

IC 27-1-43.2

Chapter 43.2. Service Contracts

IC 27-1-43.2-1

"Ancillary protection product"

Sec. 1. (a) As used in this chapter, "ancillary protection product" means a protective chemical, substance, device, or system that is:

- (1) installed on or applied to a motor vehicle;
- (2) formulated or designed to:
 - (A) prevent; or
 - (B) minimize the likelihood of;a specified loss or damage to a motor vehicle from a specific cause; and
- (3) sold with a service contract under which the provider agrees to pay specified incidental costs incurred by the holder as a result of the failure of the chemical, substance, device, or system to prevent or minimize the loss or damage described in subdivision (2).

(b) As used in this chapter, "ancillary protection product" includes the following:

- (1) Protective chemicals.
- (2) Alarm systems.
- (3) Body part marking products.
- (4) Steering locks.
- (5) Window etching products.
- (6) Pedal and ignition locks.
- (7) Fuel and ignition kill switches.
- (8) Electronic, radio, and satellite tracking devices.

(c) As used in this chapter, "ancillary protection product" does not include the following:

- (1) Fuel additives.
- (2) Oil additives.
- (3) Other chemical products applied to the engine, transmission, or fuel system of a motor vehicle.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-2

"Holder"

Sec. 2. As used in this chapter, "holder" means a person who is entitled to services or indemnification under a service contract.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-3

"Incidental cost"

Sec. 3. (a) As used in this chapter, "incidental cost" means an expense that is:

- (1) specified in a service contract that applies to a motor vehicle;

- (2) incurred by the holder due to the failure of an ancillary protection product to perform as provided in the service contract sold with the ancillary protection product; and
- (3) reimbursed to the holder:
 - (A) as a fixed amount specified in the service contract; or
 - (B) by use of a formula that itemizes specific incurred expenses.
- (b) "Incidental cost" includes the following:
 - (1) Insurance policy deductibles.
 - (2) Rental vehicle charges.
 - (3) The difference between the actual value of a stolen motor vehicle at the time of theft and the cost of a replacement motor vehicle.
 - (4) Sales tax.
 - (5) Registration fees.
 - (6) Transaction fees.
 - (7) Mechanical inspection fees.
 - (8) Expense incurred due to a defective part or mechanical or electrical breakdown.
 - (9) Expense incurred for labor.
 - (10) Expense incurred for other remedial measures, including a repair, a replacement, or repetition of a service.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-4
"Motor vehicle"

Sec. 4. As used in this chapter, "motor vehicle" has the meaning set forth in IC 9-13-2-105(a).

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-5
"Provider"

Sec. 5. As used in this chapter, "provider" means a person who is contractually obligated to a holder under a service contract.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-6
"Road hazard"

Sec. 6. (a) As used in this chapter, "road hazard" means a hazard encountered by a motor vehicle in normal driving conditions.

(b) "Road hazard" includes the following:

- (1) A pothole.
- (2) A rock.
- (3) Wood debris.
- (4) Metal parts.
- (5) Glass.
- (6) Plastic.
- (7) A curb.

(8) A composite scrap.
As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-7

"Service contract"

Sec. 7. (a) As used in this chapter, "service contract" means an agreement:

- (1) that is effective for a specified period; and
- (2) under which a provider:
 - (A) receives consideration that is separate from the lease or purchase price of a motor vehicle; and
 - (B) agrees to provide the performance, or indemnification for the cost of performance, of the repair, replacement, or maintenance of a motor vehicle related to the operational or structural failure of the motor vehicle due to a defect in materials or workmanship, accidental damage, normal wear and tear, or damage resulting from a power surge or interruption.

A service contract may also provide for the incidental payment of indemnity under limited circumstances, including indemnity for towing, temporary replacement motor vehicle rental, and emergency road service.

(b) The repair, replacement, or maintenance described in subsection (a)(2)(B) includes the following:

- (1) Repair or replacement of tires or wheels on a motor vehicle damaged as a result of road hazards.
- (2) 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.
- (3) Repair of chips or cracks in, or replacement of, motor vehicle windshields as a result of damage caused by road hazards.
- (4) Replacement of an inoperable, lost, or stolen motor vehicle key or keyfob.
- (5) Payment of specified incidental costs resulting from failure of an ancillary protection product to perform as specified.
- (6) Payment related to other products and services approved by the commissioner and consistent with this chapter.

(c) A service contract may not include coverage:

- (1) for the:
 - (A) repair of damage to;
 - (B) replacement of; or
 - (C) repair of damage to and replacement of; the interior surfaces of a vehicle; or
- (2) for the:
 - (A) repair of damage to;
 - (B) replacement of; or

(C) repair of damage to and replacement of;
the exterior paint or finish of a vehicle.

However, coverage described in subdivision (1) or (2) may be offered in connection with the sale of an ancillary protection product as defined in section 1 of this chapter.

- (d) "Service contract" does not include an insurance policy that:
- (1) is issued by an insurer authorized to engage in the insurance business in Indiana; and
 - (2) provides coverage for repair, replacement, or maintenance described in subsection (a)(2)(B).

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-8

"Service contract reimbursement policy"

Sec. 8. As used in this chapter, "service contract reimbursement policy" means a policy of insurance that provides coverage for one (1) of the following:

- (1) All obligations and liabilities incurred by a provider under a service contract issued by the provider in Indiana.
- (2) In the event of the provider's nonperformance under a service contract issued by the provider in Indiana, performance of all obligations:
 - (A) of the provider under the service contract; and
 - (B) that the provider did not perform.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-9

"Warranty"

Sec. 9. As used in this chapter, "warranty" means a guarantee that:

- (1) is made:
 - (A) solely by the manufacturer, importer, or seller of property or services; and
 - (B) without consideration;
- (2) is not negotiated or separated from the sale of the property or services;
- (3) is incidental to the sale of the property or services; and
- (4) the person making the guarantee will indemnify the warranty holder for:
 - (A) defective parts;
 - (B) mechanical or electrical failure;
 - (C) labor; or
 - (D) other remedial measures, including repair or replacement of the property or repetition of services.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-10

Service contract characterization and regulation

Sec. 10. (a) A service contract:

- (1) is not insurance; and
- (2) except as provided in this chapter, is not regulated under IC 27.

(b) The authority of the commissioner under this chapter is in addition to all other authority of the commissioner under this title.
As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-11

Service contract requirements

Sec. 11. (a) Except as provided in section 14 of this chapter, a service contract may not be offered, sold, or issued in Indiana unless the provider complies with one (1) of the following subdivisions:

- (1) All of the following conditions are met:
 - (A) The provider is insured under a service contract reimbursement policy issued by an insurer authorized to do business in Indiana.
 - (B) True and correct copies of the service contract reimbursement policy have been filed with the commissioner.
 - (C) The service contract conspicuously:
 - (i) states that the obligations of the provider to the holder are covered under the service contract reimbursement policy; and
 - (ii) sets forth the name and address of the insurer that issued the service contract reimbursement policy.
- (2) The provider maintains a funded reserve account for its obligations under each service contract issued by the provider in Indiana and outstanding, subject to the following:
 - (A) The reserves are calculated at not less than forty percent (40%) of the gross consideration received, then minus the amount of claims paid under the service contracts.
 - (B) The service contract conspicuously states that the obligations of the provider under the service contract are backed by the full faith and credit of the provider.

A reserve account maintained under subdivision (2) is subject to examination and review by the commissioner under section 15 of this chapter.

(b) A filing described in subsection (a)(1)(B) is for informational purposes only and is not subject to approval by the commissioner.
As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-12

Service contract form

Sec. 12. A service contract must meet the following requirements:

- (1) Be legibly typed or printed in understandable language.
- (2) Include the following disclosures:
 - (A) The name and address of:
 - (i) the provider;

- (ii) any administrator of the service contract, if different from the provider;
- (iii) the person selling the service contract; and
- (iv) if the information has been furnished by the holder, the holder.

This information may be added to the service contract at the time of sale and is not required to be preprinted on the service contract.

(B) The total purchase price and the terms under which the service contract is sold. This information may be negotiated with the holder and added to the service contract at the time of sale and is not required to be preprinted on the service contract.

(C) The existence and amount of any applicable deductible.

(D) The products and services to be provided under the service contract, including any conditions, limitations, exceptions, and exclusions.

(E) Whether the use of nonoriginal manufacturer parts is allowed.

(F) Any applicable restrictions governing the transferability of the service contract.

(G) The terms, restrictions, or conditions governing cancellation, by the provider or the holder, of the service contract before the termination or expiration date of the service contract.

(H) All obligations and duties of the holder, including any applicable:

- (i) duty to protect the motor vehicle from additional damage; and
- (ii) motor vehicle service requirements, as provided in the motor vehicle owner's manual, supplement, or guide.

(I) Whether the service contract provides for or excludes consequential damages or preexisting conditions.

(3) Conspicuously set forth the following statement or a substantially similar statement:

"This service contract is not insurance and is not subject to Indiana insurance law."

(4) If the service provider is insured under a service contract reimbursement policy under section 11(a)(1)(A) of this chapter, conspicuously state that if the provider fails to perform or make payment due under the service contract within sixty (60) days after the holder requests the performance or payment, the holder may request the performance or payment directly from the insurer that issued the provider's service contract reimbursement policy, including any applicable requirement under the service contract that the provider refund any part of the cost of the service contract upon cancellation of the service contract.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-13

Service contract reimbursement policy form

Sec. 13. Except as provided in section 14 of this chapter, a service contract reimbursement policy may not be offered, sold, or issued in Indiana unless the service contract reimbursement policy conspicuously states that the insurer will do either of the following:

- (1) Pay all sums that the provider is obligated to pay under service contracts issued by the provider and outstanding in Indiana.
- (2) In the event of the provider's nonperformance under a service contract issued by the provider and outstanding in Indiana, perform or pay for the performance of services that the provider:
 - (A) is obligated to perform under the service contract; and
 - (B) failed to perform.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-14

Application of chapter provisions

Sec. 14. Sections 11, 12(4), and 13 of this chapter do not apply to a warranty, service contract, or other agreement:

- (1) that is offered or sold by a motor vehicle dealer in connection with a motor vehicle sold by the motor vehicle dealer; and
- (2) under which the motor vehicle dealer, motor vehicle manufacturer, or affiliate of the dealer or manufacturer is obligated to perform.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-15

Commissioner authority; violations

Sec. 15. The commissioner may do the following:

- (1) Conduct an investigation or examination of a provider, an administrator, an insurer, or another person to enforce this chapter.
- (2) Take action that is necessary or appropriate to enforce this chapter.
- (3) If a provider violates this chapter, issue an order to do the following:
 - (A) Require a provider to cease and desist.
 - (B) Prohibit a provider from offering, issuing, or selling a service contract in Indiana.
 - (C) Impose a civil penalty not to exceed ten thousand dollars (\$10,000) per violation.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-16

Administrative hearing

Sec. 16. (a) If a person is aggrieved by an order issued under section 15(3) of this chapter, the person may, not more than twenty (20) days after the effective date of the order, request a hearing under IC 4-21.5.

(b) If a person requests a hearing under subsection (a) the commissioner shall suspend the effective date of the order pending the outcome of the hearing.

(c) In a hearing requested under subsection (a), the burden is on the commissioner to show cause why the order is justified.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-17

Court action

Sec. 17. The commissioner may commence an action in the circuit or superior court of Marion County to do the following:

(1) Enjoin an actual or threatened violation of this chapter.

(2) Seek restitution on behalf of a person aggrieved by a violation of this chapter.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-18

Nonapplicability of chapter

Sec. 18. This chapter does not apply to the following:

(1) A warranty provided under the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 et seq.

(2) A contract that is effective for a specified period and under which a person agrees to:

(A) provide; or

(B) indemnify the contract holder for;
regular maintenance.

(3) A motor club approved under IC 9-30-2-8.

As added by P.L.129-2014, SEC.10.

IC 27-1-43.2-19

Rules

Sec. 19. The commissioner may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.129-2014, SEC.10.