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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Lang

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SUMMARY

- Exempts “excess wear and use waivers,” i.e., contracts that nullify fees that might otherwise be owed at the end of a motor vehicle lease agreement for driving too many miles or damaging the vehicle, from state insurance laws.
- Prohibits conditioning terms of a motor vehicle lease on the consumer’s payment for an excess wear and use waiver.
- Expands the existing insurance law exemption for motor vehicle “debt cancellation or debt suspension products” to include products that provide a financial benefit for the purchase of a new vehicle.
- Limits the current requirement that debt cancellation or debt suspension products be listed as a specific good when invoiced to the consumer to “optional” products that are not a condition of the sale.
- Exempts optional debt cancellation or debt suspension products from state law limitations on interest and finance charges.
- Expands the types of agreements that qualify as “ancillary product protection contracts” and, thus, are exempted from state insurance laws to include certain contracts that protect against lease-end charges, vehicle value protection agreements, and contracts involving under-speed vehicles.
- Requires providers of “vehicle value protection agreements,” i.e., agreements that provide a benefit to the purchaser when a vehicle is lost, stolen, damaged, obsolete, or diminished in value, to allow a 30-day period for the contract holder to cancel the agreement so long as no benefits have been paid.
- Establishes procedures and requirements for contract providers that seek to cancel a vehicle value protection agreement.

- Enables ancillary vehicle protection products to be guaranteed by either an insurance policy, a funded reserve account, or the net worth of the product issuer, as opposed to just an insurance policy.

DETAILED ANALYSIS

Overview

Continuing law exempts certain maintenance, value protection, and repair products offered in connection with the sale or lease of a motor vehicle from state insurance laws. The bill expands the types of products that qualify for that exemption. It also modifies some of the requirements associated with those products, including requirements involving invoicing, cancellation, and surety.

Excess wear and use waivers

The bill creates a new class of motor vehicle products, referred to as “excess wear and use waivers,” that are exempt from state insurance laws. A vehicle lease agreement typically stipulates how many miles the person leasing the vehicle may drive the vehicle each year for the duration of the lease. For example, it is common for leases to allow up to 10,000 or 12,000 miles per year. At the end of the lease, a fee is paid for each mile driven beyond the allotted amount. Excess wear and use waivers effectively nullify those fees.

Under the bill, an “excess wear and use waiver” is defined as any contractual agreement that is part of, or a separate addendum to, a lease agreement for use of a motor vehicle, under which the lessor (the entity providing the vehicle) agrees, with or without a separate charge, to do one or both of the following:

- Cancel or waive all or part of amounts that may become due under a lease agreement as a result of excess wear and use of a motor vehicle;
- Cancel or waive amounts due for excess mileage.

The bill specifies that the terms of a lease are not to be conditioned upon the consumer’s payment for any extended wear and use waiver. Extended wear and use waivers may be discounted or given at no extra charge in connection with the purchase of other noncredit related goods or services.¹

Debt cancellation or debt suspension products

A “debt cancellation or debt suspension product” is an agreement, exempt from state insurance laws, that cancels any debt associated with a motor vehicle that is destroyed or stolen. Under continuing law, the term includes a guaranteed asset protection waiver, guaranteed auto protection waiver, or any other similarly named agreement. The bill adds that a debt cancellation or debt suspension product may also provide a benefit that waives an

¹ R.C. 1310.251.

amount, or provides a borrower with a credit, towards the purchase of a replacement motor vehicle. Such a benefit may be included with or without a separate charge.

Current law requires the charges associated with debt cancellation or debt suspension products to be listed as a specific good. In other words, the charge cannot be lumped in with the total purchase price for the vehicle. Under the bill, this requirement applies only to “optional” debt cancellation or debt suspension products. Consequently, it appears that when a retail seller conditions the sale of a motor vehicle on the consumer’s purchase of a debt cancellation or debt suspension product, that product need not be itemized, and may be lumped into the total purchase price.

Furthermore, the bill specifies that optional debt cancellation or debt suspension products are not to be considered a finance charge or interest. Under continuing law, a finance charge is an amount paid or contracted to a retail seller for the privilege of paying the principal balance of the transaction in installments over time. Ohio law caps the amount that a retail seller may collect as a finance charge or interest. The bill seemingly exempts optional debt cancellation or debt suspension products from those limits. In addition, finance charges are subject to certain disclosure requirements under the federal “Truth in Lending Act” (TILA). It is not clear what, if any, affect the bill would have on the application of TILA to debt cancellation or debt suspension products.²

Ancillary product protection contracts

Under current law, an ancillary product protection contract provides for the repair or replacement of specified parts or components of a motor vehicle. The bill adds two new types of products that qualify as an ancillary product protection contract and, therefore, are exempted from state insurance laws. It also extends the exemption to contracts involving under-speed vehicles and establishes alternatives to the current requirement that all contracts be covered by a reimbursement insurance policy.

Protection against lease-end charges

The bill expands the services that qualify as motor vehicle ancillary product protection contracts to include, in conjunction with a leased vehicle, both of the following:

- The repair, replacement, or maintenance of property, or indemnification for repair, replacement, or maintenance, due to excess wear and use, damage for items such as tires, paint cracks or chips, missing interior or exterior parts, or excess mileage that results in a lease-end charge; and
- Any other charge for damage that is deemed as excess wear and use by a lessor under a motor vehicle lease.

The bill specifies that such services do not qualify as a motor vehicle ancillary product protection contract if the charge exceeds the purchase price of the vehicle at the end of the

² R.C. 1317.05(B); R.C. 1317.01, 1317.06, and 1343.01, not in the bill; 15 United States Code 1601, *et. seq.*

lease term. It appears that an excess wear and use waiver, described above, would qualify as an ancillary product protection contract in at least some cases.³

Vehicle value protection agreements

The bill also specifies that a motor vehicle ancillary product protection contract includes a vehicle value protection agreement.

Characteristics

When a motor vehicle is damaged, lost, stolen, or otherwise depreciates in value, these agreements provide a benefit towards either the reduction of some or all of the contract holder's current finance agreement deficiency balance (such as an amount still owed on a vehicle loan or lease agreement), or towards the purchase or lease of a replacement motor vehicle or motor vehicle services. Under the bill, "vehicle value protection agreement" includes trade-in-credit agreements, diminished value agreements, depreciation benefit agreements, or other similar agreements. "Vehicle value protection agreement" does not include a debt suspension or debt cancellation product.⁴

Cancellation by contract holder

The bill specifies that a vehicle value protection agreement may be canceled by the contract holder within 30 days of the effective date of the agreement. If the agreement is cancelled, the contract holder is entitled to a full refund of the purchase price, so long as no benefits have been paid under the agreement.⁵

For those vehicle value protection agreements that allow the contract holder to cancel the agreement *more* than 30 days after the effective date of the agreement, the agreement must state the conditions under which it may be canceled, including the procedures for requesting any refund of the purchase price paid by the contract holder and the methodology for calculating any refund of the purchase price.⁶

Any refund provided in response to a cancellation initiated by the contract holder is required to be paid to the seller or assignee of a retail installment contract unless otherwise agreed to by the contract holder and the seller or assignee.⁷

Cancellation by contract provider

If a vehicle value protection agreement is cancelled by the contract provider, the provider is required to mail a written notice to the contract holder at the holder's last known address at least five days prior to cancellation. Prior notice is not required if the reason for

³ R.C. 3905.426(A)(4)(a)(vi).

⁴ R.C. 3905.426(A)(2), (A)(4)(a)(vii), and (A)(10).

⁵ R.C. 3905.426(F).

⁶ R.C. 3905.426(G).

⁷ R.C. 3905.426(I).

cancellation is nonpayment of the provider fee, a material misrepresentation by the contract holder to the contract provider or administrator, or a substantial breach of duties by the contract holder relating to the covered product or the use of the covered product. Such a notice must state the effective date of the cancellation and the reason for the cancellation.

If a vehicle value protection agreement is canceled by the contract provider for a reason other than nonpayment of the provider fee, the provider is required to refund to the contract holder 100% of the “unearned” provider fee paid by the contract holder, if any. The bill does not specify how or when all, or a portion of, the fee is earned by the contract provider. If coverage under the vehicle value protection agreement continues after a claim, then the bill specifies that all paid claims may be deducted from any required refund. A reasonable administrative fee of up to \$75 may be charged by the contract provider and deducted from any refund due to cancellation.⁸

Under-speed vehicles

The bill amends the definition of “motor vehicle” to include an under-speed vehicle, which is a three- or four-wheeled vehicle that can go less than 20 miles per hour and has a weight of less than 3,000 pounds.⁹ In effect, this change exempts ancillary product protection contracts involving under-speed vehicles from insurance laws.

Alternatives to reimbursement insurance

Under current law, ancillary product protection contracts must be covered under one or more reimbursement insurance policies. The bill instead applies the requirement to the contract provider (as opposed to each individual contract). Furthermore, it allows contract providers, as an alternative to purchasing insurance, to either maintain a reserve account or establish sufficient net worth or stockholder equity to act as surety for its issued and outstanding obligations. However, the bill requires ancillary product protection contracts not covered by insurance to contain a statement advising that the provider’s obligations “are backed by the full faith and credit of the provider.”

Reserve account

A contract provider that elects to provide surety through a reserve account must fund the account at not less than 40% of gross consideration received on the sale of all motor vehicle ancillary product protect contracts issued and outstanding in Ohio, less any claims paid on those contracts. The reserve account is subject to examination and review by the Superintendent of Insurance. In addition, the contract provider must place in trust with the Superintendent a financial security deposit valued at not less \$25,000, or 5% of gross considerations received, less claims paid, on the sale of all such products, whichever is greater. The security deposit must consist of one of the following:

⁸ R.C. 3905.426(H).

⁹ R.C. 3905.426(A).

- A surety bond;
- Securities eligible for deposit by authorized issuers in this state;
- Cash;
- A letter of credit issued by a financial institution qualified to issue the letter of credit;
- Another form of security authorized by the Superintendent.

Net worth

Contract providers may also provide surety by maintaining, independently or together with a parent company, a net worth or stockholder equity of \$100 million. If the contract provider chooses this option, the contract provider must, upon request, provide the Superintendent with a copy of the provider's or the provider's parent company's most recent form 10-K or form 20-F filed within the last year with the Securities and Exchange Commission (SEC). If the company does not file with the SEC, the contract provider must provide a copy of the company's audited financial statements, which show a net worth of the provider or the provider's parent company of at least \$100 million. If the provider submits a parent company's form 10-K, form 20-F, or audited financial statements, then the parent company must agree to guarantee the obligations of the provider relating to vehicle value protection agreements issued by the provider in Ohio.¹⁰

HISTORY

Action	Date
Introduced	09-19-23

ANSB0157IN-135/ts

¹⁰ R.C. 3905.426(B) and (D).