

ACT No. 592

2018 Regular Session

HOUSE BILL NO. 522

BY REPRESENTATIVE DAVIS

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AN ACT

To amend and reenact R.S. 22:361(5), (9), and (10) and 362(B) and to enact Chapter 58 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:3151 through 3156, and to repeal R.S. 22:361(3), relative to motor vehicle service contracts; to move the registration of motor vehicle service contract providers from the Department of Insurance to the secretary of state; to provide for definitions; to provide for exemptions; to establish financial and registration requirements for service contract providers; to require certain disclosures to consumers; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:361(5), (9), and (10) and 362(B) are hereby amended and reenacted to read as follows:

§361. Definitions

As used in this Subpart:

* * *

(5) "Reinsurer" means a person licensed under this Subpart engaged in the reinsuring of vehicle mechanical reimbursement insurance, residual value insurance, or credit disability insurance policies, or any combination of kinds of insurance.

* * *

(9) "Vehicle mechanical breakdown insurance policy" means any contract, agreement, or instrument whereby a person other than the owner, seller, or lessor of a vehicle assumes the risk of or the expense or portion thereof for the mechanical breakdown or mechanical failure of a motor vehicle and may include other customer

1 assistance and convenience services, such as vehicle rental assistance, towing
 2 assistance, trip interruption, and roadside assistance, ~~and shall include those~~
 3 ~~agreements commonly known as vehicle service agreements or extended warranty~~
 4 ~~agreements where the assumption of risk is made by an entity other than the owner,~~
 5 ~~seller, or lessor of the vehicle.~~ The term "vehicle mechanical breakdown insurance
 6 policy" shall not include a service contract covering motor vehicles offered pursuant
 7 to R.S. 51:3151 et seq.

8 (10) "Vehicle mechanical breakdown insurer" means any person or
 9 organization, whether domestic, foreign, or alien, issuing or attempting to issue
 10 vehicle mechanical breakdown policies or vehicle component coverage contracts as
 11 defined herein. The term "vehicle mechanical breakdown insurer" shall not include
 12 a provider of service contracts covering motor vehicles offered pursuant to R.S.
 13 51:3151 et seq.

14 §362. License required of vehicle mechanical breakdown insurer

15 * * *

16 B. Each vehicle mechanical breakdown insurer may also act as a reinsurer
 17 in accordance with regulations adopted by the commissioner. All reserves for credit
 18 disability insurance shall be retained and held by the credit disability insurer. Except
 19 as otherwise provided in this Subsection, a vehicle mechanical breakdown insurer
 20 shall be allowed credit for reinsurance ceded to an assuming insurer that satisfies the
 21 requirements of this Subsection, R.S. 22:651 or 652, and the regulations thereunder.

22 * * *

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

25 CHAPTER 58. MOTOR VEHICLE CONTRACT PROVIDERS

26 §3151. Scope and purpose; exemptions

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

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

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

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

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

8 (1) Warranties as defined in this Chapter.

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

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

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

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

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

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

23 §3152. Definitions

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

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

29 (2) "Consumer" means a natural person who buys, other than for purposes
 30 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 who, pursuant to
20 a 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)(a) "Motor Vehicle Service Contract" means a contract or agreement for
24 a separately stated consideration for any duration to perform the service,
25 repair, replacement, or maintenance of property or indemnification for service,
26 repair, replacement, or maintenance, for the operational or structural failure of any
27 motor vehicle due to a defect in materials, workmanship, inherent defect, or normal
28 wear and tear, with or without additional provisions for incidental payment or
29 indemnity under limited circumstances, including but not limited to towing, rental,
30 and emergency road service and road hazard protection.

1 **(b) "Motor vehicle service contract" also includes a contract or agreement for**
2 **a separately stated consideration for any duration to perform any one or more of the**
3 **following:**

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

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

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

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

14 **(c) A motor vehicle service contract is not insurance in this state or otherwise**
15 **regulated under any provision of the Louisiana Insurance Code.**

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

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

21 **(8) "Provider fee" means the consideration paid for a motor vehicle service**
22 **contract.**

23 **(9) "Reimbursement insurance policy" means a policy of insurance issued**
24 **to a provider to do either of the following:**

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

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

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

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

7 (11) "Solvent" means having a current financial statement in which assets
8 exceed liabilities as calculated in accordance with generally accepted accounting
9 principles.

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

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

18 §3153. Requirements for doing business

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

21 (1) Registered with the secretary of state and remains in good standing.

22 (2) Provided a receipt for, or other written evidence of, the purchase of the
23 motor vehicle service contract to the contract holder.

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

26 B. Beginning February 1, 2019, each provider of a motor vehicle service
27 contract sold in this state shall file an application for an initial registration with the
28 secretary of state consisting of the provider's name, address, telephone number, and
29 contact person, designating a person in this state for service of process, and
30 providing a listing of all officers, all directors, and all owners of ten percent or more

1 of the business. Additionally, the provider shall file a copy of its basic organizational
2 documents, including articles of incorporation, articles of organization, articles of
3 association, or a partnership agreement. Each application for registration shall be
4 accompanied by a fee of six hundred dollars. All fees shall be paid to the secretary
5 of state.

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

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

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

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

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

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

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

28 (b) Maintain surplus as to policyholders and paid-in capital of less than
29 fifteen million dollars but at least equal to ten million dollars and maintain a ratio of

1 net written premiums, wherever written, to surplus as to policyholders and paid-in
2 capital of not greater than three to one.

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

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

9 (2) Provide reimbursement to, or payment on behalf of, the provider under
10 the terms of the insured service contracts issued or sold by the provider or, in the
11 event of the provider's nonperformance, provide or pay for, on behalf of the provider,
12 all covered contractual obligations incurred by the provider under the terms of the
13 insured service contracts issued or sold by the provider.

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

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

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

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

28 H. The marketing, sale, offering for sale, issuance, making, proposing to
29 make, and administration of motor vehicle service contracts by providers and related

1 service contract sellers, administrators, and other persons is not insurance and shall
2 be exempt from all provisions of the Louisiana Insurance Code.

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

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

9 §3154. Required disclosures; service contracts

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

14 B. Every motor vehicle service contract shall contain all the following
15 information:

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

18 (2)(a) Motor vehicle service contracts insured under a reimbursement
19 insurance policy shall contain a statement in substantially the following form:
20 "Obligations of the provider under this service contract are insured under a service
21 contract reimbursement insurance policy." The motor vehicle service contract shall
22 also state the name and address of the insurer.

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

25 (3) The name of the motor vehicle service contract seller and name of the
26 service contract holder to the extent that the name of the service contract holder has
27 been furnished to the service contract provider. The identities of parties are not
28 required to be preprinted on the service contract and may be added to the service
29 contract at the time of sale.

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

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

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

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

9 (8) The terms, restrictions, or conditions governing cancellation of the
10 service contract prior to the termination or expiration date of the service contract by
11 either the provider or the service contract holder. The provider of the service contract
12 shall mail a written notice to the contract holder at the last known address of the
13 service contract holder contained in the records of the provider at least fifteen days
14 prior to cancellation by the provider. Prior notice is not required if the reason for
15 cancellation is nonpayment of the provider fee, a material misrepresentation by the
16 service contract holder to the provider, or a substantial breach of duties by the
17 service contract holder relating to the covered product or its use. The notice shall
18 state the effective date of the cancellation and the reason for the cancellation.

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

22 (10) A statement as to whether or not the service contract provides for or
23 excludes consequential damages or preexisting conditions, if applicable. Service
24 contracts may, but are not required to, cover damage resulting from rust, corrosion,
25 or damage caused by a noncovered part or system.

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

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

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

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

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

7 §3155. Consumer's right to cancel

8 A motor vehicle service contract shall require every provider to permit the
 9 service contract holder to return the motor vehicle service contract within twenty
 10 days of the date the motor vehicle service contract was mailed to the service contract
 11 holder or within ten days of delivery if the motor vehicle service contract is delivered
 12 to the service contract holder at the time of sale or within a longer time period
 13 permitted under the motor vehicle service contract. Upon return of the motor vehicle
 14 service contract to the provider within the applicable time period, if no claim has
 15 been made under the motor vehicle service contract prior to its return to the
 16 provider, the motor vehicle service contract is void and the provider shall refund to
 17 the service contract holder, or credit the account of the service contract holder, with
 18 the full purchase price of the motor vehicle service contract. The right to void the
 19 motor vehicle service contract provided is not transferable and shall apply only to the
 20 original service contract holder and only if no claim has been made prior to its return
 21 to the provider. A ten percent penalty per month shall be added to a refund that is
 22 not paid or credited within forty-five days after return of the motor vehicle service
 23 contract to the provider.

24 §3156. Prohibited acts

25 A. A provider shall not use in its name the words "insurance", "casualty",
 26 "surety", "mutual", or any other words descriptive of the insurance, casualty, or
 27 surety business or a name deceptively similar to the name or description of any
 28 insurance or surety corporation, or to the name of any other provider. The word
 29 "guaranty" or similar word may be used by a provider. A provider shall include in

1 its motor vehicle service contracts a statement in substantially the following form:

2 "This agreement is not an insurance contract."

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

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

8 Section 4. This Act shall become effective on February 1, 2019.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____