

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
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A Bill

SENATE BILL 279

By: Senator D. Sanders
By: Representative Maddox

For An Act To Be Entitled

AN ACT CONCERNING THE TYPE OF SERVICE CONTRACTS THAT ARE SUBJECT TO THE MOTOR VEHICLE SERVICE CONTRACT ACT; TO ADD THEFT PROTECTION PROGRAM WARRANTIES TO THE MOTOR VEHICLE SERVICE CONTRACT ACT; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE TYPE OF SERVICE CONTRACTS THAT ARE SUBJECT TO THE MOTOR VEHICLE SERVICE CONTRACT ACT; AND TO ADD THEFT PROTECTION PROGRAM WARRANTIES TO THE MOTOR VEHICLE SERVICE CONTRACT ACT.

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

SECTION 1. Arkansas Code § 4-90-502 is amended to read as follows:

4-90-502. Definitions.

~~For purposes of~~ As used in this subchapter:

(1) "Affiliate" means an entity that is owned at least fifty-one percent (51%) by the same entity that holds at least fifty-one percent (51%) of the seller of a motor vehicle;

(2) "Commissioner" shall mean the Insurance Commissioner for the State of Arkansas;

(3)(A) "Incidental costs" means expenses specified in a theft protection program warranty that are incurred by the warranty holder due to the failure of a theft protection program to perform as provided in the



contract.

(B) "Incidental costs" may include without limitation:

(i) Insurance policy deductibles;

(ii) Rental vehicle charges;

(iii) The difference between the actual value of the stolen motor vehicle at the time of theft and the cost of a replacement motor vehicle;

(iv) Sales tax;

(v) Registration fees;

(vi) Transaction fees; and

(vii) Mechanical inspection fees.

(C) Incidental costs may be reimbursed in either:

(i) A fixed amount specified in the theft protection program warranty; or

(ii) By use of a formula itemizing specific incidental costs incurred by the warranty holder;

~~(2)~~(4) "Mechanical breakdown insurance" ~~shall mean~~ means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to a defect in materials or workmanship or normal wear and tear and that is issued by an insurer that is authorized or approved to transact the business of insurance in this state;

~~(3)~~(5) "Motor vehicle" ~~shall mean any~~ means a vehicle designed for highway use and subject to registration under § 27-14-701 et seq.;

~~(4)~~(6)(A) "Motor vehicle service contract" or "service contract" ~~shall mean~~ means a contract or agreement given for separate and identifiable consideration ~~pursuant to which~~ that a service contract provider undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle or any of its component parts due to a defect in materials or workmanship or normal wear and tear, with or without an additional provision for incidental payment of indemnity under limited circumstances, including without limitation towing, rental vehicle expense, and emergency road service, but does not include mechanical breakdown insurance.

(B) "Motor vehicle service contract" includes a contract

that provides any of the following services:

(i) The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards;

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

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

(iv) 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; or

(v) Other services that may be approved by the commissioner, if not inconsistent with this subchapter;

~~(5)~~(7) "Motor vehicle service contract provider" or "provider" ~~shall mean~~ means a person who, as the principal or obligor, issues, makes, sells, or offers to sell a motor vehicle service contract;

~~(6)~~(8) "~~Motor vehicle service contract reimbursement~~ Reimbursement insurance policy" ~~shall mean~~ means a policy of insurance providing coverage for all obligations and liabilities incurred by a motor vehicle service contract provider or a warrantor under the terms of the motor vehicle service contracts issued or sold by the motor vehicle service contract provider or theft protection program warranties issued by a warrantor; ~~and~~

~~(7)~~(9)(A) "Road hazard" means a condition that is encountered while driving a motor vehicle.

(B) "Road hazard" includes without limitation:

(i) Potholes;

(ii) Rocks;

(iii) Wood debris;

(iv) Metal parts;

(v) Glass;

(vi) Plastic;

(vii) Curbs; or

(viii) Composite scraps;

(10) "Service contract holder" or "holder" shall mean the means a person who purchases a service contract or a permitted transferee;

(11)(A) "Theft protection program" means a device or system that:

(i) Is installed on or applied to a motor vehicle;

(ii) Is designed to prevent loss or damage to a motor vehicle from theft; and

(iii) Includes a theft protection program warranty.

(B) "Theft protection program" includes without limitation:

(i) Alarm systems;

(ii) Body part marking products;

(iii) Steering locks;

(iv) Window etch products;

(v) Pedal and ignition locks;

(vi) Fuel and ignition kill switches; and

(vii) Electronic, radio, and satellite tracking devices.

(C) "Theft protection program" does not include fuel additives, oil additives, or other chemical products that are applied to the engine, transmission, fuel system, or interior or exterior surfaces of a motor vehicle;

(12) "Theft protection program warranty" means a written agreement by a warrantor that provides that if the theft protection program fails to prevent loss or damage to a motor vehicle from theft, the warrantor shall pay to or on behalf of the warranty holder any specified incidental costs as a result of the failure of the theft protection program to perform under the terms of the theft protection program warranty;

(13) "Warrantor" means a person who is contractually obligated to the warranty holder under the terms of the theft protection program warranty; and

(14) "Warranty holder" means a person who purchases a theft protection program, any authorized transferee or assignee of the purchaser, or any other person legally assuming the purchaser's rights under the theft protection program contract.

SECTION 2. Arkansas Code § 4-90-504 is amended to read as follows:

4-90-504. ~~Exclusive governance of provisions~~ Exemptions – Affiliates.

(a) Except as provided in this subchapter, ~~a~~ motor vehicle service contract providers shall be provider and warrantor are governed by ~~the provisions of this subchapter and shall be~~ are exempt from ~~all other provisions of the Arkansas Insurance Code.~~

(b)(1) ~~Nothing in this~~ This subchapter shall ~~not, however,~~ prohibit or affect the giving, free of charge, of the usual warranties or performance guarantees by manufacturers, distributors, or dealers in connection with the sale of new motor vehicles~~;~~.

(2) ~~further, the requirements of this~~ This subchapter shall not apply to ~~a~~ motor vehicle service contracts contract or a theft protection program warranty issued by a motor vehicle manufacturer, distributor, importer, or dealer of motor vehicles, nor shall the requirements of this subchapter apply to any nonrenewable motor vehicle service contract ~~or theft protection program warranty~~ issued for a period of less than six (6) months, ~~provided that if~~ if the issuer of ~~such the~~ the motor vehicle service contract ~~or theft protection program warranty~~ is the entity ~~which that~~ that sold the motor vehicle to which the motor vehicle service contract or theft protection program warranty applies or is an affiliate of ~~such the~~ the entity.

(c) ~~For purposes of this subchapter, an “affiliate” is an entity whose ownership is held fifty one percent (51%) or more by the same entity which holds fifty one percent (51%) or more ownership of the seller of the motor vehicle.~~

SECTION 3. Arkansas Code § 4-90-505 is amended to read as follows:

4-90-505. Mandatory insurance.

(a) ~~No~~ A motor vehicle service contract or theft protection program warranty shall not be issued, sold, or offered for sale in this state unless ~~the~~ a motor vehicle service contract provider or warrantor is insured under a ~~motor vehicle service contract~~ reimbursement insurance policy issued by an insurer authorized to do business in this state, and providing that the insurer will pay on behalf of the motor vehicle service contract provider or warrantor all sums ~~which that~~ that the motor vehicle service contract provider or warrantor is legally obligated to pay and will guarantee the performance of the motor vehicle service contract provider’s or warrantor’s obligations

undertaken according to the motor vehicle service contract provider's or warrantor's contractual obligations under the service contracts issued or sold by the motor vehicle service contract provider or theft protection program warranties issued by the warrantor.

(b) ~~No~~ A policy of insurance ~~may~~ shall not be cancelled, terminated, or nonrenewed by the insurer unless a sixty-day written notice has been given to the motor vehicle service contract provider or warrantor before the date of the cancellation, termination, or nonrenewal.

(c) ~~No~~ A cancellation, termination, or nonrenewal shall not affect the liability of ~~the~~ an insurer to guarantee the ~~provider's~~ performance of a motor vehicle service contract provider or warrantor under the motor vehicle service contracts issued or sold or theft protection program warranties ~~prior to~~ before the effective date of cancellation or termination or nonrenewal.

(d) The insured motor vehicle service contract or theft protection program warranty ~~must~~ shall conspicuously state:

(1) That the obligations of ~~the~~ a motor vehicle service contract provider to the service contract holder or the obligations of a warrantor to the warranty holder are guaranteed under a ~~motor vehicle service contract~~ reimbursement insurance policy;

(2) The name, address, and telephone number of the issuer of ~~the~~ a motor vehicle service contract provider's or warrantor's ~~motor vehicle service contract~~ reimbursement insurance policy; and

(3) The procedure for filing a claim under ~~the~~ a motor vehicle service contract or theft protection program warranty directly with ~~the motor vehicle service contract~~ a reimbursement insurer.

(e) ~~The motor vehicle service contract~~ A reimbursement insurer shall establish and maintain unearned premium reserves and claims reserves for ~~the~~ any gross policy obligations under ~~the motor vehicle service contract~~ a reimbursement insurance policy, net of reinsurance ceded, ~~for which that~~ that the insurer is entitled to full reserve credit on its financial statements, ~~in accordance with the provisions of~~ under this subchapter.

SECTION 4. Arkansas Code § 4-90-506 is amended to read as follows:
4-90-506. Required service contract disclosures.

All A motor vehicle service ~~contracts~~ contract or theft protection program warranty issued or sold for delivery in this state shall contain the

following disclosures, as applicable, in a conspicuous and readable manner:

- (1) The name and address of the:
 - (A) Motor vehicle service contract provider and the service contract holder; or
 - (B) Warrantor and the warranty holder;
- (2) The total retail price of the motor vehicle service contract or theft protection program;
- (3) The procedure for making a claim under the motor vehicle service contract or theft protection program warranty, including the name, address, and telephone number of any person from whom approval is required before covered repairs may be commenced;
- (4) The existence and amount of a deductible, if any;
- (5) ~~The~~ For motor vehicle service contracts, the motor vehicle parts and components covered under the motor vehicle service contract, and any limitations, exceptions, or exclusions;
- (6) The terms, conditions, and restrictions governing transferability of the motor vehicle service contract or theft protection program warranty, if any;
- (7) ~~The~~ For motor vehicle service contracts, the provisions governing termination and refunds ~~in accordance with~~ under § 4-90-507; and
- (8) A statement that purchase of the motor vehicle service contract or theft protection program is not required in order to purchase or obtain financing for a motor vehicle.

SECTION 5. Arkansas Code § 4-90-508 is repealed.

~~4-90-508. Incidental benefits.~~

~~A motor vehicle service contract may provide reimbursement for towing and rental vehicle expenses incurred by the service contract holder as a direct and proximate result of an operational or structural failure covered by the service contract, emergency road service, and such other incidental benefits as may be approved by the Insurance Commissioner.~~

SECTION 6. Arkansas Code § 4-90-509(b), concerning rulemaking authority of the Insurance Commissioner, is amended to read as follows:

- (b) The commissioner may promulgate rules ~~and regulations~~ providing for the filing with the commissioner of motor vehicle service contract forms

by motor vehicle service contract providers and warrantors ~~authorized~~ under § 4-90-504, ~~provided, that any such~~ if rules and regulations may do not require the approval of ~~such~~ the forms by the commissioner ~~prior to~~ before their initial use.

SECTION 7. Arkansas Code § 4-90-510(a), concerning investigations of motor vehicle service contracts by the Insurance Commissioner, is amended to read as follows:

(a) The Insurance Commissioner is authorized to conduct such investigations of the motor vehicle service contract and theft protection program business, of any motor vehicle service contract provider or warrantor, and of any person assisting the motor vehicle service contract provider or warrantor in the conduct of such business as the commissioner may deem necessary.

SECTION 8. Arkansas Code § 4-90-511 is amended to read as follows:
4-90-511. Unfair trade practices.

Motor vehicle service contract providers and warrantors ~~shall be~~ are subject to ~~the provisions of~~ the Trade Practices Act, § 23-66-201 et seq., to the extent such act may be appropriately applied to motor vehicle service contract providers and warrantors given the nature of such contracts.

SECTION 9. Arkansas Code § 4-90-512 is amended to read as follows:
4-90-512. Form of service contracts.

~~No~~ A motor vehicle service contract or theft protection program warranty ~~may~~ shall not be issued ~~which~~ that:

(1) Is ~~in any respect in~~ a violation of or does not comply with this subchapter, any specifically applicable provision of the Arkansas Insurance Code, or any applicable rule of the ~~department~~ State Insurance Department;

(2) Contains, or incorporates by reference when such incorporation is otherwise permissible, any inconsistent, ambiguous, illusory, or misleading clauses, or exceptions and conditions ~~which~~ that deceptively affect the risk purported to be assumed in the general coverage of the motor vehicle service ~~agreement~~ contract;

(3) Has any title, heading, or other indication of its

provisions ~~which~~ that is misleading;

(4) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible;

(5) Contains any provision ~~which~~ that is unconscionable or ~~which~~ encourages misrepresentation;

(6) Contains any provision ~~which~~ that makes it difficult to determine the actual motor vehicle service contract provider or warrantor issuing the form; or

(7) Contains any provision for reducing claim payments due to depreciation of parts.