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Indicates New Matter

COMMITTEE REPORT

March 26, 2019

**H. 4244**

Introduced by Rep. Sandifer

S. Printed 3/26/19--H. [SEC 3/27/19 10:12 PM]

Read the first time March 13, 2019.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4244) to amend Section 38‑78‑20, Code of Laws of South Carolina, 1976, relating to definitions applicable to service contracts, so as to expand the definition of, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

\ SECTION 1. Section 38‑78‑20(12), (13), and (14) of the 1976 Code is amended to read:

“(12) ‘Service contract’ means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances including, but not limited to, towing, rental, and emergency road service. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling. ‘Service contract’ includes a contract or agreement for a separately stated consideration for a specific duration to perform one or more of the following services:

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

(b) 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 sanding, bonding, painting, or replacing a vehicle body panel;

(c) the replacement of a motor vehicle key or key fob in the event that the key or key fob becomes inoperable, lost, or stolen; and

(d) other services consistent with the provisions of this chapter approved by the director.

(13) ‘Road hazard’ means a hazard that is encountered while driving a motor vehicle including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

(14) ‘Service contract holder’ or ‘contract holder’ means a person who is the purchaser or holder of a service contract.

(15) ‘Theft protection program’ means a device or system installed on or applied to a motor vehicle designed to prevent loss or damage to a motor vehicle from theft that includes a theft protection program warranty. The term ‘theft protection program’ includes, but is not limited to, alarm systems, body‑part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

(16) ‘Theft protection program warranty’ means a written agreement by a warrantor that provides the warrantor will pay to or on behalf of the warranty holder specified incidental costs not to exceed five thousand dollars as a result of the failure of the theft protection program to prevent loss or damage to a motor vehicle pursuant to the terms of the warranty. Specified incidental costs include expenses specified in the warranty that are incurred by the warranty holder due to the failure of the program to perform as provided in the warranty. Incidental costs include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be reimbursed in a fixed amount specified in the warranty or by use of a formula itemizing specific costs incurred by the warranty holder. A theft protection program warranty must contain a conspicuous disclosure substantially similar to the following in ten‑point bold font: ‘This warranty is not insurance and payments or reimbursement under this warranty may not exceed five thousand dollars.’

~~(14)~~(17) ‘Warranty’ means a warranty made solely by the manufacturer, importer, or seller of property or services without charge, that is not negotiated or separated from the sale of the product, that is incidental to the sale of the product, and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services. This term includes theft protection program warranties if the warrantor has obtained a reimbursement insurance policy to insure its warranty obligations in this State.”

SECTION 2. Section 38‑78‑30(E) of the 1976 Code is amended to read:

“(E) Except for the requirements specified in subsection (D), no other financial security requirements shall be required by the director for service contract providers.

Service contract providers that establish their financial security to pay claims by insuring their obligations under a reimbursement insurance policy as provided in subsection (D)(1) are not required to file financial statements in connection with an application for registration or the renewal of a registration.”

SECTION 3. Section 38‑78‑50 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) Service contracts must include a disclosure substantially similar to the following: ‘In the event of a dispute with the provider of this contract, you may contact the South Carolina Department of Insurance, Capitol Center, 1201 Main Street, Ste. 1000, Columbia, South Carolina 29201 or by phone at (800) 768‑3467’.”

SECTION 4. This act takes effect on January 1, 2020. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 38‑78‑20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS APPLICABLE TO SERVICE CONTRACTS, SO AS TO EXPAND THE DEFINITION OF “SERVICE CONTRACT” AND “WARRANTY” AND TO DEFINE THE TERMS “ROAD HAZARD”, “THEFT PROTECTION PROGRAM”, AND “THEFT PROTECTION PROGRAM WARRANTY”; TO AMEND SECTION 38‑78‑30, RELATING TO SERVICE CONTRACT REQUIREMENTS, SO AS TO EXCLUDE A SERVICE CONTRACT PROVIDER THAT INSURES THEIR OBLIGATIONS UNDER A REIMBURSEMENT INSURANCE POLICY FROM THE FINANCIAL STATEMENT REQUIREMENT FOR REGISTRATION WITH THE DIRECTOR OF THE DEPARTMENT OF INSURANCE; AND TO AMEND SECTION 38‑78‑50, RELATING TO REQUIRED PROVISIONS IN SERVICE CONTRACTS, SO AS TO REQUIRE A CERTAIN DISCLOSURE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 38‑78‑20(12), (13) and (14) of the 1976 Code is amended to read:

“(12) ‘Service contract’ means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances including, but not limited to, towing, rental, and emergency road service. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling. ‘Service contract’ includes a contract or agreement for a separately stated consideration for a specific duration to perform one or more of the following services:

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

(b) 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 sanding, bonding, painting, or replacing a vehicle body panel;

(c) the replacement of a motor vehicle key or key‑fob in the event that the key or key‑fob becomes inoperable, lost, or stolen; and

(d) other services consistent with the provisions of this chapter approved by the director.

(13) ‘Road hazard’ means a hazard that is encountered while driving a motor vehicle including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

(14) ‘Service contract holder’ or ‘contract holder’ means a person who is the purchaser or holder of a service contract.

(15) ‘Theft protection program’ means a device or system installed on or applied to a motor vehicle designed to prevent loss or damage to a motor vehicle from theft that includes a theft protection program warranty. The term ‘theft protection program’ includes, but is not limited to, alarm systems, body‑part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices. It does not include fuel additives, oil additives, or other chemical products applied to the engine, transmission, or fuel system or the interior or exterior surfaces of a motor vehicle.

(16) ‘Theft protection program warranty’ means a written agreement by a warrantor that provides the warrantor will pay to or on behalf of the warranty holder specified incidental costs as a result of the failure of the theft protection program to prevent loss or damage to a motor vehicle pursuant to the terms of the warranty. Specified incidental costs include expenses specified in the warranty that are incurred by the warranty holder due to the failure of the program to perform as provided in the warranty. Incidental costs include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be reimbursed in a fixed amount specified in the warranty or by use of a formula itemizing specific costs incurred by the warranty holder.

~~(14)~~(17) ‘Warranty’ means a warranty made solely by the manufacturer, importer, or seller of property or services without charge, that is not negotiated or separated from the sale of the product, that is incidental to the sale of the product, and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services. This term includes theft protection program warranties.”

SECTION 2. Section 38‑78‑30(E) of the 1976 Code is amended to read:

“(E) Except for the requirements specified in subsection (D), no other financial security requirements shall be required by the director for service contract providers. Service contract providers insuring their obligations under a reimbursement insurance policy as provided in subsection (D)(1) are not required to file financial statements in connection with an application for registration or the renewal of a registration.”

SECTION 3. Section 38‑78‑50 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) Service contracts must include a disclosure substantially similar to the following: ‘In the event of a dispute with the provider of this contract, you may contact the South Carolina Department of Insurance, Capitol Center, 1201 Main Street, Ste. 1000, Columbia, South Carolina 29201 or by phone at (800) 768‑3467.’”

SECTION 4. This act takes effect on January 1, 2020.

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