

IN THE SENATE

SENATE BILL NO. 1357

BY TRANSPORTATION COMMITTEE

AN ACT

1 RELATING TO MOTOR VEHICLE SERVICE CONTRACTS; AMENDING SECTION 49-2803,  
2 IDAHO CODE, TO PROVIDE FOR APPLICATION OF LAW, TO PROVIDE PROVISIONS  
3 AND REQUIREMENTS RELATING TO SERVICE CONTRACT LIABILITY POLICIES; AND  
4 AMENDING CHAPTER 28, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW  
5 SECTION 49-2805A, IDAHO CODE, TO PROVIDE THAT IT SHALL BE UNLAWFUL  
6 FOR ANY COMPANY TO REPRESENT IN ANY MANNER A FALSE, DECEPTIVE OR  
7 MISLEADING STATEMENT REGARDING SUCH COMPANY'S AFFILIATION WITH CERTAIN  
8 MANUFACTURERS, SUCH COMPANY'S POSSESSION OF INFORMATION REGARDING  
9 CERTAIN MANUFACTURER'S EQUIPMENT WARRANTIES, ALL INDICATIONS THAT  
10 SUCH COMPANY'S RECORDS SHOW A CERTAIN WARRANTY IS NEARING OR PAST  
11 EXPIRATION, A REQUIREMENT THAT A VEHICLE OWNER REGISTER FOR A CERTAIN  
12 CONTRACT, AND TO PROVIDE FOR A MISDEMEANOR, TO PROVIDE FOR PENALTIES,  
13 AND TO PROVIDE FOR ENFORCEMENT.  
14

15 Be It Enacted by the Legislature of the State of Idaho:

16 SECTION 1. That Section 49-2803, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18 49-2803. SERVICE CONTRACT REIMBURSEMENT POLICY REQUIREMENTS. (1)  
19 Mandatory insurance.

20 (a) No motor vehicle service contract shall be issued, sold, or offered  
21 for sale in this state unless the motor vehicle service contract  
22 provider is insured under a service contract liability policy issued  
23 by an insurer admitted to do business in this state or as otherwise  
24 provided in subsection (2) of this section. The policy shall provide  
25 that the insurer will pay to, or on behalf of, the motor vehicle service  
26 contract provider all sums which the motor vehicle service contract  
27 provider is legally obligated to pay according to the motor vehicle  
28 service contract provider's contractual obligations under the motor  
29 vehicle service contracts issued or sold by the motor vehicle service  
30 contract provider.

31 (b) All service contract liability policies insuring motor vehicle  
32 service contracts issued, sold or offered for sale in this state must  
33 conspicuously state that, upon failure of the motor vehicle service  
34 contract provider to perform under the contract, the issuer of the  
35 policy shall pay on behalf of the provider any sums which the provider is  
36 legally obligated to perform, according to the provider's contractual  
37 obligations under the motor vehicle service contracts issued or sold by  
38 the provider.

39 ~~(2) Reserves. The reserve to be maintained on service contract~~  
40 ~~liability policies issued:~~

41 ~~(a) Covering new vehicles shall be one which generates an~~  
42 ~~unearned premium reserve not less than the unearned premium~~

1 ~~reserve which is generated by applying the "reverse sum of the~~  
 2 ~~digits" earnings method to each policy issued;~~

3 ~~(b) Covering used vehicles shall be a reserve of not less than the~~  
 4 ~~unearned premium reserve which is generated by the "straight line"~~  
 5 ~~or "prorated" earnings method; or~~

6 ~~(c) Shall be by such other methods as are certified annually by a~~  
 7 ~~competent actuary who is a member of the American society of actuaries.~~

8 The service contract liability policy shall be obtained from an insurer  
 9 authorized, registered or otherwise permitted to transact insurance in this  
 10 state or a surplus lines insurer meeting the requirements of chapter 12,  
 11 title 41, Idaho Code, and which insurer or surplus lines insurer meets one  
 12 (1) of the following requirements:

13 (a) (i) Maintain surplus as to policyholders and paid-in capital  
 14 of at least fifteen million dollars (\$15,000,000); and

15 (ii) Annually file copies of the insurer's financial statements,  
 16 its NAIC annual statement and the actuarial certification  
 17 required by and filed in the insurer's state of domicile; or

18 (b) (i) Maintain surplus as to policyholders and paid-in capital  
 19 of less than fifteen million dollars (\$15,000,000) but at least  
 20 equal to ten million dollars (\$10,000,000); and

21 (ii) Maintain a ratio of net written premiums, wherever written,  
 22 to surplus as to policyholders and paid-in capital of not greater  
 23 than three (3) to one (1); and

24 (iii) Annually files copies of the insurer's audited financial  
 25 statements, its NAIC annual statement and the actuarial  
 26 certification required by and filed in the insurer's state of  
 27 domicile.

28 (3) Premiums. Premiums are defined as those funds paid by or on behalf  
 29 of the motor vehicle service contract provider to the liability insurance  
 30 policy issuer for such risks covered under such liability insurance policy.  
 31 Such premiums or the method of developing such premiums shall be filed with  
 32 the director of the department of insurance for approval.

33 (4) Cancellation of service contract liability insurance policy. The  
 34 issuer of a service contract liability policy may not cancel the policy  
 35 until a thirty (30) days' advance notice of cancellation has been mailed or  
 36 delivered to each motor vehicle service contract provider. The cancellation  
 37 of a service contract liability policy shall not reduce the insurer's  
 38 responsibility for motor vehicle service contracts issued by motor vehicle  
 39 service contract providers prior to the date of the cancellation.

40 SECTION 2. That Chapter 28, Title 49, Idaho Code, be, and the same is  
 41 hereby amended by the addition thereto of a NEW SECTION, to be known and  
 42 designated as Section 49-2805A, Idaho Code, and to read as follows:

43 49-2805A. DECEPTIVE SOLICITATION OF MOTOR VEHICLE SERVICE CONTRACTS  
 44 PROHIBITED -- PENALTIES. (1) It shall be unlawful for any company to  
 45 directly or indirectly represent in any manner, whether by written  
 46 solicitation, advertisement, or telemarketing, a false, deceptive or  
 47 misleading statement with regard to:

48 (a) Such company's affiliation with a motor vehicle manufacturer,  
 49 recreational vehicle manufacturer or dealer;

1 (b) Such company's possession of information regarding a motor vehicle  
2 owner's current motor vehicle manufacturer or recreational vehicle  
3 manufacturer original equipment warranty;

4 (c) All indications that such company's records show that a motor  
5 vehicle or recreational vehicle owner's current motor vehicle  
6 manufacturer or recreational manufacturer's original equipment  
7 warranty is nearing or past expiration;

8 (d) A requirement that such motor vehicle, or recreational vehicle  
9 owner register for a new motor vehicle service contract with such  
10 company to maintain coverage under the motor vehicle or recreational  
11 vehicle owner's current service contract or manufacturer's original  
12 equipment warranty.

13 (2) In addition to any other penalty provided by law, any company who  
14 violates any provisions of this section shall be subject to prosecution for a  
15 misdemeanor for each violation, plus a civil penalty of one thousand dollars  
16 (\$1,000) a day for each violation.

17 (3) This section shall be enforced by the Idaho attorney general or  
18 local prosecuting attorney.