

TITLE 41
INSURANCE

CHAPTER 62
IDAHO MOTOR VEHICLE SERVICE CONTRACT ACT

41-6201. SHORT TITLE. The provisions of this chapter shall be known and may be cited as the "Idaho Motor Vehicle Service Contract Act."

[41-6201, added 2018, ch. 116, sec. 2, p. 241.]

41-6202. LEGISLATIVE INTENT. (1) The legislature finds and declares that a considerable number of Idaho citizens use contracts to provide necessary services for the repair and servicing of motor vehicles purchased and used within the state.

(2) It is the intent of the legislature that this act provides for state of Idaho regulation of motor vehicle service contracts offered for sale in the state by any person other than the motor vehicle manufacturer or its affiliates and subsidiaries.

(3) It is also the intent of the legislature that this act shall not apply to:

(a) The customary and usual performance guarantees or warranties offered at no additional charge by motor vehicle manufacturers, or their affiliates and subsidiaries, regarding the sale of motor vehicles;

(b) Maintenance agreements; or

(c) Theft protection programs or theft protection program warranties.

Such products identified in this subsection shall not be subject to the provisions of [title 41](#), Idaho Code, unless expressly made applicable.

[41-6202, added 2018, ch. 116, sec. 2, p. 241.]

41-6203. DEFINITIONS. As used in this chapter:

(1) "Administrator" means the person responsible for the administration of the motor vehicle service contract;

(2) "Director" means the director of the Idaho department of insurance;

(3) "Incidental costs" means expenses specified in a theft protection program warranty that are incurred by the warranty holder due to the failure of a theft protection program to perform as provided in the contract. Incidental costs may 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 either a fixed amount specified in the theft protection program warranty or by use of a formula itemizing specific incidental costs incurred by the warranty holder;

(4) "Liability insurance policy" means a policy of insurance providing coverage for all contractual obligations incurred by a motor vehicle service contract provider under the terms of a motor vehicle service contract issued or sold by the motor vehicle service contract provider;

(5) "Maintenance agreement" means a contract of limited duration that provides scheduled maintenance only;

(6) "Mechanical breakdown insurance" means a policy, contract or agreement that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural

failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear and that is issued by an insurance company authorized to do business in this state;

(7) "Motor vehicle service contract" means a contract or agreement given for separately stated consideration that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear but shall not include mechanical breakdown insurance. A motor vehicle service contract may provide full or partial reimbursement for other expenses incurred by the motor vehicle service contract holder as a direct and proximate result of an operational or structural failure or reduced operating efficiency if included in the contract coverage, including but not limited to towing, rental car, lodging, motor club, maintenance benefits, roadside assistance and meal expenses. An agreement whereby an employer or a third party contracted by the employer provides mileage reimbursement and incidental maintenance and repairs to its employees for personal vehicles used for business purposes, which agreement shall not be considered a motor vehicle service contract or a contract of insurance. "Motor vehicle service contract" also means a contract or agreement that provides one (1) or more of the following:

(a) The repair or replacement of tires, wheels or 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 replacing vehicle body panels, sanding, bonding or painting;

(c) The repair of chips or cracks in or the replacement of motor vehicle windshields as a result of damage caused by road hazards; or

(d) The replacement of a motor vehicle key or key fob in the event that the key or key fob becomes inoperable or is lost or stolen;

(8) "Motor vehicle service contract holder" means a person who purchases a motor vehicle service contract or is a permitted transferee;

(9) "Motor vehicle service contract provider" means a person who is contractually obligated to a motor vehicle service contract holder under the terms of a motor vehicle service contract;

(10) "Person" means an individual, company, association, organization, partnership, business trust, corporation or any other form of legal entity;

(11) "Road hazard" means a hazard encountered while driving a motor vehicle and may include, but not be limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs or composite scraps;

(12) "Theft protection program" means a device or system that:

(a) Is installed on or applied to a motor vehicle;

(b) Is designed to prevent loss or damage to a motor vehicle from theft; and

(c) Includes a theft protection program warranty.

The term shall include, but not be 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. The term does not include fuel additives, oil additives or other chemical products applied to the engine, transmission or fuel system, or to interior or exterior surfaces of a motor vehicle;

(13) "Theft protection program warranty" means a written agreement by a warrantor that provides, if a theft protection program fails to prevent loss or damage to a motor vehicle from theft, 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 perform pursuant to the terms of the theft protection program warranty.

[41-6203, added 2018, ch. 116, sec. 2, p. 242.]

41-6204. SERVICE CONTRACT REIMBURSEMENT POLICY REQUIREMENTS. (1) The following are mandatory insurance provisions:

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

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

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

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

(ii) Annually file copies of the insurer's audited financial statements, its national association of insurance commissioners (NAIC) annual statement and the actuarial certification required by and filed in the insurer's state of domicile; or

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

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

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

(3) Premiums are defined as those funds paid by or on behalf of the motor vehicle service contract provider to the liability insurance policy issuer for such risks covered under such liability insurance policy. Such premiums

or the method of developing such premiums shall be filed with the director of the department of insurance for approval.

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

[41-6204, added 2018, ch. 116, sec. 2, p. 243.]

41-6205. MOTOR VEHICLE SERVICE CONTRACT PROVISIONS. The following provisions shall apply to the sale of motor vehicle service contracts in the state:

(1) A motor vehicle service contract may not be issued, sold or offered for sale in this state unless the contract contains a statement in substantially the following form: "Obligations of the motor vehicle service contract provider under this motor vehicle service contract are guaranteed under a service contract liability policy. Should the motor vehicle service contract provider fail to pay or provide service on any claim within sixty (60) days after proof of loss has been filed, the motor vehicle service contract holder is entitled to make a claim directly against the insurance company." The motor vehicle service contract shall also conspicuously state the name and address and a toll-free claim service number of the insurer.

(2) The motor vehicle service contract must identify the motor vehicle service contract provider, the seller and the motor vehicle service contract holder.

(3) The motor vehicle service contract must conspicuously state the total purchase price of the motor vehicle service contract.

(4) If prior approval of repair work is required, the motor vehicle service contract must conspicuously state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining reimbursement for emergency repairs performed outside of normal business hours.

(5) The motor vehicle service contract must conspicuously state the existence of any deductible amount.

(6) The motor vehicle service contract must specify the merchandise and services to be provided and any limitations, exceptions or exclusions. Any preexisting conditions clause must specifically state which preexisting conditions are excluded from coverage.

(7) The motor vehicle service contract must state any terms, restrictions or conditions governing the transferability of the service contract.

(8) The motor vehicle service contract must state the terms, restrictions or conditions governing cancellation of the service contract by either the motor vehicle service contract holder or motor vehicle service contract provider.

(9) A motor vehicle service contract may not be issued, sold or offered for sale in this state unless the contract contains a statement in substantially the following form: "Coverage afforded under this motor vehicle service contract is not guaranteed by the Idaho insurance guaranty association."

(10) No motor vehicle service contract may be issued, sold or offered in this state unless the service contract conspicuously states that the motor vehicle service contract holder is allowed to cancel the service contract:

(a) Within thirty (30) days of its purchase if no claim has been made and shall receive a full refund of the service contract retail price, less any cancellation fee stated in the service contract not exceeding fifty dollars (\$50.00); or

(b) At any other time and shall receive a pro rata refund of the service contract retail price for the unexpired term of the service contract, based on the number of the lapsed months, miles or such other measure that is clearly disclosed in the service contract, less any cancellation fees stated in the service contract not exceeding fifty dollars (\$50.00).

[41-6205, added 2018, ch. 116, sec. 2, p. 244.]

41-6206. MOTOR VEHICLE SERVICE CONTRACT REQUIREMENTS. Before the sale of any motor vehicle service contract, the motor vehicle service contract provider shall give written notice to the customer clearly disclosing that the purchase of the contract is not required either to purchase or to obtain financing for a motor vehicle. No motor vehicle service contract may be used in this state by any motor vehicle service contract provider if the contract:

(1) In any respect violates, or does not comply with, the laws of this state;

(2) Contains or incorporates by reference any inconsistent, ambiguous or misleading clauses or any exceptions and conditions that affect the risk assumed or to be assumed in the general coverage of the contract;

(3) Has any title, heading or other indication of its provisions that is misleading; or

(4) Is printed or otherwise reproduced in any manner that renders any material provision of the contract substantially illegible.

[41-6206, added 2018, ch. 116, sec. 2, p. 245.]

41-6207. PROHIBITED ACTS. (1) A motor vehicle service contract provider may not use in its name, contracts or literature:

(a) Any of the words "insurance," "casualty," "surety," "mutual" or any other words descriptive of the insurance, casualty or surety business; or

(b) A name deceptively similar to the name or description of any insurance or surety corporation, or any other motor vehicle service contract provider.

(2) A motor vehicle service contract provider, its representative or any other person may not make, permit or allow to be made any false, deceptive or misleading statement, or may not deliberately omit any material statement that would be considered misleading if omitted, in connection with the sale, offer to sell or advertisement of a motor vehicle service contract.

(3) It shall be unlawful for any company to directly or indirectly represent in any manner, whether by written solicitation, advertisement or telemarketing, a false, deceptive or misleading statement with regard to:

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

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

(c) All indications that such company's records show that a motor vehicle or recreational vehicle owner's current motor vehicle manufac-

turer's or recreational vehicle manufacturer's original equipment warranty is nearing or past expiration;

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

[41-6207, added 2018, ch. 116, sec. 2, p. 245.]

41-6208. RECORDKEEPING REQUIREMENTS. (1) All motor vehicle service contract providers shall keep accurate accounts, books and records concerning transactions regulated under the provisions of this act. A motor vehicle service contract provider's accounts, books and records shall include:

- (a) Copies of all motor vehicle service contracts issued;
- (b) The name and address of each motor vehicle service contract holder; and
- (c) Claim files.

(2) All motor vehicle service contract providers shall retain all records pertaining to each motor vehicle service contract holder for at least three (3) years after the specified period of coverage has expired. It shall be the responsibility of the insurer issuing the liability policy to make an examination at least every two (2) years of each motor vehicle service contract provider that they insure to assure that each provider is in compliance with the recordkeeping requirements.

[41-6208, added 2018, ch. 116, sec. 2, p. 246.]

41-6209. LICENSING. Motor vehicle service contract providers, and persons marketing, administering, selling or offering to sell motor vehicle service contracts for motor vehicle service contract providers, are not required to obtain a license under [title 41](#), Idaho Code. A motor vehicle service contract provider shall not be subject to regulation under any provision of [title 41](#), Idaho Code, not made expressly applicable to it.

[41-6209, added 2018, ch. 116, sec. 2, p. 246.]

41-6210. GUARANTY. The provisions of the Idaho insurance guaranty association act, [chapter 36, title 41](#), Idaho Code, shall not apply to any motor vehicle service contract, mechanical breakdown insurance or motor vehicle service contract liability insurance policy, as defined in this chapter, and no claim under any motor vehicle service contract, mechanical breakdown insurance or motor vehicle service contract liability insurance policy shall be deemed to be a "covered claim" within the scope of section [41-3605](#)(7), Idaho Code, as to which the Idaho insurance guaranty association has any obligation under section [41-3608](#), Idaho Code, or other provisions of [chapter 36, title 41](#), Idaho Code.

[41-6210, added 2018, ch. 116, sec. 2, p. 246.]

41-6211. ENFORCEMENT AND PENALTIES. (1) The director may conduct examinations of motor vehicle service contract providers, administrators, insurers or other persons to enforce the provisions of this chapter and to protect motor vehicle service contract holders in this state. Upon

request of the director, the provider shall make available to the director all accounts, books and records concerning motor vehicle service contracts sold or issued by the provider that are necessary to enable the director to reasonably determine compliance or noncompliance with this chapter.

(2) The following provisions of [chapter 2, title 41](#), Idaho Code, generally addressing the director's inquiry powers, orders and conduct of administrative proceedings apply to persons subject to this chapter:

(a) Sections [41-210](#) through [41-215](#), Idaho Code;

(b) Sections [41-220](#) through [41-223](#), [41-225](#), and [41-227](#), Idaho Code; and

(c) Sections [41-229](#) through [41-240](#), and section [41-247](#), Idaho Code.

(3) Any company that violates any provisions of this act may, in the director's discretion, be subject to a civil penalty of one thousand dollars (\$1,000) per violation, limited to a total of twenty-five thousand dollars (\$25,000) in the aggregate for all like violations.

(4) This act does not create a separate civil cause of action, but does not preclude a cause of action under the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code, or any applicable common law or statutory causes of action.

[41-6211, added 2018, ch. 116, sec. 2, p. 246.]