

Assembly Bill No. 2354

CHAPTER 386

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.

[Approved by Governor September 16, 2016. Filed with
Secretary of State September 16, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2354, 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 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 routine vehicle maintenance or noncollision 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, debris, metal parts, glass, plastic, curbs, or composite scraps for purposes of vehicle service contract coverage.

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

SECTION 1. Section 116.5 of the Insurance Code is repealed.

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

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

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

(b) An admitted insurer.

(c) An association of motor carriers.

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

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

(f) A person offering the services described in paragraph (7) of subdivision (a) of Section 12805 to the extent that person is providing the services described therein.

(g) An agreement that promises routine maintenance.

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

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

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

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

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

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

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

(c) (1) "Vehicle service contract" means a contract or agreement for a separately stated consideration and for a specific duration 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, necessitated

by an operational or structural failure due to a defect in materials or workmanship, or due to normal wear and tear.

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

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

(3) "Vehicle service contract" also includes an agreement of a term of at least one year, for separately stated consideration, that promises routine maintenance.

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

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

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

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

(D) 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.

(5) “Vehicle service contract” also includes an agreement covering any of a 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.

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

(1) Providing sellers with service contract forms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) 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 routine vehicle maintenance or noncollision repairs, or any combination of these benefits, to the employer's employees for personal vehicles used in the employer's business.

(b) The types of agreements described in paragraphs (4) to (7), inclusive, of subdivision (a) are exempt from all provisions of this part.

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

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

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

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

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

(B) If an obligor has complied with Section 12836, the vehicle service contract shall include a disclosure in substantially the following form: "If any promise made in the contract has been denied or has not been honored within 60 days after your request, you may contact the California Department

of Insurance at 1-800-927-4357 or access the department's Internet Web site (www.insurance.ca.gov)."

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

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

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

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

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

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

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

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

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

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

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

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

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