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*Bill Analysis*  
Legislative Service Commission

## **H.B. 442**

126th General Assembly  
(As Introduced)

**Reps. Dolan, McGregor, J., Martin, Combs, Law, Patton, S., Miller, Chandler**

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### **BILL SUMMARY**

- Requires all vehicle protection product warranties to be covered by warranty reimbursement insurance policies that must contain specified statements.
  - Expands the conditions that a vehicle protection product warranty must meet in order for the warranty to not constitute an insurance contract or for its issuance to not constitute the business of insurance.
  - Enacts new provisions prescribing requirements for consumer goods service contracts and provides that such contracts do not constitute contracts substantially amounting to insurance and that their issuance does not constitute the business of insurance.
  - Requires all consumer goods service contracts to be covered by reimbursement insurance policies that must contain specified statements.
  - Applies the Ohio Consumer Sales Practices Act to vehicle protection product warranties and consumer goods service contracts.
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### **CONTENT AND OPERATION**

#### **Vehicle protection product warranties**

##### **Existing law**

Under existing law, a "vehicle protection product" warranty may be issued by a "warrantor of a vehicle protection product." (See **'Definitions for purposes of vehicle protection product warranties,'** below.) A vehicle protection product warranty issued by the warrantor of a vehicle protection product does not constitute a contract substantially amounting to insurance nor does the issuance of

the warranty constitute the business of insurance under R.C. 3905.42 (prohibition against engaging in the business of insurance unless expressly authorized by Ohio laws) if the warranty meets the following conditions (R.C. 3905.421(C)(1) and (2)):

(1) The warranty is limited to indemnifying the warranty holder for "incidental costs" (see *Definitions for purposes of vehicle protection product warranties*," below) caused by the failure of the vehicle protection product to deter the theft of the vehicle or facilitate the recovery of the vehicle after it has been stolen.

(2) The warranty contains both of the following conspicuous, written disclosures:

"This vehicle protection product warranty is not subject to the insurance laws of this state, contained in Title XXXIX of the Ohio Revised Code." "This warranty may not include all of the benefits or protections of an insurance policy that includes theft coverage issued by an insurer authorized to do business in Ohio."

#### *Operation of the bill*

The bill modifies existing law by requiring a vehicle protection product warranty to be covered by a warranty reimbursement insurance policy and expanding the conditions that preclude such a warranty from being considered an insurance contract.

*Warranty reimbursement insurance policy*. The bill requires all vehicle protection product warranties issued in Ohio under existing law as described above to be covered by a "warranty reimbursement insurance policy" (see *Definitions for purposes of vehicle protection product warranties*," below). A warranty reimbursement insurance policy must contain both of the following: a statement that the warranty reimbursement insurance company will reimburse, or pay on behalf of, the warrantor of a vehicle protection product all covered amounts for which the warrantor is legally obligated, and will provide any service that the warrantor is legally obligated to perform, under the terms of a vehicle protection product warranty, and a statement that if a payment due under the terms of a vehicle protection product warranty is not paid within 60 days after the warranty holder files proof of loss pursuant to the terms of the warranty, that the warranty holder may file directly with the warrantor's warranty reimbursement insurance company for payment or reimbursement. The bill provides that the cancellation of a warrantor's warranty reimbursement insurance policy does not affect the warrantor's liability to the warranty holder. (R.C. 3905.421(B), (D), and (E).)

**Additional conditions precluding a vehicle protection product warranty from being considered an insurance contract.** The bill expands the conditions described in (1) and (2) under "**Existing law**," above, that a vehicle protection product warranty must meet in order for the warranty to not constitute a contract substantially amounting to insurance or for its issuance to not constitute the business of insurance under existing law. It adds the following conditions (R.C. 3905.421(C)(3), (4), (5), and (6)):

(1) The warranty identifies the warrantor, the warranty holder, and the terms of the sale.

(2) The warranty conspicuously states that the obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy.

(3) The warranty conspicuously states that if a payment due under the terms of the warranty is not paid by the warrantor within 60 days after the warranty holder files proof of loss pursuant to the terms of the warranty, the warranty holder may file directly with the warrantor's warranty reimbursement insurance company for reimbursement.

(4) The warranty conspicuously states the name and address of the warrantor's warranty reimbursement insurance company.

**Applicability of Ohio Consumer Sales Practices Act.** The bill specifies that the sale or issuance of a vehicle protection product warranty by the warrantor of a vehicle protection product constitutes a consumer transaction for purposes of the Ohio Consumer Sales Practices Law (R.C. 1345.01 to 1345.13). It provides that the warrantor is the supplier and the warranty holder is the consumer in such consumer transactions. (R.C. 3905.421(F).) (See **COMMENT**.)

**Definitions for purposes of vehicle protection product warranties**

Existing law, not affected by the bill, defines the following terms (R.C. 3905.421(A)(1), (2), and (3)):

"**Vehicle protection product**" means a vehicle protection device, system, or service that is installed on or applied to a vehicle and that is designed to deter the theft of a vehicle or facilitate the recovery of the vehicle after it has been stolen. "Vehicle protection product" includes, but is not limited to, alarm systems, window etch products, body part marking products, steering locks, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

"Warrantor of a vehicle protection product" or "warrantor" means the person that is contractually obligated to the warranty holder under the terms of a vehicle protection product warranty. "Warrantor" does not include an insurer authorized or eligible to do business in Ohio.

"Incidental costs" means the losses and expenses specified by a vehicle protection product warranty related to the failure of a vehicle protection product to deter the theft of a vehicle or facilitate the recovery of the vehicle after it has been stolen. "Incidental costs" may include, but are not limited to, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of the theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees.

The bill adds the following definition for purposes of vehicle protection product warranties (R.C. 3905.421(A)(4)):

"Warranty reimbursement insurance policy" means a policy of insurance issued by an insurer authorized to do business in Ohio to the warrantor of a vehicle protection product to pay, on behalf of the warrantor, all covered contractual obligations incurred by the warrantor under the terms and conditions of the vehicle protection product warranty.

### **Consumer goods service contracts**

The bill enacts new provisions pertaining to consumer goods service contracts. It requires a "consumer goods service contract" issued by a "provider" under the bill to comply with all of the following requirements (R.C. 3905.423(C)):

(1) Conspicuously state that the obligations of the provider are guaranteed under a "reimbursement insurance policy";

(2) Conspicuously state that if a provider fails to perform or make payment due under the terms of the contract within 60 days after the "contract holder" requests performance or payment pursuant to the terms of the contract, the contract holder may request performance or payment directly from the provider's reimbursement policy insurer, including, but not limited to, any obligation in the contract by which the provider must refund the contract holder upon cancellation of a contract;

(3) Conspicuously state the name, address, and telephone number of the provider's reimbursement insurance policy insurer.

(See "Definitions for purposes of consumer goods service contracts," below, for definitions of the terms in quotation marks, above.)



The bill provides that a consumer goods service contract must be effective for a specified duration and paid for by means other than the purchase of the consumer goods. It further provides that a consumer goods service contract does not constitute a contract substantially amounting to insurance, or the contract's issuance the business of insurance, under R.C. 3905.42. (R.C. 3905.423(E) and (G).)

### **Applicability of Ohio Consumer Sales Practices Act**

The bill specifies that the sale or issuance of a consumer goods service contract is a consumer transaction for purposes of the Ohio Consumer Sales Practices Law. For purposes of that Law, the provider is the supplier, and the contract holder is the consumer. (R.C. 3905.423(F).) (See **COMMENT.**)

### **Reimbursement insurance policy**

The bill requires all consumer goods service contracts issued in Ohio under the bill to be covered by a reimbursement insurance policy (R.C. 3905.423(B)). A reimbursement insurance policy must contain at least one of the following statements (R.C. 3905.423(D)):

(1) A statement that the reimbursement insurance policy insurer will reimburse, or pay on behalf of, the provider of a consumer goods service contract all covered amounts for which the provider is legally obligated, and will perform any service that the provider is legally obligated to perform, under the terms of the consumer goods protection contract;

(2) A statement that if a provider fails to perform or make payment due under the terms of the contract within 60 days after the contract holder requests performance or payment pursuant to the terms of the contract, the contract holder may request performance or payment directly from the provider's reimbursement policy insurer, including, but not limited to, any obligation in the contract by which the provider must refund the contract holder upon cancellation of a contract.

### **Definitions for purposes of consumer goods service contracts**

The bill defines the following terms for purposes of its provisions pertaining to consumer goods service contracts (R.C. 3905.423(A)):

"Consumer" means a person who engages in a consumer transaction with a supplier (by reference to R.C. 1345.01, not in the bill).

"Consumer goods" means goods sold, leased, assigned, awarded by chance, or transferred to a consumer in a consumer transaction.

"Consumer goods service contract" means a contract or agreement to perform or pay for repairs, replacement, or maintenance of consumer goods due to a defect in materials or workmanship, normal wear and tear, power surges, or accidental damage from handling. "Consumer goods service contract" does not include any of the following items: (1) a consumer product warranty governed under the federal Consumer Product Warranty Law (Title 15, Chapter 50, U.S. Code), (2) a contract or agreement to perform or pay for the repair, replacement, or maintenance of a motor vehicle or utility vehicle,<sup>1</sup> that is effective for a specified duration and paid for by means other than the purchase of a motor vehicle or utility vehicle, or (3) a vehicle protection product as defined in R.C. 3905.421 (see "Definitions for purposes of vehicle protection product warranties," above).

"Consumer transaction" means a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. "Consumer transaction" does not include transactions between persons, defined in the Public Utilities Commission Law (R.C. Chapter 4905.) and the Financial Institutions, Dealers in Intangibles, and Insurance Companies Law (R.C. 5725.01 to 5725.26), and their customers; transactions between certified public accountants or public accountants and their clients; transactions between attorneys, physicians, or dentists and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services. (By reference to R.C. 1345.01.)

"Contract holder" means the consumer who purchased goods covered by a consumer goods service contract, any authorized transferee or assignee of the consumer, or any other person assuming the consumer's rights under the consumer goods service contract.

"Provider" means a person who is contractually obligated to a contract holder under the terms of a consumer goods service contract.

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<sup>1</sup> "*Motor vehicle*" means, with specified exceptions, any vehicle, including mobile homes and recreational vehicles, that is propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires (by reference to R.C. 4501.01, not in the bill).

*"Utility vehicle" means a self-propelled vehicle designed with a bed, principally for the purpose of transporting material or cargo in connection with construction, agricultural, forestry, grounds maintenance, lawn and garden, materials handling, or similar activities (by reference to R.C. 4501.01).*

"Reimbursement insurance policy" means a policy of insurance issued by an insurer authorized to do business in this state to a provider to pay, on behalf of the provider, all covered contractual obligations incurred by the provider under the terms and conditions of the consumer goods service contract.

"Supplier" means a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer (by reference to R.C. 1345.01).

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## COMMENT

R.C. 1345.02 includes a listing of prohibited unfair or deceptive consumer sales practices, and R.C. 1345.03 prohibits unconscionable consumer sales practices. R.C. 1345.06 grants the Attorney General investigatory powers regarding acts or practices that allegedly violate the Consumer Sales Practices Law. Upon finding a reasonable cause to believe that a supplier has engaged or is engaging in an act or practice in violation of that Law, the Attorney General may bring a declaratory judgment action, an action to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain the act or practice, or a class action on behalf of aggrieved consumers. (R.C. 1345.07.) An aggrieved consumer also has an individual cause of action under R.C. 1345.09 and is entitled to relief, which includes recovery of damages, rescission of the consumer transaction, declaratory judgment, injunctive relief, or other appropriate relief.

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## HISTORY

ACTION	DATE
Introduced	12-08-05

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