

**ASSEMBLY BILL**

**No. 2354**

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**Introduced by Assembly Member Calderon**

February 18, 2016

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An act to amend Sections 12140, 12800, 12805, and 12820 of, and to repeal Section 116.5 of, the Insurance Code, relating to vehicle service contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2354, as introduced, Calderon. Vehicle service contracts.

Existing law provides that an express warranty warranting a motor vehicle lubricant, treatment, fluid, or additive that covers incidental or consequential damage resulting from a failure of the lubricant, treatment, fluid, or additive shall constitute automobile insurance, unless specified requirements are met.

This bill would repeal this provision.

Existing law provides that a “vehicle service contract,” except as provided, is insurance and is regulated by the Department of Insurance. A person, other than a seller of motor vehicles, is prohibited from selling or offering for sale a vehicle service contract. An obligor, the entity legally obligated under the terms of a service contract, who is not a seller, is required to possess a vehicle service contract license, as provided. “Vehicle service contract” is defined for the purposes of these provisions.

This bill, among other things, would add to the definition of a “vehicle service contract” an agreement, that promises the replacement of a motor vehicle key or key fob in the event that the key or key fob becomes inoperable or is lost or stolen, and an agreement covering any of the vehicle’s mechanical components, provided with or without

separate consideration, that promises to repair, replace, or maintain a motor vehicle or watercraft, or to indemnify for the repair, replacement, or maintenance of a motor vehicle or watercraft, conditioned upon the use of a specific brand or brands of lubricant, treatment, fluid, or additive.

This bill would delete from the definition of “vehicle service contract” an agreement of a term of at least one year, for separately stated consideration, that promises routine maintenance, and would specify that this type of agreement is not insurance. The bill would also specify that an agreement whereby an employer, or a 3rd party contracted by the employer, provides mileage reimbursement and incidental maintenance and repairs to its employees for personal vehicles used for business purposes is not a vehicle service contract or insurance. The bill would also define the term “road hazard” as a hazard that is encountered while driving a motor vehicle and that may include, but is not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps for purposes of vehicle service contract coverage.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 116.5 of the Insurance Code is repealed.  
2 ~~116.5.—An express warranty warranting a motor vehicle~~  
3 ~~lubricant, treatment, fluid, or additive that covers incidental or~~  
4 ~~consequential damage resulting from a failure of the lubricant,~~  
5 ~~treatment, fluid, or additive, shall constitute automobile insurance,~~  
6 ~~unless all of the following requirements are met:~~  
7 ~~(a) The obligor is the primary manufacturer of the product. For~~  
8 ~~the purpose of this section, “manufacturer” means a person who~~  
9 ~~can prove clearly and convincingly that the per unit cost of owned~~  
10 ~~or leased capital goods, including the factory, used to produce the~~  
11 ~~product, plus the per unit cost of nonsubcontracted labor used to~~  
12 ~~produce the product, exceeds twice the per unit cost of raw~~  
13 ~~materials used to produce the product. “Manufacturer” also means~~  
14 ~~a person who has formulated or produced, and continuously offered~~  
15 ~~in this state for more than nine years, a motor vehicle lubricant,~~  
16 ~~treatment, fluid, or additive.~~

1 ~~(b) The commissioner has issued a written determination that~~  
2 ~~the obligor is a manufacturer as defined in subdivision (a). An~~  
3 ~~obligor shall provide the commissioner with all information,~~  
4 ~~documents, and affidavits reasonably necessary for this~~  
5 ~~determination to be made. Approval by the commissioner shall be~~  
6 ~~obtained prior to January 1, 2004, or prior to the issuance of a~~  
7 ~~warranty subject to this section, whichever is later. If the~~  
8 ~~commissioner determines that the obligor is not a manufacturer,~~  
9 ~~the obligor may obtain a hearing in accordance with Chapter 4.5~~  
10 ~~(commencing with Section 11400) of Part 1 of Division 3 of Title~~  
11 ~~2 of the Government Code.~~

12 ~~(e) The agreement covers only damage incurred while the~~  
13 ~~product was in the vehicle.~~

14 ~~(d) The agreement is provided automatically with the product~~  
15 ~~at no extra charge.~~

16 SEC. 2. Section 12140 of the Insurance Code is amended to  
17 read:

18 12140. This part shall not apply to any of the following:

19 (a) A duly authorized attorney at law acting in the usual course  
20 of his profession.

21 (b) ~~Any~~An admitted insurer.

22 (c) ~~Any~~An association of motor carriers.

23 (d) ~~Any~~A person who is directly or indirectly engaged, either  
24 as principal or agent, in selling or offering for sale, furnishing, or  
25 procuring any of the services described in Section 12148, 12152,  
26 or 12153, or miscellaneous service that augments or is incidental  
27 to any of those services, but who is not directly or indirectly  
28 engaged, either as principal or agent, in selling or offering for sale,  
29 furnishing, or procuring any other service described in this chapter.

30 (e) *A person who is licensed as a vehicle service contract*  
31 *provider and offering any of the services described in subdivision*  
32 *(c) of Section 12800, to the extent that person is providing the*  
33 *services described therein.*

34 (f) *A person offering the services described in paragraph (4) of*  
35 *subdivision (c) of Section 12800, to the extent that person is*  
36 *providing the services described therein.*

37 (g) *An agreement for separately stated consideration that*  
38 *promises routine maintenance.*

39 SEC. 3. Section 12800 of the Insurance Code is amended to  
40 read:

1 12800. The following definitions apply for purposes of this  
2 part:

3 (a) “Motor vehicle” means a self-propelled device operated  
4 solely or primarily upon land and may include both self-propelled  
5 motor homes or recreational vehicles, non-self-propelled camping  
6 and recreational trailers, off-road vehicles, and trailers designed  
7 to transport off-road vehicles. However, “motor vehicle” shall not  
8 include a self-propelled vehicle, or a component part of such a  
9 vehicle, that has any of the following characteristics:

10 (1) Has a gross vehicle weight rating of 30,000 pounds or more,  
11 and is not a recreational vehicle as defined by Section 18010 of  
12 the Health and Safety Code.

13 (2) Is designed to transport more than 15 passengers, including  
14 the driver.

15 (3) Is used in the transportation of materials considered  
16 hazardous pursuant to the Hazardous Materials Transportation Act  
17 (49 U.S.C. Sec. 5101 et seq.), as amended.

18 (b) “Watercraft” means a vessel, as defined in Section 21 of the  
19 Harbors and Navigation Code, and may include any  
20 non-self-propelled trailer used to transport such watercraft upon  
21 land.

22 (c) (1) “Vehicle service contract” means a contract or agreement  
23 for a separately stated consideration and for a specific duration to  
24 repair, replace, or maintain a motor vehicle or watercraft, or to  
25 indemnify for the repair, replacement, or maintenance of a motor  
26 vehicle or watercraft, necessitated by an operational or structural  
27 failure due to a defect in materials or workmanship, or due to  
28 normal wear and tear.

29 (2) (A) A vehicle service contract may also provide for the  
30 incidental payment of indemnity under limited circumstances only  
31 in the form of the following additional benefits: coverage for  
32 towing, substitute transportation, emergency road service, rental  
33 car reimbursement, reimbursement of deductible amounts under  
34 a manufacturer’s warranty, and reimbursement for travel, lodging,  
35 or meals.

36 ~~(3) “Vehicle service contract” also includes an agreement of a~~  
37 ~~term of at least one year, for separately stated consideration, that~~  
38 ~~promises routine maintenance.~~

39 (B) *For purposes of this paragraph, indemnity benefits are*  
40 *incidental if the cost to provide them based on historical data, or*

1 *projected data if historical data is unavailable or insufficient, is*  
2 *substantially less than the cost of providing all the benefits*  
3 *described in paragraphs (1) and (3).*

4 ~~(4)~~

5 (3) Notwithstanding Section 116, and paragraphs (1) and (2) of  
6 this subdivision, a vehicle service contract also includes one or  
7 more of the following:

8 (A) An agreement that promises the repair or replacement of a  
9 tire or wheel necessitated by wear and tear, defect, or damage  
10 caused by a road hazard. However, an agreement that promises  
11 the repair or replacement of a tire necessitated by wear and tear,  
12 defect, or damage caused by a road hazard, in which the obligor  
13 is the tire manufacturer, is exempt from the requirements of this  
14 part. A warranty provided by a tire or wheel distributor or retailer  
15 is exempt from the requirements of this part as long as the warranty  
16 covers only defects in the material or workmanship of the tire or  
17 wheel.

18 (B) An agreement that promises the repair or replacement of  
19 glass on a vehicle necessitated by wear and tear, defect, or damage  
20 caused by a road hazard. However, a warranty provided by a  
21 vehicle glass or glass sealant manufacturer is exempt from the  
22 requirements of this part. A warranty provided by a vehicle glass  
23 distributor or retailer is exempt from the requirements of this part  
24 as long as the warranty covers only defects in the material or  
25 workmanship of the vehicle glass.

26 (C) An agreement that promises the removal of a dent, ding, or  
27 crease without affecting the existing paint finish using paintless  
28 dent repair techniques, and which expressly excludes the  
29 replacement of vehicle body panels, sanding, bonding, or painting.

30 (D) *An agreement that promises the replacement of a motor*  
31 *vehicle key or key fob in the event that the key or key fob becomes*  
32 *inoperable or is lost or stolen.*

33 (4) *“Vehicle service contract” also includes an agreement*  
34 *covering any of a vehicle’s mechanical components, provided with*  
35 *or without separate consideration, that promises to repair, replace,*  
36 *or maintain a motor vehicle or watercraft, or to indemnify for the*  
37 *repair, replacement, or maintenance of a motor vehicle or*  
38 *watercraft, conditioned upon the use of a specific brand or brands*  
39 *of lubricant, treatment, fluid, or additive.*

1 (5) A “vehicle service contract” or contract of insurance does  
2 not include an agreement whereby an employer, or a third party  
3 contracted by the employer, provides mileage reimbursement and  
4 incidental maintenance and repairs to its employees for personal  
5 vehicles used for business purposes.

6 (d) “Service contract administrator” or “administrator” means  
7 any person, other than an obligor, who performs or arranges,  
8 directly or indirectly, the collection, maintenance, or disbursement  
9 of moneys to compensate any party for claims or repairs pursuant  
10 to a vehicle service contract, and who also performs or arranges,  
11 directly or indirectly, any of the following activities with respect  
12 to vehicle service contracts in which a seller located within this  
13 state is the obligor:

14 (1) Providing sellers with service contract forms.

15 (2) Participating in the adjustment of claims arising from service  
16 contracts.

17 (e) “Purchaser” means any person who purchases a vehicle  
18 service contract from a seller.

19 (f) “Seller” means either of the following:

20 (1) With respect to motor vehicles, a dealer or lessor-retailer  
21 licensed in one of those capacities by the Department of Motor  
22 Vehicles and who sells vehicle service contracts incidental to his  
23 or her business of selling or leasing motor vehicles.

24 (2) With respect to watercraft, a person who sells vehicle service  
25 contracts incidental to that person’s business of selling or leasing  
26 watercraft vehicles.

27 (g) “Obligor” means the entity legally obligated under the terms  
28 of a service contract.

29 (h) “Road hazard” means a hazard that is encountered while  
30 driving a motor vehicle and that may include, but is not limited  
31 to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs,  
32 or composite scraps.

33 SEC. 4. Section 12805 of the Insurance Code is amended to  
34 read:

35 12805. (a) Notwithstanding Sections 103 and 116, the  
36 following types of agreements shall not constitute insurance:

37 (1) A vehicle service contract that does each of the following:

38 (A) Names as the obligor a motor vehicle manufacturer or  
39 distributor licensed in that capacity by the Department of Motor  
40 Vehicles, or a watercraft manufacturer.

1 (B) Covers only motor vehicles or watercraft manufactured,  
2 distributed, or sold by that obligor.

3 (2) A vehicle service contract in which the obligor is a seller,  
4 provided that the obligor complies with all provisions of this part  
5 except Section 12815.

6 (3) A vehicle service contract sold by a seller in which the  
7 obligor is a party other than the seller, provided that the obligor  
8 complies with all provisions of this part.

9 (4) An agreement in which the obligor is a motor vehicle or  
10 watercraft part manufacturer, distributor, or retailer, that covers  
11 no more than the following items:

12 (A) The repair or replacement of a part manufactured,  
13 distributed, or retailed by that obligor.

14 (B) Consequential and incidental damage resulting from the  
15 failure of that part.

16 (5) An agreement in which the obligor is a repair facility, that  
17 is entered into pursuant and subsequent to repair work previously  
18 performed by that repair facility, and that is limited in scope to the  
19 following:

20 (A) The repair or replacement of the part that was previously  
21 repaired.

22 (B) Consequential and incidental damage resulting from the  
23 failure of that part.

24 (6) An agreement promising only routine maintenance that does  
25 not constitute a vehicle service contract.

26 (7) *An agreement whereby an employer, or a third party*  
27 *contracted by the employer, provides mileage reimbursement and*  
28 *incidental maintenance and repairs to its employees for personal*  
29 *vehicles used for business purposes.*

30 (8) *An agreement for separately stated consideration that*  
31 *promises routine maintenance.*

32 (b) The types of agreements described in paragraphs (4), (5),  
33 and (6) of subdivision (a) are exempt from all provisions of this  
34 part.

35 (c) Vehicle service contracts described in paragraph (1) of  
36 subdivision (a) are exempt from the provisions of Sections 12815,  
37 12830, 12835, and 12845.

38 SEC. 5. Section 12820 of the Insurance Code, as added by  
39 Section 27 of Chapter 348 of the Statutes of 2015, is amended to  
40 read:

1 12820. (a) Prior to offering a vehicle service contract form to  
2 a purchaser or providing a vehicle service contract form to a seller,  
3 an obligor shall file with the commissioner a specimen of that  
4 vehicle service contract form.

5 (b) A vehicle service contract form may include any or all of  
6 the benefits described in subdivision (c) of Section 12800 and shall  
7 comply with all of the following requirements:

8 (1) (A) If an obligor has complied with Section 12830, the  
9 vehicle service contract shall include a disclosure in substantially  
10 the following form: “Performance to you under this contract is  
11 guaranteed by a California approved insurance company. You may  
12 file a claim with this insurance company if any promise made in  
13 the contract has been denied or has not been honored within 60  
14 days after your request. The name and address of the insurance  
15 company is: (insert name and address). If you are not satisfied with  
16 the insurance company’s response, you may contact the California  
17 Department of Insurance at 1-800-927-4357 or access the  
18 department’s Internet Web site ([www.insurance.ca.gov](http://www.insurance.ca.gov)).”

19 (B) If an obligor has complied with Section 12836, the vehicle  
20 service contract shall include a disclosure in substantially the  
21 following form: “If any promise made in the contract has been  
22 denied or has not been honored within 60 days after your request,  
23 you may contact the California Department of Insurance at  
24 1-800-927-4357 or access the department’s Internet Web site  
25 ([www.insurance.ca.gov](http://www.insurance.ca.gov)).”

26 (C) The requirement that a vehicle service contract form include  
27 the department’s Internet Web site shall not apply to a form for  
28 which the department has issued a “no objection letter” as of  
29 December 31, 2016.

30 (2) All vehicle service contract language that excludes coverage,  
31 or imposes duties upon the purchaser, shall be conspicuously  
32 printed in boldface type no smaller than the surrounding type.

33 (3) The vehicle service contract shall do each of the following:

34 (A) State the obligor’s full corporate name or a fictitious name  
35 approved by the commissioner, the obligor’s mailing address, the  
36 obligor’s telephone number, and the obligor’s vehicle service  
37 contract provider license number.

38 (B) State the name of the purchaser and the name of the seller.

39 (C) Conspicuously state the vehicle service contract’s purchase  
40 price.

1 (D) Comply with Sections 1794.4 and 1794.41 of the Civil  
2 Code.

3 (E) Name the administrator, if any, and provide the  
4 administrator's license number.

5 (4) If the vehicle service contract excludes coverage for  
6 preexisting conditions, the contract must disclose this exclusion  
7 in 12-point type.

8 (c) The following benefits constitute insurance, whether offered  
9 as part of a vehicle service contract or in a separate agreement:

10 (1) Indemnification for a loss caused by misplacement, theft,  
11 collision, fire, or other peril typically covered in the comprehensive  
12 coverage section of an automobile insurance policy, a homeowner's  
13 policy, or a marine or inland marine ~~policy.~~ *policy, except as*  
14 *expressly authorized in subdivision (c) of Section 12800.*

15 (2) Locksmith services, unless offered as part of an emergency  
16 road service benefit.

17 (d) This section shall become operative on January 1, 2017.