

CHAPTER 78
Service Contracts

SECTION 38-78-10. Purpose of chapter; applicability; motor vehicle manufacturer's service contracts.

(A) The purpose of this chapter is to create a legal framework within which service contracts may be sold in this State.

(B) This chapter does not apply to:

- (1) warranties;
- (2) maintenance agreements;
- (3) commercial transactions;
- (4) warranties, service contracts, or maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated by the Public Service Commission or the Department of Health and Environmental Control;
- (5) service contracts sold or offered for sale to persons other than consumers.

(C) Motor vehicle manufacturer's service contracts on the motor vehicle manufacturer's products shall comply with Sections 38-78-50 (A) and (D), to (N), Section 38-78-60, and Section 38-78-100, as applicable.

(D) The types of agreements referred to in subsection (B) of this section do not have to comply with any provision of the insurance laws of this State.

HISTORY: 2000 Act No. 330, Section 2.

SECTION 38-78-20. Definitions.

As used in this chapter:

(1) "Administrator" means the person who is responsible for the administration of the service contracts or the service contracts plan or who is responsible for any filings required by this chapter.

(2) "Director" means the Director of the Department of Insurance.

(3) "Consumer" means a natural person who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes.

(4) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

(5) "Motor vehicle manufacturer" means a person that:

- (a) manufactures or produces motor vehicles and sells motor vehicles under its own name or label;
- (b) is a wholly owned subsidiary of the person who manufactures or produces motor vehicles;
- (c) is a corporation which owns one hundred percent of the person who manufactures or produces motor vehicles;
- (d) does not manufacture or produce motor vehicles, but sells motor vehicles under its trade name label;
- (e) manufactures or produces motor vehicles and sells such motor vehicles under the trade name or label of another person; or
- (f) does not manufacture or produce motor vehicles but, pursuant to a written contract, licenses the use of its trade name or label to another person that sells motor vehicles under the licensor's trade name or label.

(6) "Nonoriginal manufacturer's parts" means replacement parts not made for or by the original manufacturer of the property commonly referred to as "after market parts".

(7) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or combination of entities acting in concert.

(8) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

(9) "Provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(10) "Provider fee" means the consideration paid for a service contract.

(11) "Reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the provider's nonperformance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider.

(12) "Service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances including, but not limited to, towing, rental, and emergency road service. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling. "Service contract" includes a contract or agreement for a separately stated consideration for a specific duration to perform one or more of the following services:

(a) the repair or replacement of 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 sanding, bonding, painting, or replacing a vehicle body panel;

(c) the replacement of a motor vehicle key or key fob in the event that the key or key fob becomes inoperable, lost, or stolen; and

(d) other services consistent with the provisions of this chapter approved by the director.

(13) "Road hazard" means a hazard that is encountered while driving a motor vehicle including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

(14) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

(15) "Theft protection program" means a device or system installed on or applied to a motor vehicle designed to prevent loss or damage to a motor vehicle from theft that includes a theft protection program warranty. The term "theft protection program" includes, but is not 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.

(16) "Theft protection program warranty" means a written agreement by a warrantor that provides the warrantor will pay to or on behalf of the warranty holder specified incidental costs not to exceed five thousand dollars as a result of the failure of the theft protection program to prevent loss or damage to a motor vehicle pursuant to the terms of the warranty. Specified incidental costs include expenses specified in the warranty that are incurred by the warranty holder due to the failure of the program to perform as provided in the warranty. Incidental costs 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 a fixed amount specified in the warranty or by use of a formula itemizing specific costs incurred by the warranty holder. A theft protection program warranty must contain a conspicuous disclosure substantially similar to the following in ten-point bold font: "This warranty is not insurance and payments or reimbursement under this warranty may not exceed five thousand dollars."

(17) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without charge, that is not negotiated or separated from the sale of the product, that is incidental to the sale of the product, and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services. This term includes theft protection program warranties if the warrantor has obtained a reimbursement insurance policy to insure its warranty obligations in this State.

HISTORY: 2000 Act No. 330, Section 2; 2020 Act No. 115 (H.4244), Section 1, eff May 3, 2020.

Effect of Amendment

2020 Act No. 115, Section 1, in (12), added the third sentence and (a) to (d); inserted (13), relating to the definition of "road hazard" and redesignated (13) as (14); inserted (15) and (16), relating to the definitions of "theft protection program" and "theft protection program warranty", respectively; and redesignated (14) as (17) and added the second sentence, relating to theft protection program warranties.

SECTION 38-78-30. Appointment of administrator; requirements for sale of contracts; registration and fees; financial security requirements; right to return contract; cancellation.

(A) A provider may, but is not required to, appoint an administrator or other designee to be responsible for any or all of the administration of service contracts and compliance with this chapter.

(B) A service contract must not be issued, sold, or offered for sale in this State unless the provider or its designee has:

(1) provided a receipt for, or other written evidence of, the purchase of the service contract to the contract holder;

(2) provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase; and

(3) complied with this chapter.

(C) Each provider of service contracts sold in this State shall file a registration with the director on a form prescribed by the director. Each provider shall pay to the department a fee of two hundred dollars annually.

(D) In order to assure the faithful performance of a provider's obligations to its contract holders each provider shall be responsible for complying with the requirements of item (1), (2), or (3):

(1) insure all service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance business in this State or issued pursuant to Section 38-45-110; or

(2)(a) maintain a funded reserve account for its obligations under its service contracts issued and outstanding in this State. The reserves may not be less than forty percent of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account is subject to examination and review by the director; and

(b) place in trust with the director a financial security deposit having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than twenty-five thousand dollars, consisting of one of the following:

(i) a surety bond issued by an authorized surety;

(ii) securities of the type eligible for deposit by authorized insurers in this State;

(iii) cash;

(iv) a letter of credit issued by a qualified financial institution; or

(v) another form of security prescribed by regulations promulgated by the director; or

(3)(a) maintain, or its parent company maintain, a net worth or stockholder's equity of one hundred million dollars; and

(b) upon request, provide the director with a copy of the provider's, or the provider's parent company's, most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the provider or the provider's parent company does not file with the SEC, a copy of the provider's or the provider's parent company's audited financial statements which show a net worth of the provider or its parent company of at least one hundred million dollars. If the provider's parent company's Form 10-K, Form 20-F, or audited financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this State.

(E) Except for the requirements specified in subsection (D), no other financial security requirements shall be required by the director for service contract providers. Service contract providers that establish their financial security to pay claims by insuring their obligations under a reimbursement insurance policy as

provided in subsection (D)(1) are not required to file financial statements in connection with an application for registration or the renewal of a registration.

(F) Service contracts shall require the provider to permit the service contract holder to return the service contract within twenty days of the date the service contract was mailed to the service contract holder or within ten days of delivery if the service contract is delivered to the service contract holder at the time of sale or within a longer time period permitted under the service contract. Upon return of the service contract to the provider within the applicable time period, if no claim has been made under the service contract prior to its return to the provider, the service contract is void and the provider shall refund to the service contract holder, or credit the account of the service contract holder, with the full purchase price of the service contract. The right to void the service contract provided in this subsection is not transferable and shall apply only to the original service contract purchaser and only if no claim has been made prior to its return to the provider. A ten percent penalty per month shall be added to a refund that is not paid or credited within forty-five days after return of the service contract to the provider.

(G) If the provider cancels the service contract, the provider shall mail a written notice to the contract holder at the last known address of the service contract holder contained in the records of the provider at least fifteen days prior to cancellation by the provider. Prior notice is not required if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation by the service contract holder to the provider, or a substantial breach of duties by the service contract holder relating to the covered product or its use. The notice shall state the effective date of the cancellation and the reason for the cancellation.

(H) Provider fees collected on service contract are not subject to premium taxes.

(I) Except for the registration requirements in subsection (C), providers and related service contract sellers, administrators, and other persons marketing, selling, or offering to sell service contracts are exempt from state licensing requirements.

(J) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of service contracts by providers and related service contract sellers, administrators, and other persons shall be exempt from all other provisions of Title 38.

HISTORY: 2000 Act No. 330, Section 2; 2020 Act No. 115 (H.4244), Section 2, eff May 3, 2020.

Effect of Amendment

2020 Act No. 115, Section 2, in (E), added the second sentence, excluding a service contract provider that insures their obligations under a reimbursement insurance policy from the financial statement requirement for registration.

SECTION 38-78-40. Reimbursement insurance policies.

(A) Reimbursement insurance policies insuring service contracts issued, sold, or offered for sale in this State shall conspicuously state that the insurer that issued the policy shall either reimburse or pay on behalf of the provider any covered sums the provider is legally obligated to pay or in the event of the provider's nonperformance, shall provide the service which the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.

(B) In the event covered service is not provided by the service contract provider within sixty days of proof of loss by the service contract holder, the contract holder is entitled to apply directly to the reimbursement insurance company.

HISTORY: 2000 Act No. 330, Section 2.

SECTION 38-78-50. Service contracts; required provisions.

(A) Service contracts marketed, issued, sold, offered for sale, made, proposed to be made, or administered in this State shall be written, printed, or typed in clear, understandable language that is easy to read and shall disclose the requirements in this section as applicable.

(B) Service contracts insured under a reimbursement insurance policy pursuant to Section 38-78-30(D)(1) shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy." The service contract shall also conspicuously state the name and address of the insurer.

(C) Service contracts not insured under a reimbursement insurance policy pursuant to Section 38-78-30(D)(1) of this chapter shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider." A claim against the provider shall also include a claim for return of the unearned provider fee. The service contract shall also conspicuously state the name and address of the provider.

(D) Service contracts shall identify any administrator, if different from the providers, the provider obligated to perform the service under the contract, the service contract seller, and the service contract holder to the extent that the name of the service contract holder has been furnished by the service contract holder. The identities of such parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale.

(E) Service contracts shall conspicuously state the total purchase price and the terms under which the service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale with the service contract holder.

(F) If prior approval of repair work is required, the service contracts shall conspicuously state the procedure for obtaining prior approval and for making a claim, including either a toll-free telephone number for claim service or a procedure for obtaining emergency repairs performed outside of normal business hours.

(G) Service contracts shall conspicuously state the existence of any deductible amount, if applicable.

(H) Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

(I) Service contracts covering automobiles shall state the conditions upon which the use of nonoriginal manufacturers' parts, or substitute service, may be allowed. Conditions stated shall comply with applicable state and federal laws.

(J) Service contracts shall state any restrictions governing the transferability of the service contract, if applicable.

(K) Service contracts shall state the terms, restrictions, or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the provider or the service contract holder.

(L) Service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and any requirement to follow the owner's manual.

(M) Service contracts shall clearly state whether or not the service contract provides for or excludes consequential damages or preexisting conditions, if applicable.

(N) Service contracts must disclose the right of the service contract holder to return the contract and receive a full refund pursuant to Section 38-78-30(F).

(O) Service contracts must include a disclosure substantially similar to the following: "In the event of a dispute with the provider of this contract, you may contact the South Carolina Department of Insurance, Capitol Center, 1201 Main Street, Ste. 1000, Columbia, South Carolina, 29201 or by phone at (800) 768-3467".

HISTORY: 2000 Act No. 330, Section 2; 2020 Act No. 115 (H.4244), Section 3, eff May 3, 2020.
Effect of Amendment

2020 Act No. 115, Section 3, added (O), requiring service contracts to include a certain disclosure.

SECTION 38-78-60. Provider name restrictions; misleading statements in contracts or literature; purchase of contract as condition of loan.

(A) A provider may not use in its name the words "insurance", "casualty", "guaranty", "surety", "mutual", or any other words descriptive of the insurance, casualty, guaranty, or surety business or a name deceptively

similar to the name or description of any insurance or surety corporation or any other provider. This section does not apply to a company that was using any of the prohibited language in its name before the effective date of this chapter. However, a company using the prohibited language in its name shall conspicuously include in its service contracts a statement in substantially the following form: "This agreement is not an insurance contract".

(B) A provider or its representative in its service contracts or literature may not make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted, in connection with the sale, offer to sell, or advertisement of a service contract.

(C) A person such as a bank, savings and loan association, lending institution, manufacturer, or seller of any product shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.

HISTORY: 2000 Act No. 330, Section 2.

SECTION 38-78-70. Provider to maintain accounts, books, and records.

(A) A provider shall maintain accurate accounts, books, and records concerning transactions regulated under this chapter which shall include:

- (1) copies of each type of service contract issued;
- (2) the name and address of each service contract holder to the extent that the name and address have been furnished by the service contract holder;
- (3) a list of the locations where service contracts are marketed, sold, or offered for sale; and
- (4) recorded claims files which shall contain at least the dates and description of claims related to the service contracts.

Except as provided in subsection (B), the provider shall retain all records required to be maintained by this section for at least one year after the specified period of coverage has expired.

The records required under this chapter may be, but are not required to be, maintained on a computer disk or other recordkeeping technology. If records are maintained in other than hard copy, the records must be capable of duplication to legible hard copy at the request of the director.

(B) A provider discontinuing business in this State shall maintain its records until it furnishes the director satisfactory proof that it has discharged all obligations to contract holders in this State.

(C) The provider shall make all accounts, books, and records concerning transactions regulated under this chapter, or other pertinent laws, available to the director upon request.

HISTORY: 2000 Act No. 330, Section 2.

SECTION 38-78-80. Termination of reimbursement insurance policy.

As applicable, an insurer that issued a reimbursement insurance policy may not terminate the policy until a notice of termination in accordance with Chapter 75 of this title has been mailed or delivered to the director. The termination of a reimbursement insurance policy does not reduce the issuer's responsibility for service contracts issued by providers before the date of the termination.

HISTORY: 2000 Act No. 330, Section 2.

SECTION 38-78-90. Insurers deemed to have received premiums upon payment of provider fees by consumer; insurer's right to seek indemnification.

(A) Insurers issuing reimbursement insurance to providers are deemed to have received the premiums for such insurance upon the payment of provider fees by consumers for service contracts issued by such insured providers.

(B) This chapter does not prevent or limit the right of an insurer which issued a reimbursement insurance policy to seek indemnification or subrogation against a provider if the issuer pays, or is obligated to pay,

the service contract holder sums that the provider was obligated to pay pursuant to the provisions of the service contract or under a contractual agreement.

HISTORY: 2000 Act No. 330, Section 2.

SECTION 38-78-100. Director empowered to enforce chapter; request for hearing; enforcement actions; civil penalties.

(A) The director may conduct investigations or examinations of providers, administrators, insurers, or other persons to enforce the provisions of this chapter and protect service contract holders in this State. Upon request of the director, the provider shall make all accounts, books, and records concerning service contracts sold by the provider available to the director which are necessary to enable the director to reasonably determine compliance or noncompliance with this chapter.

(B) The director may take action which is necessary or appropriate to enforce the provisions of this chapter and the director's regulations and orders and to protect service contract holders in this State.

If a service contract provider violates a provision of this chapter, a regulation promulgated under this chapter, or an order issued by the director, the director may:

- (1) order the service contract provider to cease and desist from committing the violation;
- (2) issue an order prohibiting a service contract provider from selling or offering for sale service contracts;
- (3) issue an order imposing a civil penalty; or
- (4) any combination of these.

(C) A person aggrieved by an order issued under this section may request a hearing before the director. The hearing request must be filed with the director within twenty days of the date the director's order is effective.

Pending the hearing and the decision by the director, the director shall suspend the effective date of the order.

At the hearing, the burden is on the director to show why the order issued pursuant to this section is justified. If the issuance of the order is upheld by the director, the person may file an appeal with the Administrative Law Court.

(D) The director may bring an action under the Administrative Law Court or in circuit court for an injunction or other appropriate relief to enjoin threatened or existing violations of this chapter or of the director's orders or regulations. An action filed under this section may also seek restitution on behalf of persons aggrieved by a violation of this chapter or orders or regulations of the director.

(E) A person in violation of this chapter or an order or regulation of the director may be assessed a civil penalty not to exceed one thousand dollars per violation and no more than ten thousand dollars in the aggregate for all violations of a similar nature; provided, however, that if a person is found by a court of competent jurisdiction to have been in wilful violation of this chapter or an order or regulation of the director, then such person is subject to a penalty of one thousand dollars per violation with no aggregate limit.

For purposes of this section, violations of a similar nature, which are considered technical and unintentional by the Department of Insurance lacking the requisite wilful intent, are subject to the ten thousand dollar aggregate penalty limit and are defined as a violation which consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the act, conduct, or practice which is determined to be a violation of this chapter occurred.

(F) The authority of the director under this section is in addition to other authority of the director as provided by law.

HISTORY: 2000 Act No. 330, Section 2.

SECTION 38-78-110. Promulgation of regulations.

The director may promulgate regulations necessary to effectuate this chapter.

HISTORY: 2000 Act No. 330, Section 2.

SECTION 38-78-120. Severability.

If any provision of this chapter, or the application of the provision to any person or circumstances, is held invalid, the remainder of the chapter, and the application of the provision to a person or circumstances other than those as to which it is held invalid, is not affected.

HISTORY: 2000 Act No. 330, Section 2.