

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 521

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO MOTOR VEHICLE SERVICE CONTRACTS; REPEALING CHAPTER 28, TITLE  
2 49, IDAHO CODE, RELATING TO MOTOR VEHICLE SERVICE CONTRACTS; AMENDING  
3 TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 62, TITLE 41,  
4 IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE INTENT,  
5 TO DEFINE TERMS, TO PROVIDE SERVICE CONTRACT REIMBURSEMENT POLICY RE-  
6 QUIREMENTS, TO SET FORTH PROVISIONS ASSOCIATED WITH THE SALE OF MOTOR  
7 VEHICLE SERVICE CONTRACTS, TO PROVIDE FOR MOTOR VEHICLE SERVICE CON-  
8 TRACT REQUIREMENTS, TO PROHIBIT CERTAIN ACTS, TO PROVIDE RECORDKEEPING  
9 REQUIREMENTS, TO PROVIDE FOR LICENSING, TO PROVIDE THAT THE PROVISIONS  
10 OF THE IDAHO INSURANCE GUARANTY ASSOCIATION ACT SHALL NOT APPLY TO ANY  
11 MOTOR VEHICLE SERVICE CONTRACT, MECHANICAL BREAKDOWN INSURANCE OR MO-  
12 TOR VEHICLE SERVICE CONTRACT LIABILITY INSURANCE POLICY AND TO PROVIDE  
13 FOR ENFORCEMENT AND PENALTIES; AND AMENDING SECTION 41-114A, IDAHO  
14 CODE, TO REVISE A CODE REFERENCE.  
15

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

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18 hereby repealed.

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

22 CHAPTER 62  
23 IDAHO MOTOR VEHICLE SERVICE CONTRACT ACT

24 41-6201. SHORT TITLE. The provisions of this chapter shall be known  
25 and may be cited as the "Idaho Motor Vehicle Service Contract Act."

26 41-6202. LEGISLATIVE INTENT. (1) The legislature finds and declares  
27 that a considerable number of Idaho citizens use contracts to provide nec-  
28 essary services for the repair and servicing of motor vehicles purchased and  
29 used within the state.

30 (2) It is the intent of the legislature that this act provides for state  
31 of Idaho regulation of motor vehicle service contracts offered for sale in  
32 the state by any person other than the motor vehicle manufacturer or its af-  
33 filiates and subsidiaries.

34 (3) It is also the intent of the legislature that this act shall not ap-  
35 ply to:

36 (a) The customary and usual performance guarantees or warranties of-  
37 ferred at no additional charge by motor vehicle manufacturers, or their  
38 affiliates and subsidiaries, regarding the sale of motor vehicles;

39 (b) Maintenance agreements; or

40 (c) Theft protection programs or theft protection program warranties.

1 Such products identified in this subsection shall not be subject to the pro-  
2 visions of title 41, Idaho Code, unless expressly made applicable.

3 41-6203. DEFINITIONS. As used in this chapter:

4 (1) "Administrator" means the person responsible for the administra-  
5 tion of the motor vehicle service contract;

6 (2) "Director" means the director of the Idaho department of insurance;

7 (3) "Incidental costs" means expenses specified in a theft protection  
8 program warranty that are incurred by the warranty holder due to the failure  
9 of a theft protection program to perform as provided in the contract. Inci-  
10 dental costs may include, without limitation, insurance policy deductibles,  
11 rental vehicle charges, the difference between the actual value of the  
12 stolen vehicle at the time of theft and the cost of a replacement vehicle,  
13 sales taxes, registration fees, transaction fees and mechanical inspection  
14 fees. Incidental costs may be reimbursed in either a fixed amount specified  
15 in the theft protection program warranty or by use of a formula itemizing  
16 specific incidental costs incurred by the warranty holder;

17 (4) "Liability insurance policy" means a policy of insurance providing  
18 coverage for all contractual obligations incurred by a motor vehicle service  
19 contract provider under the terms of a motor vehicle service contract issued  
20 or sold by the motor vehicle service contract provider;

21 (5) "Maintenance agreement" means a contract of limited duration that  
22 provides scheduled maintenance only;

23 (6) "Mechanical breakdown insurance" means a policy, contract or  
24 agreement that undertakes to perform or provide repair or replacement ser-  
25 vice, or indemnification for such service, for the operational or structural  
26 failure of a motor vehicle due to defect in materials or workmanship or nor-  
27 mal wear and tear and that is issued by an insurance company authorized to do  
28 business in this state;

29 (7) "Motor vehicle service contract" means a contract or agreement  
30 given for separately stated consideration that undertakes to perform or  
31 provide repair or replacement service, or indemnification for such service,  
32 for the operational or structural failure of a motor vehicle due to defect  
33 in materials or workmanship or normal wear and tear but shall not include  
34 mechanical breakdown insurance. A motor vehicle service contract may pro-  
35 vide full or partial reimbursement for other expenses incurred by the motor  
36 vehicle service contract holder as a direct and proximate result of an oper-  
37 ational or structural failure or reduced operating efficiency if included  
38 in the contract coverage, including but not limited to towing, rental car,  
39 lodging, motor club, maintenance benefits, roadside assistance and meal  
40 expenses. An agreement whereby an employer or a third party contracted by  
41 the employer provides mileage reimbursement and incidental maintenance and  
42 repairs to its employees for personal vehicles used for business purposes,  
43 which agreement shall not be considered a motor vehicle service contract  
44 or a contract of insurance. "Motor vehicle service contract" also means a  
45 contract or agreement that provides one (1) or more of the following:

46 (a) The repair or replacement of tires, wheels or tires and wheels on a  
47 motor vehicle damaged as a result of coming into contact with road haz-  
48 ards;

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

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

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

9 (8) "Motor vehicle service contract holder" means a person who pur-  
10 chases a motor vehicle service contract or is a permitted transferee;

11 (9) "Motor vehicle service contract provider" means a person who is  
12 contractually obligated to a motor vehicle service contract holder under the  
13 terms of a motor vehicle service contract;

14 (10) "Person" means an individual, company, association, organization,  
15 partnership, business trust, corporation or any other form of legal entity;

16 (11) "Road hazard" means a hazard encountered while driving a motor ve-  
17 hicle and may include, but not be limited to, potholes, rocks, wood debris,  
18 metal parts, glass, plastic, curbs or composite scraps;

19 (12) "Theft protection program" means a device or system that:

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

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

23 (c) Includes a theft protection program warranty.

24 The term shall include, but not be limited to, alarm systems, body part  
25 marking products, steering locks, window etch products, pedal and ignition  
26 locks, fuel and ignition kill switches, and electronic, radio and satellite  
27 tracking devices. The term does not include fuel additives, oil additives or  
28 other chemical products applied to the engine, transmission or fuel system,  
29 or to interior or exterior surfaces of a motor vehicle;

30 (13) "Theft protection program warranty" means a written agreement by a  
31 warrantor that provides, if a theft protection program fails to prevent loss  
32 or damage to a motor vehicle from theft, the warrantor will pay to or on be-  
33 half of the warranty holder specified incidental costs as a result of the  
34 failure of the theft protection program to perform pursuant to the terms of  
35 the theft protection program warranty.

36 41-6204. SERVICE CONTRACT REIMBURSEMENT POLICY REQUIREMENTS. (1) The  
37 following are mandatory insurance provisions:

38 (a) No motor vehicle service contract shall be issued, sold or of-  
39 fered for sale in this state unless the motor vehicle service contract  
40 provider is insured under a service contract liability policy issued  
41 by an insurer admitted to do business in this state or as otherwise  
42 provided in subsection (2) of this section. The policy shall provide  
43 that the insurer will pay to or on behalf of the motor vehicle service  
44 contract provider all sums the motor vehicle service contract provider  
45 is legally obligated to pay according to the motor vehicle service  
46 contract provider's contractual obligations under the motor vehicle  
47 service contracts issued or sold by the motor vehicle service contract  
48 provider; and

1 (b) All service contract liability policies insuring motor vehicle  
 2 service contracts issued, sold or offered for sale in this state must  
 3 conspicuously state that, upon failure of the motor vehicle service  
 4 contract provider to perform under the contract, the issuer of the pol-  
 5 icy shall pay on behalf of the provider any sums that the provider is  
 6 legally obligated to perform according to the provider's contractual  
 7 obligations under the motor vehicle service contracts issued or sold by  
 8 the provider.

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

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

16 (ii) Annually file copies of the insurer's audited financial  
 17 statements, its national association of insurance commissioners  
 18 (NAIC) annual statement and the actuarial certification required  
 19 by and filed in the insurer's state of domicile; or

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

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

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

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

34 (4) The issuer of a service contract liability policy may not cancel  
 35 the policy until a thirty (30) days' advance notice of cancellation has been  
 36 mailed or delivered to each motor vehicle service contract provider. The  
 37 cancellation of a service contract liability policy shall not reduce the in-  
 38 surer's responsibility for motor vehicle service contracts issued by motor  
 39 vehicle service contract providers prior to the date of the cancellation.

40 41-6205. MOTOR VEHICLE SERVICE CONTRACT PROVISIONS. The following  
 41 provisions shall apply to the sale of motor vehicle service contracts in the  
 42 state:

43 (1) A motor vehicle service contract may not be issued, sold or offered  
 44 for sale in this state unless the contract contains a statement in substan-  
 45 tially the following form: "Obligations of the motor vehicle service con-  
 46 tract provider under this motor vehicle service contract are guaranteed un-  
 47 der a service contract liability policy. Should the motor vehicle service  
 48 contract provider fail to pay or provide service on any claim within sixty  
 49 (60) days after proof of loss has been filed, the motor vehicle service con-

1 tract holder is entitled to make a claim directly against the insurance com-  
2 pany." The motor vehicle service contract shall also conspicuously state the  
3 name and address and a toll-free claim service number of the insurer.

4 (2) The motor vehicle service contract must identify the motor vehicle  
5 service contract provider, the seller and the motor vehicle service contract  
6 holder.

7 (3) The motor vehicle service contract must conspicuously state the to-  
8 tal purchase price of the motor vehicle service contract.

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

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

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

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

22 (8) The motor vehicle service contract must state the terms, restric-  
23 tions or conditions governing cancellation of the service contract by either  
24 the motor vehicle service contract holder or motor vehicle service contract  
25 provider.

26 (9) A motor vehicle service contract may not be issued, sold or offered  
27 for sale in this state unless the contract contains a statement in substan-  
28 tially the following form: "Coverage afforded under this motor vehicle  
29 service contract is not guaranteed by the Idaho insurance guaranty associa-  
30 tion."

31 (10) No motor vehicle service contract may be issued, sold or offered in  
32 this state unless the service contract conspicuously states that the motor  
33 vehicle service contract holder is allowed to cancel the service contract:

34 (a) Within thirty (30) days of its purchase if no claim has been made and  
35 shall receive a full refund of the service contract retail price, less  
36 any cancellation fee stated in the service contract not exceeding fifty  
37 dollars (\$50.00); or

38 (b) At any other time and shall receive a pro rata refund of the ser-  
39 vice contract retail price for the unexpired term of the service con-  
40 tract, based on the number of the lapsed months, miles or such other mea-  
41 sure that is clearly disclosed in the service contract, less any cancel-  
42 lation fees stated in the service contract not exceeding fifty dollars  
43 (\$50.00).

44 41-6206. MOTOR VEHICLE SERVICE CONTRACT REQUIREMENTS. Before the sale  
45 of any motor vehicle service contract, the motor vehicle service contract  
46 provider shall give written notice to the customer clearly disclosing that  
47 the purchase of the contract is not required either to purchase or to obtain  
48 financing for a motor vehicle. No motor vehicle service contract may be used  
49 in this state by any motor vehicle service contract provider 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 41-6207. PROHIBITED ACTS. (1) A motor vehicle service contract  
11 provider may not use in its name, contracts or literature:

- 12 (a) Any of the words "insurance," "casualty," "surety," "mutual" or any  
13 other words descriptive of the insurance, casualty or surety business;  
14 or
- 15 (b) A name deceptively similar to the name or description of any insur-  
16 ance or surety corporation, or any other motor vehicle service contract  
17 provider.

18 (2) A motor vehicle service contract provider, its representative or  
19 any other person may not make, permit or allow to be made any false, deceptive  
20 or misleading statement, or may not deliberately omit any material statement  
21 that would be considered misleading if omitted, in connection with the sale,  
22 offer to sell or advertisement of a motor vehicle service contract.

23 (3) It shall be unlawful for any company to directly or indirectly  
24 represent in any manner, whether by written solicitation, advertisement or  
25 telemarketing, a false, deceptive or misleading statement with regard to:

- 26 (a) Such company's affiliation with a motor vehicle manufacturer,  
27 recreational vehicle manufacturer or dealer;
- 28 (b) Such company's possession of information regarding a motor vehi-  
29 cle owner's current motor vehicle manufacturer's or recreational vehi-  
30 cle manufacturer's original equipment warranty;
- 31 (c) All indications that such company's records show that a motor ve-  
32 hicle or recreational vehicle owner's current motor vehicle manufac-  
33 turer's or recreational vehicle manufacturer's original equipment war-  
34 ranty is nearing or past expiration;
- 35 (d) A requirement that such motor vehicle or recreational vehicle owner  
36 register for a new motor vehicle service contract with such company  
37 to maintain coverage under the motor vehicle or recreational vehicle  
38 owner's current service contract or manufacturer's original equipment  
39 warranty.

40 41-6208. RECORDKEEPING REQUIREMENTS. (1) All motor vehicle service  
41 contract providers shall keep accurate accounts, books and records concern-  
42 ing transactions regulated under the provisions of this act. A motor vehicle  
43 service contract provider's accounts, books and records shall include:

- 44 (a) Copies of all motor vehicle service contracts issued;
- 45 (b) The name and address of each motor vehicle service contract holder;
- 46 and
- 47 (c) Claim files.

1 (2) All motor vehicle service contract providers shall retain all  
2 records pertaining to each motor vehicle service contract holder for at  
3 least three (3) years after the specified period of coverage has expired.  
4 It shall be the responsibility of the insurer issuing the liability policy  
5 to make an examination at least every two (2) years of each motor vehicle  
6 service contract provider that they insure to assure that each provider is in  
7 compliance with the recordkeeping requirements.

8 41-6209. LICENSING. Motor vehicle service contract providers, and  
9 persons marketing, administering, selling or offering to sell motor vehicle  
10 service contracts for motor vehicle service contract providers, are not  
11 required to obtain a license under title 41, Idaho Code. A motor vehicle  
12 service contract provider shall not be subject to regulation under any pro-  
13 vision of title 41, Idaho Code, not made expressly applicable to it.

14 41-6210. GUARANTY. The provisions of the Idaho insurance guaranty as-  
15 sociation act, chapter 36, title 41, Idaho Code, shall not apply to any motor  
16 vehicle service contract, mechanical breakdown insurance or motor vehicle  
17 service contract liability insurance policy, as defined in this chapter, and  
18 no claim under any motor vehicle service contract, mechanical breakdown in-  
19 surance or motor vehicle service contract liability insurance policy shall  
20 be deemed to be a "covered claim" within the scope of section 41-3605(7),  
21 Idaho Code, as to which the Idaho insurance guaranty association has any  
22 obligation under section 41-3608, Idaho Code, or other provisions of chapter  
23 36, title 41, Idaho Code.

24 41-6211. ENFORCEMENT AND PENALTIES. (1) The director may conduct ex-  
25 aminations of motor vehicle service contract providers, administrators,  
26 insurers or other persons to enforce the provisions of this chapter and to  
27 protect motor vehicle service contract holders in this state. Upon request  
28 of the director, the provider shall make available to the director all ac-  
29 counts, books and records concerning motor vehicle service contracts sold or  
30 issued by the provider that are necessary to enable the director to reason-  
31 ably determine compliance or noncompliance with this chapter.

32 (2) The following provisions of chapter 2, title 41, Idaho Code, gener-  
33 ally addressing the director's inquiry powers, orders and conduct of admin-  
34 istrative proceedings apply to persons subject to this chapter:

35 (a) Sections 41-210 through 41-215, Idaho Code;

36 (b) Sections 41-220 through 41-223, 41-225, and 41-227, Idaho Code; and

37 (c) Sections 41-229 through 41-240, and section 41-247, Idaho Code.

38 (3) Any company that violates any provisions of this act may, in the di-  
39 rector's discretion, be subject to a civil penalty of one thousand dollars  
40 (\$1,000) per violation, limited to a total of twenty-five thousand dollars  
41 (\$25,000) in the aggregate for all like violations.

42 (4) This act does not create a separate civil cause of action, but does  
43 not preclude a cause of action under the Idaho consumer protection act, chap-  
44 ter 6, title 48, Idaho Code, or any applicable common law or statutory causes  
45 of action.

46 SECTION 3. That Section 41-114A, Idaho Code, be, and the same is hereby  
47 amended to read as follows:

1           41-114A. SERVICE CONTRACTS. (1) The term "service contract," as used  
2 in this section, means a contract or agreement for a separately stated con-  
3 sideration for a specific duration to perform the repair, replacement or  
4 maintenance of property or to reimburse, in whole or in part, the owner of  
5 such property for the repair, replacement or maintenance of property if an  
6 operational or structural failure is due to a defect in materials or man-  
7 ufacturing or to normal wear and tear. A service contract may contain a  
8 provision for incidental payment under such contract where service, repair  
9 or replacement is not feasible or economical. Service contracts, other than  
10 motor vehicle service contracts subject to the provisions of the Idaho motor  
11 vehicle service contract act, chapter ~~28~~ 62, title ~~49~~ 41, Idaho Code, may  
12 provide for the repair, replacement or maintenance of property for damage  
13 resulting from power surges and accidental damage from handling.

14           (2) The marketing, sale, offering for sale, issuance, making, propos-  
15 ing to make, and administration of a service contract is exempt from the pro-  
16 visions of title 41, Idaho Code.

17           (3) Service contracts shall be subject to the provisions of the Idaho  
18 consumer protection act, chapter 6, title 48, Idaho Code.