

## Chapter 6a Service Contracts

### 31A-6a-101 Definitions.

As used in this chapter:

- (1) "Home warranty service contract" means a service contract that requires a person to repair or replace a component, system, or appliance of a home or make indemnification to the contract holder for the repair or replacement of a component, system, or appliance of the home:
  - (a) upon mechanical or operational failure of the component, system, or appliance;
  - (b) for a predetermined fee; and
  - (c) if:
    - (i) the person is not the builder, seller, or lessor of the home that is the subject of the contract; and
    - (ii) the failure described in Subsection (1)(a) occurs within a specified period of time.
- (2)
  - (a) "Incidental cost" means a cost, incurred by a warranty holder in relation to a vehicle protection product warranty, that is in addition to the cost of purchasing the warranty.
  - (b) "Incidental cost" includes an insurance policy deductible, a rental vehicle charge, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales tax, a registration fee, a transaction fee, a mechanical inspection fee, or damage a theft causes to a vehicle.
- (3) "Mechanical breakdown insurance" means a policy, contract, or agreement issued by an insurance company that has complied with either Chapter 5, Domestic Stock and Mutual Insurance Corporations, or Chapter 14, Foreign Insurers, that undertakes to perform or provide repair or replacement service on goods or property, or indemnification for repair or replacement service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear.
- (4) "Nonmanufacturers' parts" means replacement parts not made for or by the original manufacturer of the goods commonly referred to as "after market parts."
- (5)
  - (a) "Road hazard" means a hazard that is encountered while driving a motor vehicle.
  - (b) "Road hazard" includes potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.
- (6)
  - (a) "Service contract" means a contract or agreement to perform or reimburse for the repair or maintenance of goods or property, for their operational or structural failure due to a defect in materials, workmanship, normal wear and tear, power surge or interruption, or accidental damage from handling, with or without additional provision for incidental payment of indemnity under limited circumstances, including towing, providing a rental car, providing emergency road service, and covering food spoilage.
  - (b) "Service contract" does not include:
    - (i) mechanical breakdown insurance; or
    - (ii) a prepaid contract of limited duration that provides for scheduled maintenance only, regardless of whether the contract is executed before, on, or after May 9, 2017.
  - (c) "Service contract" includes any contract or agreement to perform or reimburse the service contract holder for any one or more of the following services:

- (i) the repair or replacement of tires, wheels, or both on a motor vehicle damaged as a result of coming into contact with a road hazard;
  - (ii) 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;
  - (iii) the repair of chips or cracks in or the replacement of a motor vehicle windshield as a result of damage caused by a road hazard, that is primary to the coverage offered by the motor vehicle owner's motor vehicle insurance policy; or
  - (iv) the replacement of a motor vehicle key or key-fob if the key or key-fob becomes inoperable, lost, or stolen, except that the replacement of lost or stolen property is limited to only the replacement of a lost or stolen motor vehicle key or key-fob.
- (7) "Service contract holder" or "contract holder" means a person who purchases a service contract.
- (8) "Service contract provider" means a person who issues, makes, provides, administers, sells or offers to sell a service contract, or who is contractually obligated to provide service under a service contract.
- (9) "Service contract reimbursement policy" or "reimbursement insurance policy" means a policy of insurance providing coverage for all obligations and liabilities incurred by the service contract provider or warrantor under the terms of the service contract or vehicle protection product warranty issued by the provider or warrantor.
- (10)
- (a) "Vehicle protection product" means a device or system that is:
    - (i) installed on or applied to a motor vehicle; and
    - (ii) designed to:
      - (A) prevent the theft of the vehicle; or
      - (B) if the vehicle is stolen, aid in the recovery of the vehicle.
  - (b) "Vehicle protection product" includes:
    - (i) a vehicle protection product warranty;
    - (ii) an alarm system;
    - (iii) a body part marking product;
    - (iv) a steering lock;
    - (v) a window etch product;
    - (vi) a pedal and ignition lock;
    - (vii) a fuel and ignition kill switch; and
    - (viii) an electronic, radio, or satellite tracking device.
- (11) "Vehicle protection product warranty" means a written agreement by a warrantor that provides that if the vehicle protection product fails to prevent the theft of the motor vehicle, or aid in the recovery of the motor vehicle within a time period specified in the warranty, not exceeding 30 days after the day on which the motor vehicle is reported stolen, the warrantor will reimburse the warranty holder for incidental costs specified in the warranty, not exceeding \$5,000, or in a specified fixed amount not exceeding \$5,000.
- (12) "Vehicle service contract" means a service contract for the repair or maintenance of a vehicle:
  - (a) for operational or structural failure because of a defect in materials, workmanship, normal wear and tear, or accidental damage from handling; and
  - (b) with or without additional provision for incidental payment of indemnity under limited circumstances, including towing, providing a rental car, or providing emergency road service.
- (13) "Warrantor" means a person who is contractually obligated to the warranty holder under the terms of a vehicle protection product warranty.

- (14) "Warranty holder" means the person who purchases a vehicle protection product, any authorized transferee or assignee of the purchaser, or any other person legally assuming the purchaser's rights under the vehicle protection product warranty.

Amended by Chapter 32, 2020 General Session

**31A-6a-102 Scope and purposes.**

- (1) The purposes of this chapter are to:
- (a) create a legal framework within which service contracts may be sold in this state;
  - (b) encourage innovation in the marketing and development of more economical and effective ways of providing services under service contracts, while placing the risk of innovation on the service contract providers rather than on consumers; and
  - (c) permit and encourage fair and effective competition among different systems of providing and paying for these services.
- (2) Service contracts may not be issued, sold, or offered for sale in this state unless the provider has complied with this chapter.
- (3) This chapter applies only to a service contract not otherwise exempted from this title by Section 31A-1-103.

Amended by Chapter 116, 2001 General Session

**31A-6a-103 Requirements for doing business.**

- (1) A service contract or vehicle protection product warranty may not be issued, sold, or offered for sale in this state unless the service contract or vehicle protection product warranty is insured under a reimbursement insurance policy issued by:
- (a) an insurer authorized to do business in this state; or
  - (b) a recognized surplus lines carrier.
- (2)
- (a) A service contract or vehicle protection product warranty may not be issued, sold, or offered for sale unless the service contract provider or warrantor completes the registration process described in this Subsection (2).
  - (b) To register, a service contract provider or warrantor shall submit to the department the following:
    - (i) an application for registration;
    - (ii) a fee established in accordance with Section 31A-3-103;
    - (iii) a copy of any service contract or vehicle protection product warranty that the service contract provider or warrantor offers in this state; and
    - (iv) a copy of the service contract provider's or warrantor's reimbursement insurance policy.
  - (c) A service provider or warrantor shall submit the information described in Subsection (2)
    - (b) no less than 30 days before the day on which the service provider or warrantor issues, sells, offers for sale, or uses a service contract, vehicle protection product warranty, or reimbursement insurance policy in this state.
  - (d) A service provider or warrantor shall file any modification of the terms of a service contract, vehicle protection product warranty, or reimbursement insurance policy 30 days before the day on which it is used in this state.
  - (e) A person complying with this chapter is not required to comply with:
    - (i) Subsections 31A-21-201(1) and 31A-23a-402(3); or
    - (ii) Chapter 19a, Utah Rate Regulation Act.

- (f)
  - (i) Each year before March 1, a service provider shall pay an annual registration fee established in accordance with Section 31A-3-103.
  - (ii) If a service provider does not pay the annual registration fee described in this Subsection (2) (f) before March 1:
    - (A) the service provider's registration is expired; and
    - (B) the service provider may apply for registration in accordance with this Subsection (2).
- (3)
  - (a) Premiums collected on a service contract are not subject to premium taxes.
  - (b) Premiums collected by an issuer of a reimbursement insurance policy are subject to premium taxes.
- (4) A person marketing, selling, or offering to sell a service contract or vehicle protection product warranty for a service contract provider or warrantor that complies with this chapter is exempt from the licensing requirements of this title.
- (5) A service contract provider or warrantor complying with this chapter is not required to comply with:
  - (a) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
  - (b) Chapter 7, Nonprofit Health Service Insurance Corporations;
  - (c) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
  - (d) Chapter 9, Insurance Fraternal;
  - (e) Chapter 10, Annuities;
  - (f) Chapter 11, Motor Clubs;
  - (g) Chapter 12, State Risk Management Fund;
  - (h) Chapter 14, Foreign Insurers;
  - (i) Chapter 19a, Utah Rate Regulation Act;
  - (j) Chapter 25, Third Party Administrators; and
  - (k) Chapter 28, Guaranty Associations.

Amended by Chapter 32, 2020 General Session

**31A-6a-104 Required disclosures.**

- (1) A reimbursement insurance policy insuring a service contract or a vehicle protection product warranty that is issued, sold, or offered for sale in this state shall conspicuously state that, upon failure of the service contract provider or warrantor to perform under the contract, the issuer of the policy shall:
  - (a) pay on behalf of the service contract provider or warrantor any sums the service contract provider or warrantor is legally obligated to pay according to the service contract provider's or warrantor's contractual obligations under the service contract or a vehicle protection product warranty issued or sold by the service contract provider or warrantor; or
  - (b) provide the service which the service contract provider is legally obligated to perform, according to the service contract provider's contractual obligations under the service contract issued or sold by the service contract provider.
- (2)
  - (a) A service contract may not be issued, sold, or offered for sale in this state unless the service contract contains the following statements in substantially the following form:
    - (i) "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. Should the provider fail to pay or provide service

- on any claim within 60 days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the Insurance Company.";
- (ii) "This service contract or warranty is subject to limited regulation by the Utah Insurance Department. To file a complaint, contact the Utah Insurance Department."; and
  - (iii) A service contract or reimbursement insurance policy 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 contract is not guaranteed by the Property and Casualty Guaranty Association."
- (b) A vehicle protection product warranty may not be issued, sold, or offered for sale in this state unless the vehicle protection product warranty contains the following statements in substantially the following form:
- (i) "Obligations of the warrantor under this vehicle protection product warranty are guaranteed under a reimbursement insurance policy. Should the warrantor fail to pay on any claim within 60 days after proof of loss has been filed, the warranty holder is entitled to make a claim directly against the Insurance Company.";
  - (ii) "This vehicle protection product warranty is subject to limited regulation by the Utah Insurance Department. To file a complaint, contact the Utah Insurance Department."; and
  - (iii) as applicable:
    - (A) "The warrantor under this vehicle protection product warranty will reimburse the warranty holder as specified in the warranty upon the theft of the vehicle."; or
    - (B) "The warrantor under this vehicle protection product warranty will reimburse the warranty holder as specified in the warranty and at the end of the time period specified in the warranty if, following the theft of the vehicle, the stolen vehicle is not recovered within a time period specified in the warranty, not to exceed 30 days after the day on which the vehicle is reported stolen."
- (c) A vehicle protection product warranty, or reimbursement insurance policy, may not be issued, sold, or offered for sale in this state unless the warranty contains a statement in substantially the following form, "Coverage afforded under this warranty is not guaranteed by the Property and Casualty Guaranty Association."
- (3)
- (a) A service contract and a vehicle protection product warranty shall:
    - (i) conspicuously state the name, address, and a toll free claims service telephone number of the reimbursement insurer;
    - (ii)
      - (A) identify the service contract provider, the seller, and the service contract holder; or
      - (B) identify the warrantor, the seller, and the warranty holder;
    - (iii) conspicuously state the total purchase price and the terms under which the service contract or warranty is to be paid;
    - (iv) conspicuously state the existence of any deductible amount or service fee;
    - (v) specify the merchandise, service to be provided, and any limitation, exception, or exclusion;
    - (vi) state a term, restriction, or condition governing the transferability of the service contract or warranty; and
    - (vii) state a term, restriction, or condition that governs cancellation of the service contract as provided in Sections 31A-21-303 through 31A-21-305 by either the contract holder or service contract provider.
  - (b) Beginning January 1, 2021, a service contract shall contain a conspicuous statement in substantially the following form: "Purchase of this product is optional and is not required in order to finance, lease, or purchase a motor vehicle."

- (4) If prior approval of repair work is required under a home protection service contract or a vehicle service contract, the contract shall conspicuously state the procedure for obtaining prior approval and for making a claim, including:
  - (a) a toll free telephone number for claim service; and
  - (b) a procedure for obtaining reimbursement for emergency repairs performed outside of normal business hours.
- (5) A preexisting condition clause in a service contract shall specifically state which preexisting condition is excluded from coverage.
- (6)
  - (a) Except as provided in Subsection (6)(c), a service contract shall state the conditions upon which the use of a nonmanufacturers' part is allowed.
  - (b) A condition described in Subsection (6)(a) shall comply with applicable state and federal laws.
  - (c) This Subsection (6) does not apply to:
    - (i) a home warranty service contract; or
    - (ii) a service contract that does not impose an obligation to provide parts.
- (7) This section applies to a vehicle protection product warranty, except for the requirements of Subsections (3)(a)(iv) and (vii), (4), (5), and (6). The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the application of this section to a vehicle protection product warranty.
- (8)
  - (a) As used in this Subsection (8), "conspicuous statement" means a disclosure that:
    - (i) appears in all-caps, bold, and 14-point font; and
    - (ii) provides a space to be initialed by the consumer:
      - (A) immediately below the printed disclosure; and
      - (B) at or before the time the consumer purchases the vehicle protection product.
  - (b) A vehicle protection product warranty shall contain a conspicuous statement in substantially the following form: "Purchase of this product is optional and is not required in order to finance, lease, or purchase a motor vehicle."
- (9) If a vehicle protection product warranty states that the warrantor will reimburse the warranty holder for incidental costs, the vehicle protection product warranty shall state how incidental costs paid under the warranty are calculated.
- (10) If a vehicle protection product warranty states that the warrantor will reimburse the warranty holder in a fixed amount, the vehicle protection product warranty shall state the fixed amount.

Amended by Chapter 198, 2022 General Session

**31A-6a-105 Prohibited acts.**

- (1) Except as provided in Subsection 31A-6a-104(2), a service contract provider or warrantor may not use in the service contract provider or warrantor's name, a contract, or literature:
  - (a) any of the following words:
    - (i) "insurance";
    - (ii) "casualty";
    - (iii) "surety";
    - (iv) "mutual"; or
    - (v) another word descriptive of the insurance, casualty, or surety business; or
  - (b) a name deceptively similar to the name or description of:
    - (i) an insurance or surety corporation; or
    - (ii) another service contract provider.

- (2) A service contract provider, a service contract provider's representative, a warrantor, or a warrantor's representative may not:
  - (a) make, permit, or cause to be made a false or misleading statement in connection with the sale, offer to sell, or advertisement of a service contract or vehicle protection product; or
  - (b) deliberately omit a material statement that would be considered misleading if omitted, in connection with the sale, offer to sell, or advertisement of a service contract or vehicle protection product.
- (3) A bank, savings and loan association, insurance company, or other lending institution may not require the purchase of a service contract as a condition of a loan.
- (4) Except for a bank, savings and loan association, industrial bank, or credit union, a service contract provider may not sell, or be the obligated party for:
  - (a) a guaranteed asset protection waiver, unless registered with the commissioner under Chapter 6b, Guaranteed Asset Protection Waiver Act;
  - (b) a debt cancellation agreement, unless licensed by the commissioner; or
  - (c) a debt suspension agreement, unless licensed by the commissioner.
- (5) A warrantor or the warrantor's representative may not:
  - (a) require the purchase of a vehicle protection product as a condition of the financing, lease, or purchase of a motor vehicle; or
  - (b) sell a vehicle protection product to a consumer before providing the consumer, for review, a copy of the vehicle protection product warranty that is filed with the Department of Insurance.

Amended by Chapter 319, 2018 General Session

**31A-6a-106 Recordkeeping requirements.**

- (1)
  - (a) All service contract providers shall keep accurate accounts, books, and records concerning transactions regulated under this chapter.
  - (b) A service contract provider's accounts, books, and records shall include:
    - (i) copies of all service contracts issued;
    - (ii) the name and address of each service contract holder; and
    - (iii) claims files.
  - (c) Service contract providers shall retain all records pertaining to each service contract holder for at least three years after the specified period of coverage has expired.
- (2) A provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to contract holders in this state.
- (3) Service contract providers shall make all accounts, books, and records concerning transactions regulated under this chapter or other pertinent chapters available to the commissioner for the purpose of examination as provided in Sections 31A-2-203 and 31A-2-204.

Enacted by Chapter 203, 1992 General Session

**31A-6a-107 Cancellation of reimbursement insurance.**

The issuer of a reimbursement insurance policy may not cancel the policy until a notice of cancellation in accordance with Section 31A-21-303, 31A-21-304, or 31A-21-305 has been mailed or delivered to the commissioner and to each insured provider. The cancellation of a reimbursement policy may not reduce the issuer's responsibility for service contracts issued by providers prior to the date of the cancellation.

Amended by Chapter 10, 1997 General Session

**31A-6a-108 Obligation of reimbursement insurance issuers.**

Providers under this chapter are considered to be the agent of the issuer of the reimbursement insurance for purposes of Section 31A-23a-410. In cases where a provider is acting as an administrator and enlists other providers, the provider acting as the administrator shall notify the issuer of the reimbursement insurance of the other providers.

Amended by Chapter 298, 2003 General Session

**31A-6a-109 Enforcement provisions.**

Anyone violating of any of the provisions of this chapter or any rule made pursuant to the grant of rulemaking authority under this title may be assessed an administrative forfeiture equal to two times the amount of any profit gained from the violation. In addition an administrative forfeiture may be assessed for each violation not to exceed \$1,000 per violation. If the violations are continuing, or are of a serious nature, or a person's business practices in connection with the solicitation, sale, offering for sale, or performance under a service contract subject to this chapter, constitute a danger to the legitimate interests of consumers or the public, the commissioner may enjoin the person from soliciting, selling, or offering to sell service contracts in this state either permanently or for a stated period of time.

Enacted by Chapter 203, 1992 General Session

**31A-6a-110 Rulemaking.**

- (1) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may make rules necessary to assist in the enforcement of this chapter.
- (2) The commissioner may by rule or order, after a hearing, exempt certain service contract providers or service contract providers for a specific class of service contracts that are not otherwise exempt under Subsection 31A-1-103(3) from any provision of this title. The commissioner may order substitute requirements on a finding that a particular provision of this title is not necessary for the protection of the public or that the substitute requirement is reasonably certain to provide equivalent protection to the public.

Amended by Chapter 382, 2008 General Session

**31A-6a-111 Vehicle protection product warranty requirements.**

- (1) A warrantor shall make a reimbursement promised under a vehicle protection product warranty as specified in the warranty, regardless of, and not contingent upon, the payment of a benefit provided for under the warranty holder's primary vehicle insurance or any other contract.
- (2)
  - (a) If a vehicle protection product is represented as preventing the theft of a vehicle, the vehicle protection product warranty shall, at a minimum, provide for reimbursement of damage a theft causes to the motor vehicle up to \$5,000, if the vehicle is recovered within the time period specified in the warranty following the theft of the vehicle, not to exceed 30 days after the day on which the vehicle is reported stolen.
  - (b) If a vehicle protection product is represented as aiding in the recovery of a stolen vehicle, the vehicle protection product warranty shall provide for reimbursement of the vehicle up to

\$5,000, if the vehicle is not recovered within the time period specified in the warranty following the theft of the vehicle, not to exceed 30 days after the day on which the vehicle is reported stolen.

Repealed and Re-enacted by Chapter 319, 2018 General Session