(2) That any covered obligations or claims under the 306
contract or agreement are the responsibility of the provider; 307

(3) The name, address, and telephone number of any 308
administrator responsible for the administration of the contract 309
or agreement, the provider obligated to perform under the 310
contract or agreement, and the contract seller; 311

(4) The procedure for making a claim under the contract or 312
agreement, including a toll-free telephone number for claims 313
service and a procedure for obtaining emergency repairs or 314
replacements performed outside normal business hours. 315

Sec. 4509.06. (A) ~~The driver of any motor vehicle which~~ 316
Any person who is in any manner involved in a motor vehicle 317
accident within six months of the accident, including as the 318
driver of a motor vehicle, the owner of property, or any person 319
sustaining bodily injury or property damage, may, within six 320
months after the accident, forward a written report of the 321
accident to the registrar of motor vehicles on a form prescribed 322
by the registrar alleging that a driver or owner of any ~~other~~ 323
vehicle involved in the accident was uninsured at the time of 324
the accident. 325

(B) Upon receipt of the accident report, the registrar 326
shall send a notice by regular mail to the driver and owner 327
alleged to be uninsured requiring the person to give evidence 328
that the person had proof of financial responsibility in effect 329
at the time of the accident. 330

(C) Within thirty days after the mailing of the notice by 331
the registrar, the driver of the vehicle alleged to be uninsured 332
shall forward a report together with acceptable proof of 333
financial responsibility to the registrar in a form prescribed 334
by the registrar. The forwarding of the report by the owner of 335
the motor vehicle involved in the accident is deemed compliance 336
with this section by the driver. This section does not change or 337
modify the duties of the driver or operator of a motor vehicle 338
as set forth in section 4549.02 of the Revised Code. 339

Sec. 4509.70. (A) After consultation with the insurance 340
companies authorized to issue automobile liability or physical 341

damage policies, or both, in this state, the superintendent of 342
insurance shall approve a reasonable plan, fair and equitable to 343
the insurers and to their policyholders, for the apportionment 344
among such companies of applicants for such policies and for 345
motor-vehicle liability policies who are in good faith entitled 346
to but are unable to procure such policies through ordinary 347
methods. When any such plan has been approved by the 348
superintendent, all such insurance companies shall subscribe and 349
participate. Any applicant for such policy, any person insured 350
under such plan of operation, and any insurance company 351
affected, may appeal to the superintendent of insurance from any 352
ruling or decision of the manager or committee designated in the 353
plan to operate the assigned risk insurance plan. Any order or 354
act of the superintendent under this section is subject to 355
review as provided in sections 119.01 to 119.13 of the Revised 356
Code, at the instance of any party in interest. 357

(B) The plan described in division (A) of this section may 358
permit the assigned risk insurance plan to directly issue and 359
process claims arising from such policies described in division 360
(A) of this section to applicants of automobile insurance 361
policies who are in good faith entitled to but are unable to 362
procure such policies through ordinary methods. 363

(C) Every form of a policy, endorsement, rider, manual of 364
classifications, rules, and rates, every rating plan, and every 365
modification of any of them proposed to be used by the assigned 366
risk insurance plan shall be filed, or the plan may satisfy its 367
obligation to make such filings, as described in section 3937.03 368
of the Revised Code. 369

(D) Any automobile insurance policy issued by the assigned 370
risk insurance plan under division (B) of this section: 371

(1) Shall be recognized as if issued by an insurance 372
company authorized to do business in this state; 373

(2) Shall meet all requirements of proof of financial 374
responsibility as described in division (K) of section 4509.01 375
of the Revised Code. 376

(E) Proof of financial responsibility provided by the 377
assigned risk insurance plan to an automobile insurance 378
policyholder that meets the requirements described in division 379
(G) (1) (a) or (b) of section 4509.101 of the Revised Code shall 380
be recognized as if issued by an insurance company authorized to 381
do business in this state to demonstrate proof of financial 382
responsibility under section 4509.101 of the Revised Code. 383

(F) The assigned risk insurance plan designated in 384
division (A) of this section shall do both of the following: 385

(1) Make annual audited financial reports available to the 386
superintendent of insurance promptly upon the completion of such 387
audit; 388

(2) Upon reasonable notice, make available to the 389
superintendent of insurance all books and records relating to 390
the insurance transactions of the assigned risk insurance plan. 391

(G) (1) Except as provided in division (G) (2) of this 392
section, records created, held by, or pertaining to the assigned 393
risk insurance plan are not public records under section 149.43 394
of the Revised Code, are confidential, and are not subject to 395
inspection or disclosure. 396

(2) Division (G) (1) of this section does not apply to the 397
plan of operation and other information required to be filed 398
under this section with the superintendent unless otherwise 399
prohibited from release by law. 400

(H) (1) For the purposes of division (H) of this section, 401
"insurance agent" has the same meaning as in section 3905.01 of 402
the Revised Code. 403

(2) Provided that the assigned risk insurance plan 404
establishes registration procedures for insurance agents under 405
division (H) (3) of this section, the plan shall not accept an 406
application for an automobile insurance policy issued under 407
division (B) of this section unless that application is 408
submitted through an insurance agent registered in accordance 409
with those procedures. 410

(3) The plan may do all of the following: 411

(a) Establish procedures to register insurance agents; 412

(b) Establish separate registrations for commercial and 413
personal insurance agents, or one registration for both; 414

(c) Empower the manager of the plan to make determinations 415
on registration status, including by revoking an insurance 416
agent's registration. 417

(4) If an insurance agent is denied registration with the 418
plan, or the insurance agent's registration is revoked, the plan 419
may notify the superintendent of the plan's decision. The plan 420
and manager are immune from civil liability for any decision to 421
deny or revoke registration and from any decision to report 422
denials or revocations to the superintendent. 423

(5) All insurance agents submitting applications to the 424
plan for automobile insurance coverage have an affirmative duty 425
to ensure that all information included in the application and 426
any supporting materials is true and accurate. 427

(6) (a) An insurance agent shall not submit an application 428

to the plan for automobile insurance coverage unless the agent 429
exercises due diligence in confirming that the person seeking 430
insurance is unable to obtain coverage through an insurer 431
authorized to do business in this state. 432

(b) For the purposes of this section, due diligence 433
requires an insurance agent to contact at least five of the 434
authorized insurers the agent represents or, if the agent does 435
not represent five authorized insurers that customarily write 436
automobile insurance coverage, as many of such insurers as the 437
agent represents. 438

(c) An insurance agent may assume that insurance coverage 439
cannot be procured for the applicant through ordinary methods 440
after each insurer contacted under division (H) (6) (b) of this 441
section declines to provide coverage. 442

(d) An insurance agent may assume that an authorized 443
insurer declines to provide coverage to the applicant seeking 444
insurance upon either of the following: 445

(i) Receiving notice from the insurer declining coverage; 446
(ii) Receiving no response from the insurer within ten 447
days after the date the insurance agent initially makes contact 448
with the insurer. 449

(e) The determination of whether an insurance agent has 450
adequately complied with the due diligence requirements is at 451
the discretion of the manager of the plan. 452

(f) An agent shall not submit an application on behalf of 453
an applicant to the plan for any automobile insurance policy if 454
any insurer admitted, authorized, or otherwise eligible to do 455
business in this state has in any way communicated a willingness 456
to insure the applicant, even if coverage provided by the plan 457

costs less than other insurers. 458

(g) The manager of the plan may revoke the registration of 459
an insurance agent who fails to comply with division (H) (6) of 460
this section. 461

Section 2. That existing sections 1317.05, 3905.426, 462
4509.06, and 4509.70 of the Revised Code are hereby repealed. 463