

AMENDED IN ASSEMBLY APRIL 11, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2354

Introduced by Assembly Member Calderon

February 18, 2016

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 amended, 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.~~ *specify that an agreement whereby an employer promises, or a third party contracted by the employer and acting on the employer’s behalf provides, mileage reimbursement or vehicle maintenance or repairs, or any combination of these benefits, to the employer’s employees for personal vehicles used in the employer’s business is not 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 SEC. 2. Section 12140 of the Insurance Code is amended to
- 3 read:
- 4 12140. This part shall not apply to any of the following:
- 5 (a) A duly authorized attorney at law acting in the usual course
- 6 of his profession.
- 7 (b) An admitted insurer.
- 8 (c) An association of motor carriers.
- 9 (d) A person who is directly or indirectly engaged, either as
- 10 principal or agent, in selling or offering for sale, furnishing, or
- 11 procuring any of the services described in Section 12148, 12152,

1 or 12153, or miscellaneous service that augments or is incidental
2 to any of those services, but who is not directly or indirectly
3 engaged, either as principal or agent, in selling or offering for sale,
4 furnishing, or procuring any other service described in this chapter.

5 (e) A person who is licensed as a vehicle service contract
6 provider and offering any of the services described in *paragraphs*
7 *(1) to (4), inclusive, of subdivision (c) of Section 12800*, to the
8 extent that person is providing the services described therein.

9 (f) A person offering the services described in ~~paragraph (4) of~~
10 ~~subdivision (e) of Section 12800, (7) of subdivision (a) of Section~~
11 *12805* to the extent that person is providing the services described
12 therein.

13 (g) ~~An agreement for separately stated consideration that~~
14 ~~promises routine maintenance.~~

15 SEC. 3. Section 12800 of the Insurance Code is amended to
16 read:

17 12800. The following definitions apply for purposes of this
18 part:

19 (a) “Motor vehicle” means a self-propelled device operated
20 solely or primarily upon land and may include both self-propelled
21 motor homes or recreational vehicles, non-self-propelled camping
22 and recreational trailers, off-road vehicles, and trailers designed
23 to transport off-road vehicles. However, “motor vehicle” shall not
24 include a self-propelled vehicle, or a component part of such a
25 vehicle, that has any of the following characteristics:

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

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

31 (3) Is used in the transportation of materials considered
32 hazardous pursuant to the Hazardous Materials Transportation Act
33 (49 U.S.C. Sec. 5101 et seq.), as amended.

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

38 (c) (1) “Vehicle service contract” means a contract or agreement
39 for a separately stated consideration and for a specific duration to
40 repair, replace, or maintain a motor vehicle or watercraft, or to

1 indemnify for the repair, replacement, or maintenance of a motor
 2 vehicle or watercraft, necessitated by an operational or structural
 3 failure due to a defect in materials or workmanship, or due to
 4 normal wear and tear.

5 (2) (A) A vehicle service contract may also provide for the
 6 incidental payment of indemnity under limited circumstances only
 7 in the form of the following additional benefits: coverage for
 8 towing, substitute transportation, emergency road service, rental
 9 car reimbursement, reimbursement of deductible amounts under
 10 a manufacturer’s warranty, and reimbursement for travel, lodging,
 11 or meals.

12 (B) *A provider seeking to offer a vehicle service contract,*
 13 *including any of the benefits described in subparagraph (A), shall,*
 14 *when filing a specimen of the contract in accordance with*
 15 *subdivision (a) of Section 12820, certify that the indemnity benefits*
 16 *provided are incidental. For purposes of ~~this paragraph,~~*
 17 *subparagraph (A) and this certification, indemnity benefits are*
 18 *incidental if the cost to provide them based on historical data, or*
 19 *projected data if historical data is unavailable or insufficient, is*
 20 *substantially less than the cost of providing all the benefits*
 21 *described in paragraphs ~~(1) and (3): (1), (3), (4), and (5). The~~*
 22 *commissioner may request the historical or projected data at any*
 23 *time.*

24 (3) *“Vehicle service contract” also includes an agreement of*
 25 *a term of at least one year, for separately stated consideration,*
 26 *that promises routine maintenance.*

27 ~~(3)~~

28 (4) Notwithstanding Section 116, and paragraphs (1) and (2) of
 29 this subdivision, a vehicle service contract also includes one or
 30 more of the following:

31 (A) An agreement that promises the repair or replacement of a
 32 tire or wheel necessitated by wear and tear, defect, or damage
 33 caused by a road hazard. However, an agreement that promises
 34 the repair or replacement of a tire necessitated by wear and tear,
 35 defect, or damage caused by a road hazard, in which the obligor
 36 is the tire manufacturer, is exempt from the requirements of this
 37 part. A warranty provided by a tire or wheel distributor or retailer
 38 is exempt from the requirements of this part as long as the warranty
 39 covers only defects in the material or workmanship of the tire or
 40 wheel.

1 (B) An agreement that promises the repair or replacement of
2 glass on a vehicle necessitated by wear and tear, defect, or damage
3 caused by a road hazard. However, a warranty provided by a
4 vehicle glass or glass sealant manufacturer is exempt from the
5 requirements of this part. A warranty provided by a vehicle glass
6 distributor or retailer is exempt from the requirements of this part
7 as long as the warranty covers only defects in the material or
8 workmanship of the vehicle glass.

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

13 (D) An agreement that promises the replacement of a motor
14 vehicle key or key fob in the event that the key or key fob becomes
15 inoperable or is lost or stolen.

16 ~~(4)~~

17 (5) “Vehicle service contract” also includes an agreement
18 covering any of a vehicle’s mechanical components, provided with
19 or without separate consideration, that promises to repair, replace,
20 or maintain a motor vehicle or watercraft, or to indemnify for the
21 repair, replacement, or maintenance of a motor vehicle or
22 watercraft, conditioned upon the use of a specific brand or brands
23 of lubricant, treatment, fluid, or additive.

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

29 (d) “Service contract administrator” or “administrator” means
30 any person, other than an obligor, who performs or arranges,
31 directly or indirectly, the collection, maintenance, or disbursement
32 of moneys to compensate any party for claims or repairs pursuant
33 to a vehicle service contract, and who also performs or arranges,
34 directly or indirectly, any of the following activities with respect
35 to vehicle service contracts in which a seller located within this
36 state is the obligor:

37 (1) Providing sellers with service contract forms.

38 (2) Participating in the adjustment of claims arising from service
39 contracts.

1 (e) "Purchaser" means any person who purchases a vehicle
2 service contract from a seller.

3 (f) "Seller" means either of the following:

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

8 (2) With respect to watercraft, a person who sells vehicle service
9 contracts incidental to that person's business of selling or leasing
10 watercraft vehicles.

11 (g) "Obligor" means the entity legally obligated under the terms
12 of a service contract.

13 (h) "Road hazard" means a hazard that is encountered while
14 driving a motor vehicle and that may include, but is not limited
15 to, potholes, rocks, ~~wood~~ debris, metal parts, glass, plastic, curbs,
16 or composite scraps.

17 SEC. 4. Section 12805 of the Insurance Code is amended to
18 read:

19 12805. (a) Notwithstanding Sections 103 and 116, the
20 following types of agreements *covering watercraft or motor*
21 *vehicles* shall not constitute insurance:

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

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

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

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

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

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

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

39 (B) Consequential and incidental damage resulting from the
40 failure of that part.

1 (5) An agreement in which the obligor is a repair facility, that
2 is entered into pursuant and subsequent to repair work previously
3 performed by that repair facility, and that is limited in scope to the
4 following:

5 (A) The repair or replacement of the part that was previously
6 repaired.

7 (B) Consequential and incidental damage resulting from the
8 failure of that part.

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

11 ~~(7) An agreement whereby an employer, or a third party~~
12 ~~contracted by the employer, provides mileage reimbursement and~~
13 ~~incidental maintenance and repairs to its employees for personal~~
14 ~~vehicles used for business purposes.~~

15 ~~(8) An agreement for separately stated consideration that~~
16 ~~promises routine maintenance.~~

17 *(7) An agreement whereby an employer promises, or a third*
18 *party contracted by the employer and acting on the employer's*
19 *behalf provides, mileage reimbursement or vehicle maintenance*
20 *or repairs, or any combination of these benefits, to the employer's*
21 *employees for personal vehicles used in the employer's business.*

22 (b) The types of agreements described in paragraphs ~~(4), (5),~~
23 ~~and (6) (4) to (7), inclusive,~~ of subdivision (a) are exempt from all
24 provisions of this part.

25 (c) Vehicle service contracts described in paragraph (1) of
26 subdivision (a) are exempt from the provisions of Sections 12815,
27 12830, 12835, and 12845.

28 SEC. 5. Section 12820 of the Insurance Code, as added by
29 Section 27 of Chapter 348 of the Statutes of 2015, is amended to
30 read:

31 12820. (a) Prior to offering a vehicle service contract form to
32 a purchaser or providing a vehicle service contract form to a seller,
33 an obligor shall file with the commissioner a specimen of that
34 vehicle service contract form.

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

38 (1) (A) If an obligor has complied with Section 12830, the
39 vehicle service contract shall include a disclosure in substantially
40 the following form: "Performance to you under this contract is

1 guaranteed by a California approved insurance company. You may
2 file a claim with this insurance company if any promise made in
3 the contract has been denied or has not been honored within 60
4 days after your request. The name and address of the insurance
5 company is: (insert name and address). If you are not satisfied with
6 the insurance company's response, you may contact the California
7 Department of Insurance at 1-800-927-4357 or access the
8 department's Internet Web site (www.insurance.ca.gov)."

9 (B) If an obligor has complied with Section 12836, the vehicle
10 service contract shall include a disclosure in substantially the
11 following form: "If any promise made in the contract has been
12 denied or has not been honored within 60 days after your request,
13 you may contact the California Department of Insurance at
14 1-800-927-4357 or access the department's Internet Web site
15 (www.insurance.ca.gov)."

16 (C) The requirement that a vehicle service contract form include
17 the department's Internet Web site shall not apply to a form for
18 which the department has issued a "no objection letter" as of
19 December 31, 2016.

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

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

24 (A) State the obligor's full corporate name or a fictitious name
25 approved by the commissioner, the obligor's mailing address, the
26 obligor's telephone number, and the obligor's vehicle service
27 contract provider license number.

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

29 (C) Conspicuously state the vehicle service contract's purchase
30 price.

31 (D) Comply with Sections 1794.4 and 1794.41 of the Civil
32 Code.

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

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

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

- 1 (1) Indemnification for a loss caused by misplacement, theft,
2 collision, fire, or other peril typically covered in the comprehensive
3 coverage section of an automobile insurance policy, a homeowner's
4 policy, or a marine or inland marine policy, except as expressly
5 authorized in subdivision (c) of Section 12800.
- 6 (2) Locksmith services, unless offered as part of an emergency
7 road service benefit.
- 8 (d) This section shall become operative on January 1, 2017.

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