

1                   **INSURANCE AND SERVICE CONTRACT AMENDMENTS**

2                                   2017 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Curtis S. Bramble**

5                                   House Sponsor: James A. Dunnigan

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7                   **LONG TITLE**

8                   **General Description:**

9                   This bill modifies provisions of the Insurance Code related to service contracts.

10                  **Highlighted Provisions:**

11                  This bill:

- 12                   ▶ amends the scope and applicability of the Insurance Code;
- 13                   ▶ amends the definition of "service contract"; and
- 14                   ▶ makes technical changes.

15                  **Money Appropriated in this Bill:**

16                  None

17                  **Other Special Clauses:**

18                  None

19                  **Utah Code Sections Affected:**

20                  AMENDS:

21                   **31A-1-103**, as last amended by Laws of Utah 2010, Chapter 274

22                   **31A-6a-101**, as last amended by Laws of Utah 2016, Chapter 138

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24                  *Be it enacted by the Legislature of the state of Utah:*

25                   Section 1. Section **31A-1-103** is amended to read:

26                   **31A-1-103. Scope and applicability of title.**

27                   (1) This title does not apply to:

28                   (a) a retainer contract made by an attorney-at-law:

29                   (i) with an individual client; and

30 (ii) under which fees are based on estimates of the nature and amount of services to be  
31 provided to the specific client;

32 (b) a contract similar to a contract described in Subsection (1)(a) made with a group of  
33 clients involved in the same or closely related legal matters;

34 (c) an arrangement for providing benefits that do not exceed a limited amount of  
35 consultations, advice on simple legal matters, either alone or in combination with referral  
36 services, or the promise of fee discounts for handling other legal matters;

37 (d) limited legal assistance on an informal basis involving neither an express contractual  
38 obligation nor reasonable expectations, in the context of an employment, membership,  
39 educational, or similar relationship;

40 (e) legal assistance by employee organizations to their members in matters relating to  
41 employment; ~~or~~

42 (f) death, accident, health, or disability benefits provided to a person by an organization  
43 or its affiliate if:

44 (i) the organization is tax exempt under Section 501(c)(3) of the Internal Revenue Code  
45 and has had its principal place of business in Utah for at least five years;

46 (ii) the person is not an employee of the organization; and

47 (iii) (A) substantially all the person's time in the organization is spent providing  
48 voluntary services:

49 (I) in furtherance of the organization's purposes;

50 (II) for a designated period of time; and

51 (III) for which no compensation, other than expenses, is paid; or

52 (B) the time since the service under Subsection (1)(f)(iii)(A) was completed is no more  
53 than 18 months~~[-]; or~~

54 (g) a prepaid contract of limited duration that provides for scheduled maintenance only.

55 (2) (a) This title restricts otherwise legitimate business activity.

56 (b) What this title does not prohibit is permitted unless contrary to other provisions of  
57 Utah law.

- 58 (3) Except as otherwise expressly provided, this title does not apply to:
- 59 (a) those activities of an insurer where state jurisdiction is preempted by Section 514 of  
60 the federal Employee Retirement Income Security Act of 1974, as amended;
- 61 (b) ocean marine insurance;
- 62 (c) death, accident, health, or disability benefits provided by an organization if the  
63 organization:
- 64 (i) has as its principal purpose to achieve charitable, educational, social, or religious  
65 objectives rather than to provide death, accident, health, or disability benefits;
- 66 (ii) does not incur a legal obligation to pay a specified amount; and
- 67 (iii) does not create reasonable expectations of receiving a specified amount on the part  
68 of an insured person;
- 69 (d) other business specified in rules adopted by the commissioner on a finding that:
- 70 (i) the transaction of the business in this state does not require regulation for the  
71 protection of the interests of the residents of this state; or
- 72 (ii) it would be impracticable to require compliance with this title;
- 73 (e) except as provided in Subsection (4), a transaction independently procured through  
74 negotiations under Section [31A-15-104](#);
- 75 (f) self-insurance;
- 76 (g) reinsurance;
- 77 (h) subject to Subsection (5), employee and labor union group or blanket insurance  
78 covering risks in this state if:
- 79 (i) the policyholder exists primarily for purposes other than to procure insurance;
- 80 (ii) the policyholder:
- 81 (A) is not a resident of this state;
- 82 (B) is not a domestic corporation; or
- 83 (C) does not have its principal office in this state;
- 84 (iii) no more than 25% of the certificate holders or insureds are residents of this state;
- 85 (iv) on request of the commissioner, the insurer files with the department a copy of the

86 policy and a copy of each form or certificate; and

87 (v) (A) the insurer agrees to pay premium taxes on the Utah portion of its business, as if  
88 it were authorized to do business in this state; and

89 (B) the insurer provides the commissioner with the security the commissioner considers  
90 necessary for the payment of premium taxes under Title 59, Chapter 9, Taxation of Admitted  
91 Insurers;

92 (i) to the extent provided in Subsection (6):

93 (i) a manufacturer's or seller's warranty; and

94 (ii) a manufacturer's or seller's service contract;

95 (j) except to the extent provided in Subsection (7), a public agency insurance mutual; or

96 (k) except as provided in Chapter 6b, Guaranteed Asset Protection Waiver Act, a  
97 guaranteed asset protection waiver.

98 (4) A transaction described in Subsection (3)(e) is subject to taxation under Section  
99 [31A-3-301](#).

100 (5) (a) After a hearing, the commissioner may order an insurer of certain group or  
101 blanket contracts to transfer the Utah portion of the business otherwise exempted under  
102 Subsection (3)(h) to an authorized insurer if the contracts have been written by an unauthorized  
103 insurer.

104 (b) If the commissioner finds that the conditions required for the exemption of a group  
105 or blanket insurer are not satisfied or that adequate protection to residents of this state is not  
106 provided, the commissioner may require:

107 (i) the insurer to be authorized to do business in this state; or

108 (ii) that any of the insurer's transactions be subject to this title.

109 (6) (a) As used in Subsection (3)(i) and this Subsection (6):

110 (i) "manufacturer's or seller's service contract" means a service contract:

111 (A) made available by:

112 (I) a manufacturer of a product;

113 (II) a seller of a product; or

114 (III) an affiliate of a manufacturer or seller of a product;  
115 (B) made available:  
116 (I) on one or more specific products; or  
117 (II) on products that are components of a system; and  
118 (C) under which the person described in Subsection (6)(a)(i)(A) is liable for services to  
119 be provided under the service contract including, if the manufacturer's or seller's service  
120 contract designates, providing parts and labor;  
121 (ii) "manufacturer's or seller's warranty" means the guaranty of:  
122 (A) (I) the manufacturer of a product;  
123 (II) a seller of a product; or  
124 (III) an affiliate of a manufacturer or seller of a product;  
125 (B) (I) on one or more specific products; or  
126 (II) on products that are components of a system; and  
127 (C) under which the person described in Subsection (6)(a)(ii)(A) is liable for services to  
128 be provided under the warranty, including, if the manufacturer's or seller's warranty designates,  
129 providing parts and labor; and  
130 (iii) "service contract" [~~is as~~] means the same as that term is defined in Section  
131 [31A-6a-101](#).  
132 (b) A manufacturer's or seller's warranty may be designated as:  
133 (i) a warranty;  
134 (ii) a guaranty; or  
135 (iii) a term similar to a term described in Subsection (6)(b)(i) or (ii).  
136 (c) This title does not apply to:  
137 (i) a manufacturer's or seller's warranty;  
138 (ii) a manufacturer's or seller's service contract paid for with consideration that is in  
139 addition to the consideration paid for the product itself; and  
140 (iii) a service contract that is not a manufacturer's or seller's warranty or manufacturer's  
141 or seller's service contract if:

- 142 (A) the service contract is paid for with consideration that is in addition to the  
143 consideration paid for the product itself;
- 144 (B) the service contract is for the repair or maintenance of goods;
- 145 (C) the cost of the product is equal to an amount determined in accordance with  
146 Subsection (6)(e); and
- 147 (D) the product is not a motor vehicle.
- 148 (d) This title does not apply to a manufacturer's or seller's warranty or service contract  
149 paid for with consideration that is in addition to the consideration paid for the product itself  
150 regardless of whether the manufacturer's or seller's warranty or service contract is sold:
- 151 (i) at the time of the purchase of the product; or  
152 (ii) at a time other than the time of the purchase of the product.
- 153 (e) (i) For fiscal year 2001-02, the amount described in Subsection (6)(c)(iii)(C) shall be  
154 equal to \$3,700 or less.
- 155 (ii) For each fiscal year after fiscal year 2001-02, the commissioner shall annually  
156 determine whether the amount described in Subsection (6)(c)(iii)(C) should be adjusted in  
157 accordance with changes in the Consumer Price Index published by the United States Bureau of  
158 Labor Statistics selected by the commissioner by rule, between:
- 159 (A) the Consumer Price Index for the February immediately preceding the adjustment;  
160 and
- 161 (B) the Consumer Price Index for February 2001.
- 162 (iii) If under Subsection (6)(e)(ii) the commissioner determines that an adjustment  
163 should be made, the commissioner shall make the adjustment by rule.
- 164 (7) (a) For purposes of this Subsection (7), "public agency insurance mutual" means an  
165 entity formed by two or more political subdivisions or public agencies of the state:
- 166 (i) under Title 11, Chapter 13, Interlocal Cooperation Act; and  
167 (ii) for the purpose of providing for the political subdivisions or public agencies:
- 168 (A) subject to Subsection (7)(b), insurance coverage; or  
169 (B) risk management.

170 (b) Notwithstanding Subsection (7)(a)(ii)(A), a public agency insurance mutual may not  
171 provide health insurance unless the public agency insurance mutual provides the health  
172 insurance using:

- 173 (i) a third party administrator licensed under Chapter 25, Third Party Administrators;
- 174 (ii) an admitted insurer; or
- 175 (iii) a program authorized by Title 49, Chapter 20, Public Employees' Benefit and  
176 Insurance Program Act.

177 (c) Except for this Subsection (7), a public agency insurance mutual is exempt from this  
178 title.

179 (d) A public agency insurance mutual is considered to be a governmental entity and  
180 political subdivision of the state with all of the rights, privileges, and immunities of a  
181 governmental entity or political subdivision of the state including all the rights and benefits of  
182 Title 63G, Chapter 7, Governmental Immunity Act of Utah.

183 Section 2. Section **31A-6a-101** is amended to read:

184 **31A-6a-101. Definitions.**

185 As used in this chapter:

186 (1) "Mechanical breakdown insurance" means a policy, contract, or agreement issued  
187 by an insurance company that has complied with either Chapter 5, Domestic Stock and Mutual  
188 Insurance Corporations, or Chapter 14, Foreign Insurers, that undertakes to perform or provide  
189 repair or replacement service on goods or property, or indemnification for repair or replacement  
190 service, for the operational or structural failure of the goods or property due to a defect in  
191 materials, workmanship, or normal wear and tear.

192 (2) "Nonmanufacturers' parts" means replacement parts not made for or by the original  
193 manufacturer of the goods commonly referred to as "after market parts."

194 (3) (a) "Road hazard" means a hazard that is encountered while driving a motor vehicle.

195 (b) "Road hazard" includes potholes, rocks, wood debris, metal parts, glass, plastic,  
196 curbs, or composite scraps.

197 (4) (a) "Service contract" means a contract or agreement to perform or reimburse for

198 the repair or maintenance of goods or property, for their operational or structural failure due to  
199 a defect in materials, workmanship, [~~or~~] normal wear and tear, power surge or interruption, or  
200 accidental damage from handling, with or without additional provision for incidental payment of  
201 indemnity under limited circumstances, including towing, providing a rental car, providing  
202 emergency road service, and covering food spoilage.

203 (b) "Service contract" does not include:

204 (i) mechanical breakdown insurance~~[-]~~; or

205 (ii) a prepaid contract of limited duration that provides for scheduled maintenance only,  
206 regardless of whether the contract is executed before, on, or after May 9, 2017.

207 (c) "Service contract" includes any contract or agreement to perform or reimburse the  
208 service contract holder for any one or more of the following services:

209 (i) the repair or replacement of tires, wheels, or both on a motor vehicle damaged as a  
210 result of coming into contact with a road hazard;

211 (ii) the removal of dents, dings, or creases on a motor vehicle that can be repaired using  
212 the process of paintless dent removal without affecting the existing paint finish and without  
213 replacing vehicle body panels, sanding, bonding, or painting;

214 (iii) the repair of chips or cracks in or the replacement of a motor vehicle windshield as  
215 a result of damage caused by a road hazard, that is primary to the coverage offered by the  
216 motor vehicle owner's motor vehicle insurance policy; or

217 (iv) the replacement of a motor vehicle key or key-fob if the key or key-fob becomes  
218 inoperable, lost, or stolen, except that the replacement of lost or stolen property is limited to  
219 only the replacement of a lost or stolen motor vehicle key or key-fob.

220 (5) "Service contract holder" or "contract holder" means a person who purchases a  
221 service contract.

222 (6) "Service contract provider" means a person who issues, makes, provides,  
223 administers, sells or offers to sell a service contract, or who is contractually obligated to provide  
224 service under a service contract.

225 (7) "Service contract reimbursement policy" or "reimbursement insurance policy" means

226 a policy of insurance providing coverage for all obligations and liabilities incurred by the service  
227 contract provider or warrantor under the terms of the service contract or vehicle protection  
228 product warranty issued by the provider or warrantor.

229 (8) (a) "Vehicle protection product" means a device or system that is:

230 (i) installed on or applied to a motor vehicle; and

231 (ii) designed to prevent the theft of the vehicle.

232 (b) "Vehicle protection product" includes:

233 (i) a vehicle protection product warranty;

234 (ii) an alarm system;

235 (iii) a body part marking product;

236 (iv) a steering lock;

237 (v) a window etch product;

238 (vi) a pedal and ignition lock;

239 (vii) a fuel and ignition kill switch; and

240 (viii) an electronic, radio, or satellite tracking device.

241 (9) "Vehicle protection product warranty" means a written agreement by a warrantor  
242 that provides if the vehicle protection product fails to prevent the theft of the motor vehicle, that  
243 the warrantor will reimburse the warranty holder under the warranty in a fixed amount specified  
244 in the warranty, not to exceed \$5,000.

245 (10) "Warrantor" means a person who is contractually obligated to the warranty holder  
246 under the terms of a vehicle protection product warranty.

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