

SENATE COMMITTEE AMENDMENTS

2018 Regular Session

Amendments proposed by Senate Committee on Commerce, Consumer Protection and International Affairs to Reengrossed House Bill No. 522 by Representative Davis

1 AMENDMENT NO. 1

2 On page 1, line 2, change "57" to "58"

3 AMENDMENT NO. 2

4 On page 1, line 3, after "R.S. 51:" delete the remainder of line and on line 4 delete "3146,"
5 and insert "3151 through 3156,"

6 AMENDMENT NO. 3

7 On page 2, delete lines 27 through 29 and delete pages 3 through 12 and insert:

8 "Section 2. Chapter 58 of Title 51 of the Louisiana Revised Statutes of 1950,
9 comprised of R.S. 51:3151 through 3156, is hereby enacted to read as follows:

10 CHAPTER 58. MOTOR VEHICLE CONTRACT PROVIDERS

11 §3151. Scope and purpose; exemptions

12 A. The purposes of this Part are the following:

13 (1) To create a registration and assurance mechanism for motor vehicle
14 service contract providers in this state.

15 (2) To encourage innovation in the marketing and development of more
16 economical and effective means of providing services under motor vehicle service
17 contracts while placing the risk of innovation on the providers rather than on
18 consumers.

19 (3) To permit and encourage fair and effective competition among different
20 systems of providing and paying for these services.

21 B. The following shall be exempt from this Chapter:

22 (1) Warranties as defined in this Chapter.

23 (2) Maintenance-only agreements as defined in this Chapter.

24 (3) Service contracts sold or offered for sale to persons other than
25 consumers.

26 (4) Service contracts sold or offered for sale on a single item of property sold
27 at the time of sale of the property or within a year of the date of sale.

28 (5) A vehicle mechanical breakdown insurance policy or vehicle component
29 coverage contract offered by a vehicle mechanical breakdown insurer in compliance
30 with the applicable provisions of Title 22 of the Louisiana Revised Statutes of 1950.

31 (6) Tire and wheel coverage sold by a retailer as a part of a service package
32 in concert with the sale of one or more tires or one or more wheels in compliance
33 with the applicable provisions of Title 22 of the Louisiana Revised Statutes of 1950.

34 C. The types of agreements referred to in Paragraphs (B)(1) through (4) of
35 this Section are not insurance in this state and shall be exempt from any provision
36 of the Louisiana Insurance Code.

37
38 §3152. Definitions

39 As used in this Chapter, unless the context otherwise requires, the following
40 words and phrases shall be defined as follows:

41 (1) "Administrator" means the person who is responsible for the
42 administration of the motor vehicle service contract or the motor vehicle service
43 contract plan or who is responsible for any submission required by this Chapter.

44 (2) "Consumer" means a natural person who buys, other than for purposes
45 of resale, any corporeal movable property, including a motor vehicle, that is

1 distributed in commerce and that is normally used for personal, family, or household
 2 purposes and not for business or research purposes.

3 (3)(a) "Maintenance-only agreement" means a contract of limited duration
 4 that provides only for scheduled maintenance.

5 (4) "Motor vehicle manufacturer" means a person who is any of the
 6 following:

7 (a) A manufacturer or producer of motor vehicles who sells motor vehicles
 8 under the manufacturer's or producer's own name or label.

9 (b) The wholly owned subsidiary of a person who manufactures or produces
 10 motor vehicles.

11 (c) A corporation which owns one-hundred percent of a person who
 12 manufactures or produces motor vehicles.

13 (d) Not a manufacturer or producer of motor vehicles, but sells motor
 14 vehicles under the trade name or label of another person who manufactures or
 15 produces motor vehicles.

16 (e) A manufacturer or producer of motor vehicles who sells the motor
 17 vehicles under the trade name or label of another person who manufactures or
 18 produces motor vehicles.

19 (f) Not a manufacturer or producer of motor vehicles but, pursuant to a
 20 written contract, licenses the use of its trade name or label to another person who
 21 manufactures or produces motor vehicles that sells motor vehicles under the
 22 licensor's trade name or label.

23 (5) "Motor vehicle service contract" a motor vehicle contract or agreement
 24 for a separately stated consideration for any duration that provides for any of the
 25 following:

26 (i) The repair or replacement of tires or wheels on a motor vehicle damaged
 27 as a result of coming into contact with road hazards including but not limited to
 28 potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

29 (ii) The removal of dents, dings, or creases on a motor vehicle that can be
 30 repaired using the process of paintless dent removal without affecting the existing
 31 paint finish and without replacing vehicle body panels, sanding, bonding, or painting.

32 (iii) The repair of chips or cracks in or the replacement of motor vehicle
 33 windshields as a result of damage caused by road hazards.

34 (iv) The replacement of a motor vehicle key or key-fob in the event that the
 35 key or key-fob becomes inoperable or is lost or stolen.

36 (b) A motor vehicle service contract is not insurance in this state or
 37 otherwise regulated under any provision of the Louisiana Insurance Code.

38 (6) "Person" means an individual, partnership, corporation, incorporated or
 39 unincorporated association, joint stock company, reciprocal, syndicate, or any similar
 40 entity or combination of entities acting in concert.

41 (7) "Provider" means a person who is contractually obligated to provide the
 42 services or indemnification under a motor vehicle service contract.

43 (8) "Provider fee" means the consideration paid for a motor vehicle service
 44 contract.

45 (9) "Reimbursement insurance policy" means a policy of insurance issued
 46 to a provider to do either of the following:

47 (a) Provide reimbursement to the provider pursuant to the terms of the
 48 insured motor vehicle service contracts issued or sold by the provider.

49 (b) In the event of the provider's nonperformance, pay on behalf of the
 50 provider all covered contractual obligations incurred by the provider under the terms
 51 of the insured motor vehicle service contracts issued or sold by the provider.

52 (10)(a) "Road hazard" means a hazard that is encountered while driving a
 53 motor vehicle including but not be limited to potholes, rocks, wood debris, metal
 54 parts, glass, plastic, curbs, or composite scraps.

55 (b) "Road hazard" shall not include any damage caused by collision with
 56 another vehicle, vandalism, or other causes usually covered under the comprehensive
 57 or collision coverages provided by an automobile physical damage policy.

58 (11) "Solvent" means assets exceed liabilities as calculated in accordance
 59 with generally accepted accounting principles.

60 (12) "Service contract holder" or "contract holder" means a person who is
 61 the purchaser or holder of a motor vehicle service contract.

1 (13) "Warranty" means a warranty made solely by the motor vehicle
 2 manufacturer, importer, or seller of a vehicle that is not negotiated or separated from
 3 the sale of the vehicle and is incidental to the sale of the vehicle, that guarantees
 4 indemnity for defective parts, mechanical or electrical breakdown, labor, or other
 5 remedial measures, such as repair or replacement of the vehicle, or repetition of
 6 services.

7 §3153. Requirements for doing business

8 A. Motor vehicle service contracts shall not be issued, sold, or offered for
 9 sale in this state unless the provider has done each of the following:

10 (1) Registered with the secretary of state and remains in good standing.
 11 (2) Provided a receipt for, or other written evidence of, the purchase of the
 12 motor vehicle service contract to the contract holder.

13 (3) Provided a copy of the motor vehicle service contract to the service
 14 contract holder within a reasonable period of time from the date of purchase.

15 B. Each provider of a motor vehicle service contract sold in this state shall
 16 file an application for an initial registration with the secretary of state consisting of
 17 the provider's name, address, telephone number, and contact person, designating a
 18 person in this state for service of process, and providing a listing of all officers, all
 19 directors, and all owners of ten percent or more of the business. Additionally, the
 20 provider shall file a copy of its basic organizational documents, including articles of
 21 incorporation, articles of organization, articles of association, or a partnership
 22 agreement. Each application for registration shall be accompanied by a fee of six
 23 hundred dollars. All fees shall be paid to the secretary of state.

24 C. A registration shall be effective for two years, unless the registration is
 25 denied or revoked. Ninety days prior to the expiration of a registration, a provider
 26 shall submit a renewal application on a form prescribed by the secretary of state and
 27 a renewal fee of two hundred fifty dollars. All fees shall be paid to the secretary of
 28 state.

29 D. Each registrant shall notify the secretary of state of any material change
 30 in the registration information within sixty days of the effective date of such change.
 31 The notice shall be accompanied by supporting documentation.

32 E. In order to assure the faithful performance of a provider's obligations to
 33 its contract holders and to insure its outstanding obligations, each provider shall
 34 comply with the following:

35 (1) Each motor vehicle service contract shall be insured under a
 36 reimbursement insurance policy issued by an insurer licensed, registered, or
 37 otherwise authorized to transact the business of insurance in this state, and which
 38 complies with the provisions of Subsection F of this Section.

39 (2) A provider that issues motor vehicle service contracts shall obtain and
 40 file with the secretary of state a copy of the reimbursement insurance policy issued
 41 to the provider.

42 (3) The issuer of the reimbursement insurance policy required by this
 43 Paragraph shall do either of the following:

44 (a) Maintain surplus as to policyholders and paid-in capital of at least fifteen
 45 million dollars.

46 (b) Maintain surplus as to policyholders and paid-in capital of less than
 47 fifteen million dollars but at least equal to ten million dollars and maintain a ratio of
 48 net written premiums, wherever written, to surplus as to policyholders and paid-in
 49 capital of not greater than three to one.

50 F. An insurer issuing a reimbursement insurance policy to a provider for any
 51 motor vehicle service contract issued, offered for sale, or sold in this state shall
 52 comply with all of the following:

53 (1) Be deemed to have received the premium for the insurance upon the
 54 payment of the provider fee by a consumer for a service contract issued by an
 55 insured provider.

56 (2) Provide reimbursement to, or payment on behalf of, the provider under
 57 the terms of the insured service contracts issued or sold by the provider or, in the
 58 event of the provider's nonperformance, provide or pay for, on behalf of the provider,
 59 all covered contractual obligations incurred by the provider under the terms of the
 60 insured service contracts issued or sold by the provider.

1 (3) Accept a claim arising under the contract directly from a contract holder,
 2 if the provider does not comply with any contractual obligation pursuant to the
 3 contract within sixty days of presentation of a valid claim by the contract holder.

4 (4)(a) Terminate or not renew the policy covering service contracts issued
 5 in this state only after a notice of termination or nonrenewal is presented to the
 6 secretary of state and commissioner of insurance, at least ten days prior to the
 7 termination or nonrenewal of the policy.

8 (b) The termination or nonrenewal shall not reduce the insurer's
 9 responsibility for any insured contract issued or sold prior to the date of termination
 10 or nonrenewal.

11 G. Except for the registration requirements of this Section, providers,
 12 administrators, and persons marketing, selling, or offering to sell motor vehicle
 13 service contracts are exempt from any licensing requirements of this state and shall
 14 not be subject to other registration information or security requirements.

15 H. The marketing, sale, offering for sale, issuance, making, proposing to
 16 make, and administration of motor vehicle service contracts by providers and related
 17 service contract sellers, administrators, and other persons is not insurance and shall
 18 be exempt from all provisions of the Louisiana Insurance Code.

19 I. Motor vehicle manufacturers are exempt from the registration and
 20 financial responsibility requirements of this Section.

21 J. Nothing in this Section shall be construed to limit the right of the insurer
 22 to seek indemnification or subrogation against the provider if the insurer provides
 23 or pays, or is obligated to provide or pay, for any covered contractual obligation
 24 incurred by the provider.

25 §3154. Required disclosures; service contracts

26 A. Each motor vehicle service contract marketed, sold, offered for sale,
 27 issued, made, proposed to be made, or administered in this state shall be written,
 28 printed, or typed in clear, understandable language that is easy to read and shall
 29 disclose the requirements set forth in this Section, as applicable.

30 B. Every motor vehicle service contract shall contain all the following
 31 information:

32 (1) The name and address of the provider and shall identify any
 33 administrator if different from the provider.

34 (2)(a) Motor vehicle service contracts insured under a reimbursement
 35 insurance policy shall contain a statement in substantially the following form:
 36 "Obligations of the provider under this service contract are insured under a service
 37 contract reimbursement insurance policy." The motor vehicle service contract shall
 38 also state the name and address of the insurer.

39 (b) This paragraph shall not apply to a motor vehicle manufacturer's service
 40 contracts on the motor vehicle manufacturer's products.

41 (3) The name of the motor vehicle service contract seller and name of the
 42 service contract holder to the extent that the name of the service contract holder has
 43 been furnished to the service contract provider. The identities of parties are not
 44 required to be preprinted on the service contract and may be added to the service
 45 contract at the time of sale.

46 (4) The total purchase price and the terms under which the service contract
 47 is sold. The purchase price is not required to be preprinted on the service contract
 48 and may be negotiated at the time of sale with the service contract holder.

49 (5) The existence of any deductible amount, if applicable.

50 (6) The goods and services to be provided and any limitations, exceptions,
 51 or exclusions.

52 (7) Any restrictions governing the transferability of the service contract, if
 53 applicable.

54 (8) The terms, restrictions, or conditions governing cancellation of the
 55 service contract prior to the termination or expiration date of the service contract by
 56 either the provider or the service contract holder. The provider of the service contract
 57 shall mail a written notice to the contract holder at the last known address of the
 58 service contract holder contained in the records of the provider at least fifteen days
 59 prior to cancellation by the provider. Prior notice is not required if the reason for
 60 cancellation is nonpayment of the provider fee, a material misrepresentation by the

1 service contract holder to the provider, or a substantial breach of duties by the
 2 service contract holder relating to the covered product or its use. The notice shall
 3 state the effective date of the cancellation and the reason for the cancellation.

4 (9) The obligations and duties of the service contract holder, including but
 5 not limited to the duty to protect against any further damage and any requirement to
 6 follow an owner's manual.

7 (10) Whether or not the service contract provides for or excludes
 8 consequential damages or preexisting conditions, if applicable. Service contracts
 9 may, but are not required to, cover damage resulting from rust, corrosion, or damage
 10 caused by a noncovered part or system.

11 (11) If prior approval of repair work is required, the procedure for obtaining
 12 prior approval and for making a claim, including a toll-free telephone number for
 13 claim service and a procedure for obtaining emergency repairs performed outside of
 14 normal business hours.

15 (12) A statement that contains all of the following provisions:

16 (a) The motor vehicle service contract is not insurance.

17 (b) The motor vehicle service contract is not regulated by the Department of
 18 Insurance.

19 (c) Any concerns or complaints regarding the motor vehicle service contract
 20 may be directed to the attorney general.

21 §3155. Consumer's right to cancel

22 A motor vehicle service contract shall require every provider to permit the
 23 service contract holder to return the motor vehicle service contract within twenty
 24 days of the date the motor vehicle service contract was mailed to the service contract
 25 holder or within ten days of delivery if the motor vehicle service contract is delivered
 26 to the service contract holder at the time of sale or within a longer time period
 27 permitted under the motor vehicle service contract. Upon return of the motor vehicle
 28 service contract to the provider within the applicable time period, if no claim has
 29 been made under the motor vehicle service contract prior to its return to the
 30 provider, the motor vehicle service contract is void and the provider shall refund to
 31 the service contract holder, or credit the account of the service contract holder, with
 32 the full purchase price of the motor vehicle service contract. The right to void the
 33 motor vehicle service contract provided is not transferable and shall apply only to the
 34 original service contract holder and only if no claim has been made prior to its return
 35 to the provider. A ten percent penalty per month shall be added to a refund that is not
 36 paid or credited within forty-five days after return of the motor vehicle service
 37 contract to the provider.

38 §3156. Prohibited acts

39 A. A provider shall not use in its name the words "insurance", "casualty",
 40 "surety", "mutual", or any other words descriptive of the insurance, casualty, or
 41 surety business or a name deceptively similar to the name or description of any
 42 insurance or surety corporation, or to the name of any other provider. The word
 43 "guaranty" or similar word may be used by a provider. A provider shall include in
 44 its motor vehicle service contracts a statement in substantially the following form:
 45 "This agreement is not an insurance contract."

46 B. A provider or its representative shall not in its motor vehicle service
 47 contracts or literature make, permit, or cause to be made any false or misleading
 48 statement, or deliberately omit any material statement that would be considered
 49 misleading if omitted.

50 Section 3. R.S. 22:361(3) is hereby repealed in its entirety."