

2018 Regular Session

HOUSE BILL NO. 522

BY REPRESENTATIVE DAVIS

INSURANCE/AUTOMOBILE: Provides relative to motor vehicle service contracts

1 AN ACT

2 To amend and reenact R.S. 22:361(5), (9), and (10) and 362(B) and Chapter 57 of Title 51  
3 of the Revised Statutes of 1950, to be comprised of R.S. 51:3141 through 3147, and  
4 to repeal R.S. 22:361(3), relative to motor vehicle service contracts; to move the  
5 regulation of motor vehicle service contract providers from the Department of  
6 Insurance to the secretary of state; to provide for definitions; to provide for  
7 exemptions; to establish financial and registration requirements for service contract  
8 providers; to require certain disclosures to consumers; to provide for the cancellation  
9 of reimbursement insurance policies; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 22:361(5), (9), and (10) and 362(B) are hereby amended and  
12 reenacted to read as follows:

13 §361. Definitions

14 As used in this Subpart:

15 \* \* \*

16 (5) "Reinsurer" means a person licensed under this Subpart engaged in the  
17 reinsuring of vehicle mechanical reimbursement insurance, residual value insurance,  
18 or credit disability insurance policies, or any combination of kinds of insurance.

19 \* \* \*

1           (9) "Vehicle mechanical breakdown insurance policy" means any contract,  
 2 agreement, or instrument whereby a person other than the owner, seller, or lessor of  
 3 a vehicle assumes the risk of or the expense or portion thereof for the mechanical  
 4 breakdown or mechanical failure of a motor vehicle and may include other customer  
 5 assistance and convenience services, such as vehicle rental assistance, towing  
 6 assistance, trip interruption, and roadside assistance, ~~and shall include those~~  
 7 ~~agreements commonly known as vehicle service agreements or extended warranty~~  
 8 ~~agreements where the assumption of risk is made by an entity other than the owner,~~  
 9 ~~seller, or lessor of the vehicle.~~ The term "vehicle mechanical breakdown insurance  
 10 policy" shall not include a service contract covering motor vehicles offered pursuant  
 11 to R.S. 55:3141 et. seq.

12           (10) "Vehicle mechanical breakdown insurer" means any person or  
 13 organization, whether domestic, foreign, or alien, issuing or attempting to issue  
 14 vehicle mechanical breakdown policies or vehicle component coverage contracts as  
 15 defined herein. The term "vehicle mechanical breakdown insurer" shall not include  
 16 a provider of service contracts covering motor vehicles offered pursuant to R.S.  
 17 55:3141 et seq.

§362. License required of vehicle mechanical breakdown insurer

\* \* \*

20           B. Each vehicle mechanical breakdown insurer may also act as a reinsurer  
 21 in accordance with regulations adopted by the commissioner. All reserves for credit  
 22 disability insurance shall be retained and held by the credit disability insurer. Except  
 23 as otherwise provided in this Subsection, a vehicle mechanical breakdown insurer  
 24 shall be allowed credit for reinsurance ceded to an assuming insurer that satisfies the  
 25 requirements of this Subsection, R.S. 22:651 or 652, and the regulations thereunder.

\* \* \*

27           Section 2. Chapter 57 of Title 51 of the Revised Statutes of 1950, comprised of R.S.  
 28 51:3141 through 3147, is hereby amended and reenacted to read as follows:

1 CHAPTER 57. ~~HOME~~ SERVICE CONTRACT PROVIDERS2 §3141. Scope and purpose; exemptions

## 3 A. The purposes of this Part are the following:

4 (1) To create a registration and assurance mechanism for ~~home~~ service  
5 contract providers in this state.6 (2) To encourage innovation in the marketing and development of more  
7 economical and effective means of providing services under ~~home~~ service contracts  
8 while placing the risk of innovation on the providers rather than on consumers.9 (3) To permit and encourage fair and effective competition among different  
10 systems of providing and paying for these services.

## 11 B. The following shall be exempt from this Chapter:

12 (1) Warranties as defined in this Chapter.

13 (2) Maintenance-only agreements as defined in this Chapter.

14 (3) Service contracts sold or offered for sale to persons other than  
15 consumers.16 (4) ~~Contracts sold or offered for sale on a single new item of property at the~~  
17 ~~time of the sale of the property, or within one year of the date of the sale, which~~  
18 ~~guarantee the performance of the service, repair, replacement, or maintenance of the~~  
19 ~~property or guarantee to indemnify for the service, repair, replacement, or~~  
20 ~~maintenance of a single item of residential property.~~ Service contracts on tangible  
21 property if the tangible property has a purchase price of one hundred dollars or less,  
22 exclusive of sales tax.23 (5) A vehicle mechanical breakdown insurance policy or vehicle component  
24 coverage contract offered by a vehicle mechanical breakdown insurer in compliance  
25 with the applicable provisions of Title 22 of the Revised Statutes of 1950.26 C. The types of agreements referred to in Paragraphs (B)(1) through (4) of  
27 this Section are not insurance in this state and shall be exempt from any provision  
28 of the Louisiana Insurance Code.

## 1 §3142. Definitions

2 As used in this Chapter, unless the context otherwise requires, the following  
3 words and phrases shall be defined as follows:

4 (1) "Administrator" means the person who is responsible for the  
5 administration of the ~~home~~-service contract or the ~~home~~ service contract plan or who  
6 is responsible for any submission required by this Chapter.

7 (2) "Consumer" means a natural person who buys, other than for purposes  
8 of resale, any corporeal movable property, including a motor vehicle, that is  
9 distributed in commerce and that is normally used for personal, family, or household  
10 purposes and not for business or research purposes.

11 (3)(a) ~~"Home service~~ Service contract" means a contract or agreement for  
12 a separately stated consideration for any duration to perform the service, repair,  
13 replacement, or maintenance of property or indemnification for service, repair,  
14 replacement, or maintenance, for the operational or structural failure of any  
15 ~~residential~~ property due to a defect in materials, workmanship, inherent defect, or  
16 normal wear and tear, with or without additional provisions for incidental payment  
17 or indemnity under limited circumstances including but not limited to towing, rental,  
18 and emergency road service. A ~~home~~ service contract may provide for the service,  
19 repair, replacement, or maintenance of property for damage resulting from power  
20 surges or interruption and accidental damage from handling and may provide for leak  
21 or repair coverage to house roofing systems.

22 (b) The term "service contract" also includes a contract or agreement for a  
23 separately stated consideration for any duration that provides for any of the  
24 following:

25 (i) The repair or replacement of tires or wheels on a motor vehicle damaged  
26 as a result of coming into contact with road hazards including but not limited to  
27 potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

1           (ii) The removal of dents, dings, or creases on a motor vehicle that can be  
2           repaired using the process of paintless dent removal without affecting the existing  
3           paint finish and without replacing vehicle body panels, sanding, bonding, or painting.

4           (iii) The repair of chips or cracks in or the replacement of motor vehicle  
5           windshields as a result of damage caused by road hazards.

6           (iv) The replacement of a motor vehicle key or key-fob in the event that the  
7           key or key-fob becomes inoperable or is lost or stolen.

8           (c) A ~~home~~ service contract is not insurance in this state or otherwise  
9           regulated under any provision of the Louisiana Insurance Code.

10           (4) "Maintenance-only agreement" means a contract of limited duration that  
11           provides only for scheduled maintenance ~~and does not include repair or replacement.~~

12           (5) "Motor vehicle manufacturer" means a person who is any of the  
13           following:

14           (a) A manufacturer or producer of motor vehicles who sells motor vehicles  
15           under the manufacturer's or producer's own name or label.

16           (b) The wholly owned subsidiary of a person who manufactures or produces  
17           motor vehicles.

18           (c) A corporation which owns one-hundred percent of a person who  
19           manufactures or produces motor vehicles.

20           (d) Not a manufacturer or producer of motor vehicles, but sells motor  
21           vehicles under the trade name or label of another person who manufactures or  
22           produces motor vehicles.

23           (e) A manufacturer or producer of motor vehicles who sells the motor  
24           vehicles under the trade name or label of another person who manufactures or  
25           produces motor vehicles.

26           (f) Not a manufacturer or producer of motor vehicles but, pursuant to a  
27           written contract, licenses the use of its trade name or label to another person who  
28           manufactures or produces motor vehicles that sells motor vehicles under the  
29           licensor's trade name or label.

1           ~~(5)~~ (6) "Person" means an individual, partnership, corporation, incorporated  
2 or unincorporated association, joint stock company, reciprocal, syndicate, or any  
3 similar entity or combination of entities acting in concert.

4           ~~(6)~~ (7) "Provider" means a person who is contractually obligated to provide  
5 the services or indemnification under a ~~home~~ service contract.

6           ~~(7)~~ (8) "Provider fee" means the consideration paid for a ~~home~~ service  
7 contract.

8           (9) "Reimbursement insurance policy" means a policy of insurance issued  
9 to a provider to do either of the following:

10           (a) Provide reimbursement to the provider pursuant to the terms of the  
11 insured service contracts issued or sold by the provider.

12           (b) In the event of the provider's nonperformance, pay on behalf of the  
13 provider all covered contractual obligations incurred by the provider under the terms  
14 of the insured service contracts issued or sold by the provider.

15           (10) "Road hazard" means a hazard that is encountered while driving a motor  
16 vehicle and which may include but not be limited to potholes, rocks, wood debris,  
17 metal parts, glass, plastic, curbs, or composite scraps.

18           (11) "Solvent" means assets exceed liabilities as calculated in accordance  
19 with generally accepted accounting principles.

20           ~~(8)~~ (12) "Service contract holder" or "contract holder" means a person who  
21 is the purchaser or holder of a ~~home~~ service contract.

22           ~~(9)~~ (13) "Warranty" means a warranty made solely by the manufacturer,  
23 importer, or seller of property or services, including builders on new home  
24 construction, without consideration, that is not negotiated or separated from the sale  
25 of the product and is incidental to the sale of the product, that guarantees indemnity  
26 for defective parts, mechanical or electrical breakdown, labor, or other remedial  
27 measures, such as repair or replacement of the property, or repetition of services.

1 §3143. Requirements for doing business

2 A. ~~Home service~~ Service contracts shall not be issued, sold, or offered for  
3 sale in this state unless the provider has done each of the following:

4 (1) Registered with the secretary of state and remains in good standing.

5 (2) Provided a receipt for, or other written evidence of, the purchase of the  
6 ~~home~~ service contract to the contract holder.

7 (3) Provided a copy of the ~~home~~ service contract to the service contract  
8 holder within a reasonable period of time from the date of purchase.

9 B. Each provider of a ~~home~~ service contract sold in this state shall file an  
10 application for an initial registration with the secretary of state consisting of ~~his~~ the  
11 provider's name, address, telephone number, and contact person, designating a  
12 person in this state for service of process, and providing a listing of all officers, all  
13 directors, and all owners of ten percent or more of the business. Additionally, the  
14 provider shall file a copy of its basic organizational documents, including articles of  
15 incorporation, articles of organization, articles of association, or a partnership  
16 agreement. Each application for registration shall be accompanied by a fee of six  
17 hundred dollars. All fees shall be paid to the secretary of state.

18 C. A registration shall be effective for two years, unless the registration is  
19 denied or revoked. Ninety days prior to the expiration of a registration, a provider  
20 shall submit a renewal application on a form prescribed by the secretary of state and  
21 a renewal fee of two hundred fifty dollars. All fees shall be paid to the secretary of  
22 state. The deadline for complying with all requirements for initial registration as  
23 described in this Subsection, and for posting a two-year bond in the amount as  
24 described in Subsection E of this Section is January fifteenth.

25 D. Each registrant shall notify the secretary of state of any material change  
26 in the registration information within sixty days of the effective date of such change.  
27 The notice shall be accompanied by supporting documentation.

1 E. In order to assure the faithful performance of a provider's obligations to  
2 its contract holders and to insure its outstanding obligations, each provider shall  
3 comply with one of the following as applicable:

4 (1) A provider that issues service contracts that do not cover motor vehicles  
5 or their component parts shall obtain and file with the secretary of state a surety bond  
6 issued by a company licensed to do business in Louisiana in the amount of fifty  
7 thousand dollars. The term of the surety bond shall coincide with the years the  
8 registration is effective as provided in Subsection C of this Section.

9 (2)(a) Each service contract that covers motor vehicles or their component  
10 parts shall be insured under a reimbursement insurance policy issued by an insurer  
11 licensed, registered, or otherwise authorized to transact the business of insurance in  
12 this state, and which complies with the provisions of Subsection F of this Section.

13 (b) A provider that issues service contracts that cover motor vehicles or their  
14 component parts shall obtain and file with the secretary of state a copy of the  
15 reimbursement insurance policy issued to the provider.

16 (c) The issues of the reimbursement insurance policy required by this  
17 Paragraph shall do either of the following:

18 (i) Maintain surplus as to policyholders and paid-in capital of at least fifteen  
19 million dollars.

20 (ii) Maintain surplus as to policyholders and paid-in capital of less than  
21 fifteen million dollars but at least equal to ten million dollars and maintain a ratio of  
22 net written premiums, wherever written, to surplus as to policyholders and paid-in  
23 capital of not greater than three to one.

24 F. An insurer issuing a reimbursement insurance policy to a provider for any  
25 service contract issued, offered for sale, or sold in this state shall comply with all of  
26 the following:

27 (1) Be deemed to have received the premium for the insurance upon the  
28 payment of the provider fee by a consumer for a service contract issued by an  
29 insured provider.

1           (2) Provide reimbursement to, or payment on behalf of, the provider under  
2           the terms of the insured service contracts issued or sold by the provider or, in the  
3           event of the provider's nonperformance, provide or pay for, on behalf of the provider,  
4           all covered contractual obligations incurred by the provider under the terms of the  
5           insured service contracts issued or sold by the provider.

6           (3) Accept a claim arising under the contract directly from a contract holder,  
7           if the provider does not comply with any contractual obligation pursuant to the  
8           contract within sixty days of presentation of a valid claim by the contract holder.

9           (4)(a) Terminate or not renew the policy covering service contracts issues  
10          in this state only after a notice of termination or nonrenewal is presented to the  
11          secretary of state and commissioner of insurance, at least ten days prior to the  
12          termination or nonrenewal of the policy.

13          (b) The termination or nonrenewal shall not reduce the insurer's  
14          responsibility for any insured contract issued or sold prior to the date of termination  
15          or nonrenewal.

16          F. G. Except for the registration requirements of this Section, providers,  
17          administrators, and persons marketing, selling, or offering to sell ~~home~~ service  
18          contracts are exempt from any licensing requirements of this state and shall not be  
19          subject to other registration information or security requirements.

20          G. H. The marketing, sale, offering for sale, issuance, making, proposing to  
21          make, and administration of ~~home~~ service contracts by providers and related service  
22          contract sellers, administrators, and other persons is not insurance and shall be  
23          exempt from all provisions of the Louisiana Insurance Code.

24          I. Motor vehicle manufacturers are exempt from the registration and  
25          financial responsibility requirements of this Section.

26          J. Nothing in this Section shall not be construed to limit the right of the  
27          insurer to seek indemnification or subrogation against the provider if the insurer  
28          provides or pays, or is obligated to provide or pay, for any covered contractual  
29          obligation incurred by the provider.

1 §3144. Required disclosures; service contracts

2 A. Each ~~home~~ service contract marketed, sold, offered for sale, issued, made,  
3 proposed to be made, or administered in this state shall be written, printed, or typed  
4 in clear, understandable language that is easy to read and shall disclose the  
5 requirements set forth in this Section, as applicable.

6 B. Every ~~home~~ service contract shall contain all the following information:

7 (1) The name and address of the provider and shall identify any  
8 administrator if different from the provider.

9 (2)(a) Service contracts insured under a reimbursement insurance policy  
10 shall contain a statement in substantially the following form: "Obligations of the  
11 provider under this service contract are insured under a service contract  
12 reimbursement insurance policy." The service contract shall also state the name and  
13 address of the insurer.

14 (b) This paragraph shall not apply to a motor vehicle manufacturer's service  
15 contracts on the motor vehicle manufacturer's products.

16 ~~(2)~~ (3) The name of the service contract seller and name of the service  
17 contract holder to the extent that the name of the service contract holder has been  
18 furnished to the service contract provider. The identities of parties are not required  
19 to be preprinted on the service contract and may be added to the service contract at  
20 the time of sale.

21 ~~(3)~~ (4) The total purchase price and the terms under which the service  
22 contract is sold. The purchase price is not required to be preprinted on the service  
23 contract and may be negotiated at the time of sale with the service contract holder.

24 ~~(4)~~ (5) The existence of any deductible amount, if applicable.

25 ~~(5)~~ (6) The goods and services to be provided and any limitations,  
26 exceptions, or exclusions.

27 ~~(6)~~ (7) Any restrictions governing the transferability of the service contract,  
28 if applicable.

1           ~~(7)~~ (8) The terms, restrictions, or conditions governing cancellation of the  
2 service contract prior to the termination or expiration date of the service contract by  
3 either the provider or the service contract holder. The provider of the service contract  
4 shall mail a written notice to the contract holder at the last known address of the  
5 service contract holder contained in the records of the provider at least fifteen days  
6 prior to cancellation by the provider. Prior notice is not required if the reason for  
7 cancellation is nonpayment of the provider fee, a material misrepresentation by the  
8 service contract holder to the provider, or a substantial breach of duties by the  
9 service contract holder relating to the covered product or its use. The notice shall  
10 state the effective date of the cancellation and the reason for the cancellation.

11           ~~(8)~~ (9) The obligations and duties of the service contract holder, including  
12 but not limited to the duty to protect against any further damage and any requirement  
13 to follow an owner's manual.

14           ~~(9)~~ (10) Whether or not the service contract provides for or excludes  
15 consequential damages or preexisting conditions, if applicable. Service contracts  
16 may, but are not required to, cover damage resulting from rust, corrosion, or damage  
17 caused by a noncovered part or system.

18           ~~(10)~~ (11) If prior approval of repair work is required, the procedure for  
19 obtaining prior approval and for making a claim, including a toll-free telephone  
20 number for claim service and a procedure for obtaining emergency repairs performed  
21 outside of normal business hours.

22           §3145. Consumer's right to cancel

23           A ~~home~~ service contract shall require every provider to permit the service  
24 contract holder to return the ~~home~~ service contract within twenty days of the date the  
25 ~~home~~ service contract was mailed to the service contract holder or within ten days  
26 of delivery if the ~~home~~ service contract is delivered to the service contract holder at  
27 the time of sale or within a longer time period permitted under the ~~home~~ service  
28 contract. Upon return of the ~~home~~ service contract to the provider within the  
29 applicable time period, if no claim has been made under the ~~home~~ service contract

1 prior to its return to the provider, the ~~home~~ service contract is void and the provider  
2 shall refund to the service contract holder, or credit the account of the service  
3 contract holder, with the full purchase price of the ~~home~~ service contract. The right  
4 to void the ~~home~~ service contract provided is not transferable and shall apply only  
5 to the original service contract holder and only if no claim has been made prior to its  
6 return to the provider. A ten percent penalty per month shall be added to a refund  
7 that is not paid or credited within forty-five days after return of the ~~home~~ service  
8 contract to the provider.

9 §3146. Prohibited acts

10 A. A provider shall not use in its name the words "insurance", "casualty",  
11 "surety", "mutual", or any other words descriptive of the insurance, casualty, or  
12 surety business or a name deceptively similar to the name or description of any  
13 insurance or surety corporation, or to the name of any other provider. The word  
14 "guaranty" or similar word may be used by a provider. A provider shall include in  
15 its ~~home~~ service contracts a statement in substantially the following form: "This  
16 agreement is not an insurance contract."

17 B. A provider or its representative shall not in its ~~home~~ service contracts or  
18 literature make, permit, or cause to be made any false or misleading statement, or  
19 deliberately omit any material statement that would be considered misleading if  
20 omitted.

21 §3147. Cancellation of reimbursement insurance policy

22 An insurer that issues a reimbursement insurance policy shall not terminate  
23 the policy until a notice of termination has been mailed or delivered to the secretary  
24 of state. The termination of a reimbursement insurance policy shall not reduce the  
25 insurer's responsibility for service contracts issued by an insured provider prior to the  
26 date of the termination.

27 Section 3. R.S. 22:361(3) is hereby repealed in its entirety.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 522 Original

2018 Regular Session

Davis

**Abstract:** Moves the regulation of motor vehicle service contract providers from the Dept. of Insurance to the secretary of state.

Proposed law defines "reinsurer", "vehicle mechanical breakdown insurance policy", "vehicle mechanical breakdown insurer", "service contract", "motor vehicle manufacturer", and "road hazard".

Present law permits each vehicle mechanical breakdown insurer to also act as a reinsurer in accordance with regulations adopted by the commissioner of insurance. Present law further requires all reserves for credit disability insurance to be retained and held by the credit disability insurer.

Proposed law retains present law and provides that a vehicle mechanical breakdown insurer shall be allowed credit for reinsurance ceded to an assuming insurer that satisfies the requirements of present law and the regulations thereunder.

Present law provides for the regulation of home service contracts by the secretary of state.

Proposed law retains present law and moves the regulation of motor vehicle service contract providers from the Dept. of Insurance to the secretary of state.

Proposed law changes all references of "home service contracts" to "service contracts".

Present law exempts contracts sold or offered for sale on a single new item of property at the time of the sale of the property, or within one year of the date of the sale, which guarantee the performance of the service, repair, replacement, or maintenance of the property or guarantee to indemnify for the service, repair, replacement, or maintenance of a single item of residential property.

Proposed law repeals present law and establishes an exemption for service contracts on tangible property if the tangible property has a purchase price of \$100 or less, exclusive of sales tax. Proposed law further exempts a vehicle mechanical breakdown insurance policy or vehicle component coverage contract offered by a vehicle mechanical breakdown insurer in compliance with the applicable provisions of present law.

Present law establishes requirements for doing business as a home service contract provider.

Proposed law retains present law and adds a requirement that each service contract that covers motor vehicles or their component parts be insured under a reimbursement insurance policy issued by an insurer licensed, registered, or otherwise authorized to transact the business of insurance in this state. Proposed law further requires the provider to file with the secretary of state a copy of the reimbursement insurance policy issued to the provider.

Proposed law require the issues of the reimbursement insurance policy to do either of the following:

- (1) Maintain surplus as to policyholders and paid-in capital of at least \$15,000,000.

- (2) Maintain surplus as to policyholders and paid-in capital of less than \$15,000,000 but at least equal to \$10,000,000 and maintain a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one.

Proposed law requires an insurer issuing a reimbursement insurance policy to a provider to comply with all of the following:

- (1) Be deemed to have received the premium for the insurance upon the payment of the provider fee by a consumer for a service contract issued by an insured provider.
- (2) Provide reimbursement to, or payment on behalf of, the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the provider's nonperformance, provide or pay for, on behalf of the provider, all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider.
- (3) Accept a claim arising under the contract directly from a contract holder, if the provider does not comply with any contractual obligation pursuant to the contract within 60 days of presentation of a valid claim by the contract holder.
- (4) Terminate or not renew the policy covering service contracts issues in this state only after a notice of termination or nonrenewal is presented to the secretary of state and commissioner of insurance, at least 10 days prior to the termination or nonrenewal of the policy.

Present law requires certain disclosures to be included with each home service contract sold in the state.

Proposed law retains present law and adds a requirement that service contracts insured under a reimbursement insurance policy contain a statement that the service contract is insured under a service contract reimbursement insurance policy and state the name and address of the insurer.

Proposed law prohibits an insurer that issues a reimbursement insurance policy from terminating the policy until a notice of termination has been mailed or delivered to the secretary of state. Proposed law further provides that the termination of a reimbursement insurance policy does not reduce the insurer's responsibility for service contracts issued by an insured provider prior to the date of the termination.

Present law defines "mechanical reimbursement insurance".

Proposed law repeals present law.

(Amends R.S. 22:361(5), (9), and (10) and 362(B) and R.S. 51:3141-3147; Repeals R.S. 22:361(3))