

BILL ANALYSIS

C.S.H.B. 3625
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many consumers, interested parties note, purchase service contracts for their recently purchased automobiles to ensure that the automobile will be repaired if necessary. The parties suggest that some Texans are taken advantage of due to their lack of understanding with regard to service contracts and their limitations and are ultimately left to cover the costs of automobile repairs despite thinking they would be covered under a service contract. C.S.H.B. 3625 seeks to better protect consumers purchasing service contracts.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3625 amends the Occupations Code to require a service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in Texas to state that the administration of the contract is governed by the Service Contract Regulatory Act. The bill requires a service contract for a motor vehicle, in addition to complying with the required form and disclosures applicable to a service contract in general, to do the following:

- state the effective date and duration of the contract and, if the contract is for a duration of less than one year, provide for the automatic extension of the contract if the motor vehicle is undergoing repair, replacement, or maintenance by the provider on the contract's expiration date;
- specify the obligations of the provider and the additional services that the provider will provide;
- specify limitations on the obligations of the provider, including repairs, remedies, and services relating to certain parts, components, defects, malfunctions, and conditions that are not covered by the contract;
- specify the nature and frequency of the duties of the service contract holder and the consequences of the service contract holder's failure to comply with those duties;
- identify the legal name and business name of the provider, the mailing address of the provider, the persons who are authorized by the provider to provide services under the contract, and the name or title and address of each agent, employee, or department of the provider with responsibility for performing the provider's obligations under the contract;

- provide a step-by-step procedure for the service contract holder to follow in order to obtain products and services under the contract;
- specify the method by which the service contract holder must notify the provider of the need for products and services under the contract;
- specify whether in-home repair, replacement, or maintenance is available under the contract and, if not, whether the cost of transporting the motor vehicle for repair, replacement, or maintenance will be paid by the provider and the place where the motor vehicle must be delivered for repair, replacement, or maintenance or a toll-free telephone number that the service contract holder may call to obtain that information; and
- specify all fees, charges, or other costs that the service contract holder must pay to obtain products and services under the contract.

C.S.H.B. 3625 applies only to a service contract sold or issued on or after January 1, 2016, and prohibits a service contract sold or issued before that date from being extended or renewed at the end of the service contract term unless the contract complies with the bill's provisions.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3625 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 1304, Occupations Code, is amended by adding Subchapter F to read as follows:

No equivalent provision. (*But see SECTION 2 below.*)

Sec. 1304.301, _____ Subchapter F.

EXTENDED WARRANTIES

(a) As used in this section:

(1) "Extended warranty" means a contract or agreement entered into for consideration and for a specified term to either perform or provide indemnification for the repair, replacement, or maintenance of a product because of operational or structural failure of such product due to a defect in materials, skill, workmanship, or normal wear and tear given for consideration over and above the lease or purchase price of a product.

(2) "Extended warranty provider" means a person who issues, makes, provides, or offers to provide an extended warranty to a consumer and who is contractually obligated to provide service under such extended warranty.

(3) "Consumer" means a person who

purchases an extended warranty from an extended warranty provider.

(4) "Extended warranty reimbursement insurance policy" means a policy of insurance providing coverage for all obligations and liabilities incurred by an extended warranty provider under the terms of the extended warranty sold to a buyer by such provider.

(b) An extended warranty shall obligate the extended warranty provider to supply to the buyer all services and functional parts that may be necessary to repair the product for the duration of the extended warranty without additional charge, except as otherwise expressly provided.

(c) An extended warranty shall contain all of the following:

(1) A clear description and identification of the product or service to be provided;

(2) The date when the extended warranty commences and its duration, and, if the extended warranty is for less than one year, the extended warranty shall include a provision for the automatic extension of the extended warranty while the product is in the custody of the extended warranty provider for repair under such warranty;

(3) A description of the limits on transfer or assignment of the extended warranty if the enforceability of an extended warranty is limited to the original buyer or is limited to persons other than every consumer owner of the covered product during the term of the extended warranty;

(4) A statement of the obligation of the extended warranty provider including statements: (A) including but not limited to, services, parts, components, defects, malfunctions, conditions, repairs or remedies that are excluded from the scope of the extended warranty; (B) limits on the obligations of the extended warranty provider; (C) additional services which the extended warranty provider will supply; (D) whether the buyer has the responsibility of any other obligations and, if so, the nature and frequency of such obligations, and the consequences of any noncompliance;

(5) A step-by-step explanation of the procedure which the buyer shall follow in order to obtain performance of any obligation under the extended warranty including: (A) the full legal and business

name of the extended warranty provider; (B) the mailing address of the extended warranty provider; (C) the persons or class of persons that are authorized to perform service; (D) the name or title and address of any agent, employee, or department of the extended warranty provider that is responsible for the performance of any obligations; (E) the method of giving notice to the extended warranty provider of the need for service; (F) whether in-home service is provided or, if not, whether the costs of transporting the product for service or repairs will be paid by the extended warranty provider; (G) if the product must be transported to the extended warranty provider, either the place where the product may be delivered for service or repairs or a toll-free telephone number which the buyer may call to obtain that information; (H) all other steps which the buyer must take to obtain service; and (I) all fees, charges and other costs that the buyer must pay to obtain service;

(6) A description of the services the extended warranty provider will supply and perform under the extended warranty; and

(7) A statement of a right to cancel the warranty if the buyer returns the product or the product is sold, lost, stolen, or destroyed, or a statement that there is no right to cancel.

(d) (1) An extended warranty shall not be issued, sold, or offered for sale unless the extended warranty provider is insured under an extended warranty reimbursement insurance policy issued by an insurer authorized by the Texas Department of Insurance to do business in this state. An insurer authorized to issue an extended warranty reimbursement insurance policy in this state shall, at the time the policy is filed with the Executive Director of the Texas Department of Licensing and Regulations, continuously thereafter maintain policy limits and requirements as determined by the Commissioner of the Texas Department of Insurance.

(2) The extended warranty reimbursement insurance policy shall cover the obligations under the extended warranty while the policy is in force.

No equivalent provision.

SECTION 1. Section 1304.156(a),

84R 27274

15.121.1001

Substitute Document Number: 84R 5981

Occupations Code, is amended to read as follows:

(a) A service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) state the name and address of the provider;

(3) state the purchase price of the contract and the terms under which the contract is sold;

(4) state the terms and restrictions governing cancellation of the contract by the provider or the service contract holder before the expiration date of the contract;

(5) identify:

(A) any administrator and any registration number issued to the administrator under this chapter;

(B) the seller; and

(C) the service contract holder, if the service contract holder provides the holder's name;

(6) state the amount of any deductible;

(7) specify the products and services to be provided under the contract and any limitation, exception, or exclusion;

(8) specify any restriction governing the transferability of the contract;

(9) state the duties of the service contract holder, including any duty to protect against any further damage and any requirement to follow the instructions in the owner's manual;

~~and~~

(10) state whether the contract provides for or excludes consequential damages or preexisting conditions, if applicable; and

(11) state that the administration of the contract is governed by Chapter 1304, Occupations Code (Service Contract Regulatory Act).

No equivalent provision. (But see SECTION 1 above.)

SECTION 2. Subchapter D, Chapter 1304, Occupations Code, is amended by adding Section 1304.157 to read as follows:

Sec. 1304.157. ADDITIONAL REQUIREMENTS FOR CERTAIN SERVICE CONTRACTS. (a) In this section, "motor vehicle" has the meaning assigned by Section 501.002, Transportation Code.

(b) In addition to the requirements in Section 1304.156, a service contract for a motor vehicle must:

- (1) state the effective date and duration of the contract and, if the contract is for a duration of less than one year, provide for the automatic extension of the contract if the motor vehicle is undergoing repair, replacement, or maintenance by the provider on the contract's expiration date;
- (2) specify the obligations of the provider and the additional services that the provider will provide;
- (3) specify limitations on the obligations of the provider, including repairs, remedies, and services relating to certain parts, components, defects, malfunctions, and conditions that are not covered by the contract;
- (4) specify the nature and frequency of the duties of the service contract holder and the consequences of the service contract holder's failure to comply with those duties;
- (5) identify:
 - (A) the legal name and business name of the provider;
 - (B) the mailing address of the provider;
 - (C) the persons who are authorized by the provider to provide services under the contract; and
 - (D) the name or title and address of each agent, employee, or department of the provider with responsibility for performing the provider's obligations under the contract;
- (6) provide a step-by-step procedure for the service contract holder to follow in order to obtain products and services under the contract;
- (7) specify the method by which the service contract holder must notify the provider of the need for products and services under the contract;
- (8) specify whether in-home repair, replacement, or maintenance is available under the contract and, if not:
 - (A) whether the cost of transporting the motor vehicle for repair, replacement, or maintenance will be paid by the provider; and
 - (B) the place where the motor vehicle must be delivered for repair, replacement, or maintenance or a toll-free telephone number that the service contract holder may call to obtain that information; and
- (9) specify all fees, charges, or other costs that the service contract holder must pay to obtain products and services under the contract.

No equivalent provision.

SECTION 3. (a) Section 1304.156, Occupations Code, as amended by this Act, and Section 1304.157, Occupations Code, as added by this Act, apply only to a service contract sold or issued on or after January 1, 2016. A service contract sold or issued before that date is governed by the law in effect on the date the contract was sold or issued, and the former law is continued in effect for that purpose.

(b) Notwithstanding Subsection (a) of this section, a service contract sold or issued before January 1, 2016, may not be extended or renewed at the end of the service contract term unless the contract complies with Sections 1304.156, Occupations Code, as amended by this Act, and, if applicable, Section 1304.157, Occupations Code, as added by this Act.

Section 2. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

No equivalent provision

SECTION 3. This Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.