

IN THE SENATE

SENATE BILL NO. 1077

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO INSURANCE; REPEALING CHAPTER 28, TITLE 49, IDAHO CODE, RELATING TO MOTOR VEHICLE SERVICE CONTRACTS; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 62, TITLE 41, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE REQUIREMENTS FOR SERVICE CONTRACT REIMBURSEMENT POLICIES, TO ESTABLISH MOTOR VEHICLE SERVICE CONTRACT PROVISIONS, TO PROVIDE REQUIREMENTS FOR MOTOR VEHICLE SERVICE CONTRACTS, TO SPECIFY UNFAIR AND DECEPTIVE ACTS OR PRACTICES AND TO PROVIDE PENALTIES, TO PROHIBIT CERTAIN ACTS, TO ESTABLISH RECORDKEEPING REQUIREMENTS, TO PROVIDE THAT CERTAIN LICENSING IS NOT REQUIRED, TO CLARIFY THE APPLICABILITY OF THE IDAHO INSURANCE GUARANTY ASSOCIATION ACT AND TO PROVIDE FOR ENFORCEMENT; AND AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 63, TITLE 41, IDAHO CODE, TO PROVIDE A SHORT TITLE AND SCOPE, TO DEFINE TERMS, TO PROVIDE REQUIREMENTS FOR A THEFT PROTECTION PROGRAM WARRANTY REIMBURSEMENT POLICY, TO ESTABLISH THEFT PROTECTION PROGRAM WARRANTY PROVISIONS, TO PROVIDE REQUIREMENTS FOR A THEFT PROTECTION PROGRAM WARRANTY, TO PROHIBIT DECEPTIVE SOLICITATION AND TO PROVIDE PENALTIES, TO PROHIBIT CERTAIN ACTS, TO ESTABLISH RECORDKEEPING REQUIREMENTS, TO PROVIDE THAT CERTAIN LICENSING IS NOT REQUIRED, TO CLARIFY THE APPLICABILITY OF THE IDAHO INSURANCE GUARANTY ASSOCIATION ACT AND TO PROVIDE FOR ENFORCEMENT.

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

SECTION 1. That Chapter 28, Title 49, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 62, Title 41, Idaho Code, and to read as follows:

CHAPTER 62
IDAHO MOTOR VEHICLE SERVICE CONTRACT ACT

41-6201. SHORT TITLE. The provisions of this chapter shall be known as the "Idaho Motor Vehicle Service Contract Act." This chapter shall apply to all motor vehicle service contracts offered for sale in the state by any person other than the motor vehicle manufacturer or its affiliates and subsidiaries and shall not apply to the customary and usual performance guarantees or warranties offered at no additional charge by motor vehicle manufacturers or their affiliates and subsidiaries in connection with the sale of motor vehicles.

41-6202. DEFINITIONS. As used in this chapter:
(1) "Administrator" means the person who is responsible for the administration of the motor vehicle service contract.

1 (2) "Director" means the director of the state department of insurance.

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

6 (4) "Mechanical breakdown insurance" means a policy, contract or
7 agreement that undertakes to perform or provide repair or replacement ser-
8 vice or indemnification for such service for the operational or structural
9 failure of a motor vehicle due to defect in materials or workmanship or nor-
10 mal wear and tear and that is issued by an insurance company authorized to do
11 business in this state.

12 (5) "Motor vehicle service contract" means a contract or agreement
13 given for separately stated consideration that undertakes to perform or
14 provide repair or replacement service or indemnification for such service
15 for the operational or structural failure of a motor vehicle due to defect
16 in materials or workmanship or normal wear and tear but shall not include
17 mechanical breakdown insurance. A motor vehicle service contract may pro-
18 vide full or partial reimbursement for other expenses incurred by the motor
19 vehicle service contract holder as a direct and proximate result of an op-
20 erational or structure failure or reduced operating efficiency if included
21 in the contract coverage including, but not limited to, towing, rental car,
22 lodging, motor club, maintenance benefits, roadside assistance and meal ex-
23 penses. "Motor vehicle service contract" also means a contract or agreement
24 that provides one (1) or more of the following:

25 (a) The repair or replacement of tires and/or wheels on a motor vehicle
26 damaged as a result of coming into contact with road hazards;

27 (b) The removal of dents, dings or creases on a motor vehicle that can
28 be repaired using the process of paintless dent removal without affect-
29 ing the existing paint finish and without replacing vehicle body pan-
30 els, sanding, bonding or painting;

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

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

35 (e) Other similar services if not inconsistent with this chapter and if
36 not disapproved by the director.

37 (6) "Motor vehicle service contract holder" means a person who pur-
38 chases a motor vehicle service contract or a permitted transferee.

39 (7) "Motor vehicle service contract provider" means a person who is
40 contractually obligated to a motor vehicle service contract holder under the
41 terms of a motor vehicle service contract.

42 (8) "Person" means an individual or a company, an association, an or-
43 ganization, a partnership, a business trust, a corporation or another form
44 of legal entity.

45 (9) "Road hazard" means a hazard that is encountered while driving a mo-
46 tor vehicle and that may include, but is not limited to, potholes, rocks,
47 wood debris, metal parts, glass, plastic, curbs or composite scraps.

48 41-6203. SERVICE CONTRACT REIMBURSEMENT POLICY REQUIREMENTS. (1)
49 Mandatory insurance.

1 (a) No motor vehicle service contract shall be issued, sold or of-
2 ferred for sale in this state unless the motor vehicle service contract
3 provider is insured under a service contract liability policy issued
4 by an insurer admitted to do business in this state or as otherwise
5 provided in subsection (2) of this section. The policy shall provide
6 that the insurer will pay to or on behalf of the motor vehicle service
7 contract provider all sums that the motor vehicle service contract
8 provider is legally obligated to pay according to the motor vehicle
9 service contract provider's contractual obligations under the motor
10 vehicle service contracts issued or sold by the motor vehicle service
11 contract provider.

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

20 (2) The service contract liability policy shall be obtained from an in-
21 surer authorized, registered or otherwise permitted to transact insurance
22 in this state or a surplus lines insurer meeting the requirements of chapter
23 12, title 41, Idaho Code, and which insurer or surplus lines insurer meets
24 one (1) of the following requirements:

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

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

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

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

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

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

45 (4) Cancellation of service contract liability insurance policy. The
46 issuer of a service contract liability policy may not cancel the policy until
47 a thirty (30) days' advance notice of cancellation has been mailed or deliv-
48 ered to each motor vehicle service contract provider. The cancellation of a
49 service contract liability policy shall not reduce the insurer's responsi-

1 bility for motor vehicle service contracts issued by motor vehicle service
2 contract providers prior to the date of the cancellation.

3 41-6204. MOTOR VEHICLE SERVICE CONTRACT PROVISIONS. The following
4 provisions shall apply to the sale of motor vehicle service contracts in the
5 state:

6 (1) A motor vehicle service contract may not be issued, sold or offered
7 for sale in this state unless the contract contains a statement in substan-
8 tially the following form: "Obligations of the motor vehicle service con-
9 tract provider under this motor vehicle service contract are guaranteed un-
10 der a service contract liability policy. Should the motor vehicle service
11 contract provider fail to pay or provide service on any claim within sixty
12 (60) days after proof of loss has been filed, the motor vehicle service con-
13 tract holder is entitled to make a claim directly against the insurance com-
14 pany." The motor vehicle service contract shall also conspicuously state the
15 name and address and a toll-free claim service telephone number of the in-
16 surer.

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

20 (3) The motor vehicle service contract must conspicuously state the to-
21 tal purchase price of the motor vehicle service contract; however, the pur-
22 chase price is not required to be preprinted on the motor vehicle service
23 contract and may be negotiated with the consumer at the time of sale.

24 (4) If prior approval of repair work is required, the motor vehicle ser-
25 vice contract must conspicuously state the procedure for obtaining prior ap-
26 proval and for making a claim, including a toll-free telephone number for
27 claim service and a procedure for obtaining reimbursement for emergency re-
28 pairs performed outside of normal business hours.

29 (5) The motor vehicle service contract must conspicuously state the ex-
30 istence of any deductible amount.

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

35 (7) The motor vehicle service contract must state any terms, restric-
36 tions or conditions governing the transferability of the service contract.

37 (8) The motor vehicle service contract must state the terms, restric-
38 tions or conditions governing cancellation of the service contract by either
39 the motor vehicle service contract holder or motor vehicle service contract
40 provider.

41 (9) A motor vehicle service contract may not be issued, sold or offered
42 for sale in this state unless the contract contains a statement in substan-
43 tially the following form: "Coverage afforded under this motor vehicle
44 service contract is not guaranteed by the Idaho Insurance Guaranty Associa-
45 tion."

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

- 1 (a) Within thirty (30) days of its purchase if no claim has been made
2 and receive a full refund of the service contract retail price, less
3 any cancellation fee stated in the service contract not exceeding fifty
4 dollars (\$50.00); or
5 (b) At any other time and receive a pro rata refund of the service con-
6 tract retail price for the unexpired term of the service contract, based
7 on the number of the lapsed months, miles or such other measure that is
8 clearly disclosed in the service contract, less any cancellation fees
9 stated in the service contract not exceeding fifty dollars (\$50.00).

10 41-6205. MOTOR VEHICLE SERVICE CONTRACT REQUIREMENTS. Before the sale
11 of any motor vehicle service contract, the motor vehicle service contract
12 provider shall give written notice to the customer clearly disclosing that
13 the purchase of the contract is not required either to purchase or to obtain
14 financing for a motor vehicle. No motor vehicle service contract may be used
15 in this state by any motor vehicle service contract provider if the contract:

- 16 (1) In any respect violates or does not comply with the laws of this
17 state;
18 (2) Contains or incorporates by reference any inconsistent, ambiguous
19 or misleading clauses or any exceptions and conditions that affect the risk
20 assumed or to be assumed in the general coverage of the contract;
21 (3) Has any title, heading or other indication of its provisions that is
22 misleading; or
23 (4) Is printed or otherwise reproduced in any manner that renders any
24 material provision of the contract substantially illegible.

25 41-6206. UNFAIR AND DECEPTIVE ACTS OR PRACTICES -- PENALTIES. (1) It
26 shall be unlawful for a service contract provider to commit any of the de-
27 ceptive and unfair acts or practices specified in sections 41-1301 through
28 41-1305, 41-1308, 41-1309, 41-1311 and 41-1312, Idaho Code. Violations of
29 these sections shall be subject to enforcement and penalty by the director
30 pursuant to sections 41-1321 and 41-1327, Idaho Code.

- 31 (2) It shall be unlawful for a service contract provider to commit any
32 of the deceptive and unfair acts or practices specified in section 41-1329,
33 Idaho Code. Violations of this section shall be subject to enforcement and
34 penalty by the director pursuant to section 41-1329A, Idaho Code.

35 41-6207. PROHIBITED ACTS. (1) A motor vehicle service contract
36 provider may not use in its name, contracts or literature:

- 37 (a) Any of the following words: insurance, casualty, surety, mutual or
38 any other words descriptive of the insurance, casualty or surety busi-
39 ness; or
40 (b) A name deceptively similar to the name or description of any insur-
41 ance or surety corporation, or any other motor vehicle service contract
42 provider.
43 (2) A motor vehicle service contract provider, its representative or
44 any other person may not make, permit or allow to be made any false, deceptive
45 or misleading statement, or deliberately omit any material statement that
46 would be considered misleading if omitted, in connection with the sale, of-
47 fer to sell or advertisement of a motor vehicle service contract.

1 (3) A motor vehicle service contract provider, its representative or
2 any other person may not make, permit or allow to be made any advertisement to
3 sell a motor vehicle service contract that is false or misleading.

4 41-6208. RECORDKEEPING REQUIREMENTS. All motor vehicle service con-
5 tract providers shall keep accurate accounts, books and records concerning
6 transactions regulated under the provisions of this act. A motor vehicle
7 service contract provider's accounts, books and records shall include:

8 (1) Copies of all motor vehicle service contracts issued;

9 (2) The name and address of each motor vehicle service contract holder;
10 and

11 (3) Claim files.

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

19 41-6209. LICENSING. Motor vehicle service contract providers and
20 persons marketing, administering, selling or offering to sell motor vehi-
21 cle service contracts for motor vehicle service contract providers are not
22 required to obtain a license under title 41, Idaho Code. A service contract
23 provider shall not be subject to regulation under any provision of title 41,
24 Idaho Code, not made expressly applicable to it.

25 41-6210. GUARANTY. The provisions of the Idaho insurance guaranty as-
26 sociation act, chapter 36, title 41, Idaho Code, shall not apply to any motor
27 vehicle service contract, mechanical breakdown insurance or motor vehicle
28 service contract liability insurance policy, as defined in this chapter, and
29 no claim under any motor vehicle service contract, mechanical breakdown in-
30 surance or motor vehicle service contract liability insurance policy shall
31 be deemed to be a "covered claim" within the scope of section 41-3605(7),
32 Idaho Code, as to which the Idaho insurance guaranty association has any
33 obligation under section 41-3608, Idaho Code, or other provisions of chapter
34 36, title 41, Idaho Code.

35 41-6211. ENFORCEMENT BY DIRECTOR. (1) The director may conduct exami-
36 nations of motor vehicle service contract providers, administrators, insur-
37 ers or other persons to enforce the provisions of this chapter and protect
38 motor vehicle service contract holders in this state. Upon request of the
39 director, the provider shall make available to the director all accounts,
40 books and records concerning motor vehicle service contracts sold or issued
41 by the provider that are necessary to enable the director to reasonably de-
42 termine compliance or noncompliance with this chapter.

43 (2) The director may take action that is necessary or appropriate to en-
44 force the provisions of this chapter to protect motor vehicle service con-
45 tract holders in this state.

46 (3) This chapter does not create a separate civil cause of action.

1 SECTION 3. That Title 41, Idaho Code, be, and the same is hereby amended
2 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
3 ter 63, Title 41, Idaho Code, and to read as follows:

4 CHAPTER 63
5 IDAHO VEHICLE THEFT PROTECTION PROGRAM ACT

6 41-6301. SHORT TITLE -- SCOPE. The provisions of this chapter shall
7 be known as the "Idaho Vehicle Theft Protection Program Act." This chapter
8 shall apply to all theft protection programs offered for sale in the state by
9 any person other than the motor vehicle manufacturer and shall not apply to
10 the customary and usual performance guarantees or warranties offered at no
11 additional charge by motor vehicle manufacturers in connection with the sale
12 of motor vehicles.

13 41-6302. DEFINITIONS. As used in this chapter:

14 (1) "Administrator" means the person who is responsible for the admin-
15 istration of a theft protection program warranty.

16 (2) "Director" means the director of the state department of insurance.

17 (3) "Incidental costs" means expenses specified in a theft protection
18 program warranty that are incurred by the warranty holder due to the failure
19 of a theft protection program to perform as provided in the contract. Inci-
20 dental costs may include, without limitation, insurance policy deductibles,
21 rental vehicle charges, the difference between the actual value of the
22 stolen vehicle at the time of theft and the cost of a replacement vehicle,
23 sales taxes, registration fees, transaction fees and mechanical inspection
24 fees. Incidental costs may be reimbursed in either a fixed amount specified
25 in the theft protection program warranty or by use of a formula itemizing
26 specific incidental costs incurred by the warranty holder.

27 (4) "Liability insurance policy" means a policy of insurance providing
28 coverage for all contractual obligations incurred by a warrantor under the
29 terms of a theft protection program warranty issued by the warrantor.

30 (5) "Person" means an individual or a company, an association, an or-
31 ganization, a partnership, a business trust, a corporation or another form
32 of legal entity.

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

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

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

37 (c) Includes a theft protection program warranty.

38 For purposes of this subsection, the term "theft protection program" in-
39 cludes, but is not limited to, alarm systems, body part marking products,
40 steering locks, window etch products, pedal and ignition locks, fuel and ig-
41 nition kill switches, and electronic, radio and satellite tracking devices.
42 A theft protection program does not include fuel additives, oil additives,
43 or other chemical products applied to the engine, transmission or fuel sys-
44 tem, or interior or exterior surfaces of a motor vehicle.

45 (7) "Theft protection program warranty" means a written agreement by
46 a warrantor providing that if the theft protection program fails to prevent
47 loss or damage to a motor vehicle from theft, then the warrantor will pay to
48 or on behalf of the warranty holder specified incidental costs as a result of

1 the failure of the theft protection program to perform pursuant to the terms
2 of the theft protection program warranty.

3 (8) "Warrantor" means a person who is contractually obligated to the
4 warranty holder under the terms of a theft protection program warranty.

5 (9) "Warranty holder" means the person who purchases a theft protection
6 program, any authorized transferee or assignee of the purchaser or any other
7 person legally assuming the purchaser's rights under the theft protection
8 program warranty.

9 41-6303. THEFT PROTECTION PROGRAM WARRANTY REIMBURSEMENT POLICY RE-
10 QUIREMENTS. (1) Mandatory insurance.

11 (a) No theft protection program warranty shall be issued in this state
12 unless the warrantor is insured under a theft protection program war-
13 ranty contract liability policy issued by an insurer admitted to do
14 business in this state or as otherwise provided in subsection (2) of
15 this section. The policy shall provide that the insurer will pay to or
16 on behalf of the warrantor all sums that the warrantor is legally obli-
17 gated to pay according to the warrantor's contractual obligations under
18 the theft protection program warranties issued by the warrantor.

19 (b) All theft protection program warranty liability policies insuring
20 theft protection program warranties issued in this state must conspic-
21 uously state that, upon failure of the warrantor to perform under the
22 contract, the issuer of the policy shall pay on behalf of the warrantor
23 any sums that the warrantor is legally obligated to perform, according
24 to the warrantor's contractual obligations under the theft protection
25 program warranties issued by the warrantor.

26 (2) The theft protection program warranty liability policy shall be
27 obtained from an insurer authorized, registered or otherwise permitted to
28 transact insurance in this state or a surplus lines insurer meeting the re-
29 quirements of chapter 12, title 41, Idaho Code, and which insurer or surplus
30 lines insurer meets one (1) of the following requirements:

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

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

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

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

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

46 (3) Premiums. Premiums are defined as those funds paid by or on behalf
47 of the warrantor to the liability insurance policy issuer for such risks cov-
48 ered under such liability insurance policy. Such premiums or the method of
49 developing such premiums shall be filed with the director for approval.

1 (4) Cancellation of theft protection program warranty liability insur-
2 ance policy. The issuer of a theft protection program warranty liability
3 policy may not cancel the policy until a thirty (30) days' advance notice of
4 cancellation has been mailed or delivered to each warrantor. The cancella-
5 tion of a theft protection program warranty liability policy shall not re-
6 duce the insurer's responsibility for theft protection program warranties
7 issued by warrantors prior to the date of the cancellation.

8 41-6304. THEFT PROTECTION PROGRAM WARRANTY PROVISIONS. The following
9 provisions shall apply to the issuance of theft protection program war-
10 ranties in the state:

11 (1) A theft protection program warranty may not be issued in this state
12 unless the warranty contains a statement in substantially the following
13 form: "Obligations of the warrantor under this theft protection program
14 warranty are guaranteed under a theft protection program warranty liability
15 policy. Should the warrantor fail to pay or provide service on any claim
16 within sixty (60) days after proof of loss has been filed, the warranty
17 holder is entitled to make a claim directly against the insurance company."
18 The theft protection program warranty shall also conspicuously state the
19 name and address and a toll-free claim service telephone number of the in-
20 surer.

21 (2) The theft protection program warranty must identify the warrantor,
22 the seller of the theft protection program and the warranty holder.

23 (3) The theft protection program warranty must conspicuously state the
24 total purchase price of the theft protection program; however, the purchase
25 price is not required to be preprinted on the theft protection program war-
26 ranty and may be negotiated with the consumer at the time of sale.

27 (4) The theft protection program warranty must conspicuously state the
28 existence of any deductible amount.

29 (5) The theft protection program warranty must specify the merchandise
30 and services to be provided and any limitations, exceptions or exclusions.

31 (6) The theft protection program warranty must state any terms,
32 restrictions or conditions governing the transferability of the theft pro-
33 tection program warranty.

34 (7) The theft protection program warranty must state the terms, re-
35 strictions or conditions governing cancellation of the theft protection
36 program warranty by either the warranty holder or warrantor, if any.

37 (8) A theft protection program warranty may not be issued in this state
38 unless the theft protection program warranty contains a statement in sub-
39 stantially the following form: "Coverage afforded under this theft protec-
40 tion program warranty is not guaranteed by the Idaho Insurance Guaranty As-
41 sociation."

42 41-6305. THEFT PROTECTION PROGRAM WARRANTY REQUIREMENTS. Before the
43 issuance of any theft protection program warranty, the warrantor shall give
44 written notice to the customer clearly disclosing that the purchase of the
45 contract is not required either to purchase or to obtain financing for a mo-
46 tor vehicle. No theft protection program warranty may be used in this state
47 by any warrantor if the contract:

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

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

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

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

10 41-6306. DECEPTIVE SOLICITATION OF THEFT PROTECTION PROGRAMS PROHIB-
11 ITED -- PENALTIES. (1) It shall be unlawful for a warrantor to commit any
12 of the deceptive and unfair acts or practices specified in sections 41-1301
13 through 41-1305, 41-1308, 41-1309, 41-1311 and 41-1312, Idaho Code. Viola-
14 tions of these sections shall be subject to enforcement and penalty by the
15 director pursuant to sections 41-1321 and 41-1327, Idaho Code.

16 (2) It shall be unlawful for a warrantor to commit any of the deceptive
17 and unfair acts or practices specified in section 41-1329, Idaho Code. Vi-
18 olations of this section shall be subject to enforcement and penalty by the
19 director pursuant to section 41-1329A, Idaho Code.

20 41-6307. PROHIBITED ACTS. (1) A warrantor may not use in its name, con-
21 tracts or literature:

22 (a) Any of the following words: insurance, casualty, surety, mutual or
23 any other words descriptive of the insurance, casualty or surety busi-
24 ness; or

25 (b) A name deceptively similar to the name or description of any insur-
26 ance or surety corporation, or any other warrantor.

27 (2) A warrantor, its representative or any other person may not make,
28 permit or allow to be made any false, deceptive or misleading statement, or
29 deliberately omit any material statement that would be considered mislead-
30 ing if omitted, in connection with the sale of a theft protection program.

31 (3) A warrantor, its representative or any other person may not make,
32 permit or allow to be made any advertisement to sell a theft protection pro-
33 gram that is false or misleading.

34 41-6308. RECORDKEEPING REQUIREMENTS. All warrantors shall keep accu-
35 rate accounts, books and records concerning transactions regulated under
36 the provisions of this act. A warrantor's accounts, books and records shall
37 include:

38 (1) Copies of all theft protection program warranties issued;

39 (2) The name and address of each warranty holder; and

40 (3) Claim files.

41 All warrantors shall retain all records pertaining to each warranty
42 holder for at least three (3) years after the specified period of coverage
43 has expired. It shall be the responsibility of the insurer issuing the li-
44 ability policy to make an examination at least every two (2) years of each
45 warrantor that they insure to assure that each provider is in compliance with
46 the recordkeeping requirements.

1 41-6309. LICENSING. Warrantors, and persons marketing, administer-
2 ing, selling or offering to sell theft protection programs for warrantors
3 are not required to obtain a license under title 41, Idaho Code. A theft
4 protection program warrantor shall not be subject to any provision of title
5 41, Idaho Code, not made expressly applicable to it.

6 41-6310. GUARANTY. The provisions of the Idaho insurance guaranty as-
7 sociation act, chapter 36, title 41, Idaho Code, shall not apply to any theft
8 protection program warranty or theft protection program warranty liability
9 insurance policy, as defined in this chapter, and no claim under any theft
10 protection program warranty or theft protection program warranty liability
11 insurance policy shall be deemed to be a "covered claim" within the scope
12 of section 41-3605(7), Idaho Code, as to which the Idaho insurance guaranty
13 association has any obligation under section 41-3608, Idaho Code, or other
14 provisions of chapter 36, title 41, Idaho Code.

15 41-6311. ENFORCEMENT BY DIRECTOR. (1) The director may conduct exami-
16 nations of warrantors, administrators, insurers or other persons to enforce
17 the provisions of this chapter and protect warranty holders in this state.
18 Upon request of the director, the warrantor shall make available to the di-
19 rector all accounts, books and records concerning theft protection program
20 warranties issued by the provider that are necessary to enable the director
21 to reasonably determine compliance or noncompliance with this chapter.

22 (2) The director may take action that is necessary or appropriate to
23 enforce the provisions of this chapter to protect warranty holders in this
24 state.

25 (3) This chapter does not create a separate civil cause of action.