

IN THE SENATE

SENATE BILL NO. 1077, As Amended

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO INSURANCE; REPEALING CHAPTER 28, TITLE 49, IDAHO CODE, RELAT-
2 ING TO MOTOR VEHICLE SERVICE CONTRACTS; AMENDING TITLE 41, IDAHO CODE,
3 BY THE ADDITION OF A NEW CHAPTER 62, TITLE 41, IDAHO CODE, TO PROVIDE
4 A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE REQUIREMENTS FOR SERVICE
5 CONTRACT REIMBURSEMENT POLICIES, TO ESTABLISH MOTOR VEHICLE SERVICE
6 CONTRACT PROVISIONS, TO PROVIDE REQUIREMENTS FOR MOTOR VEHICLE SERVICE
7 CONTRACTS, TO SPECIFY UNFAIR AND DECEPTIVE ACTS OR PRACTICES AND TO PRO-
8 VIDE PENALTIES, TO PROHIBIT CERTAIN ACTS, TO ESTABLISH RECORDKEEPING
9 REQUIREMENTS, TO PROVIDE THAT CERTAIN LICENSING IS NOT REQUIRED, TO
10 CLARIFY THE APPLICABILITY OF THE IDAHO INSURANCE GUARANTY ASSOCIATION
11 ACT AND TO PROVIDE FOR ENFORCEMENT; AND AMENDING TITLE 41, IDAHO CODE,
12 BY THE ADDITION OF A NEW CHAPTER 63, TITLE 41, IDAHO CODE, TO PROVIDE A
13 SHORT TITLE AND SCOPE, TO DEFINE TERMS, TO PROVIDE REQUIREMENTS FOR A
14 THEFT PROTECTION PROGRAM WARRANTY REIMBURSEMENT POLICY, TO ESTABLISH
15 THEFT PROTECTION PROGRAM WARRANTY PROVISIONS, TO PROVIDE REQUIREMENTS
16 FOR A THEFT PROTECTION PROGRAM WARRANTY, TO PROHIBIT DECEPTIVE SOLICI-
17 TATION AND TO PROVIDE PENALTIES, TO PROHIBIT CERTAIN ACTS, TO ESTABLISH
18 RECORDKEEPING REQUIREMENTS, TO PROVIDE THAT CERTAIN LICENSING IS NOT
19 REQUIRED, TO CLARIFY THE APPLICABILITY OF THE IDAHO INSURANCE GUARANTY
20 ASSOCIATION ACT AND TO PROVIDE FOR ENFORCEMENT.
21

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

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24 hereby repealed.

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

28 CHAPTER 62

29 IDAHO MOTOR VEHICLE SERVICE CONTRACT ACT

30 41-6201. SHORT TITLE. The provisions of this chapter shall be known
31 as the "Idaho Motor Vehicle Service Contract Act." This chapter shall apply
32 to all motor vehicle service contracts offered for sale in the state by any
33 person other than the motor vehicle manufacturer or its affiliates and sub-
34 sidiaries and shall not apply to the customary and usual performance guaran-
35 tees or warranties offered at no additional charge by motor vehicle manufac-
36 turers or their affiliates and subsidiaries in connection with the sale of
37 motor vehicles.

38 41-6202. DEFINITIONS. As used in this chapter:

39 (1) "Administrator" means the person who is responsible for the admin-
40 istration of the motor vehicle service contract.

- 1 (2) "Director" means the director of the state department of insurance.
- 2 (3) "Liability insurance policy" means a policy of insurance providing
3 coverage for all contractual obligations incurred by a motor vehicle service
4 contract provider under the terms of a motor vehicle service contract issued
5 or sold by the motor vehicle service contract provider.
- 6 (4) "Mechanical breakdown insurance" means a policy, contract or
7 agreement that undertakes to perform or provide repair or replacement ser-
8 vice or indemnification for such service for the operational or structural
9 failure of a motor vehicle due to defect in materials or workmanship or nor-
10 mal wear and tear and that is issued by an insurance company authorized to do
11 business in this state.
- 12 (5) "Motor vehicle service contract" means a contract or agreement
13 given for separately stated consideration that undertakes to perform or
14 provide repair or replacement service or indemnification for such service
15 for the operational or structural failure of a motor vehicle due to defect
16 in materials or workmanship or normal wear and tear but shall not include
17 mechanical breakdown insurance. A motor vehicle service contract may pro-
18 vide full or partial reimbursement for other expenses incurred by the motor
19 vehicle service contract holder as a direct and proximate result of an op-
20 erational or structure failure or reduced operating efficiency if included
21 in the contract coverage including, but not limited to, towing, rental car,
22 lodging, motor club, maintenance benefits, roadside assistance and meal
23 expenses. An agreement whereby an employer, or a third party contracted by
24 the employer, provides mileage reimbursement and incidental maintenance and
25 repairs to its employees for personal vehicles used for business purposes
26 shall not be considered a motor vehicle service contract or a contract of
27 insurance. "Motor vehicle service contract" also means a contract or agree-
28 ment that provides one (1) or more of the following:
- 29 (a) The repair or replacement of tires and/or wheels on a motor vehicle
30 damaged as a result of coming into contact with road hazards;
- 31 (b) The removal of dents, dings or creases on a motor vehicle that can
32 be repaired using the process of paintless dent removal without affect-
33 ing the existing paint finish and without replacing vehicle body pan-
34 els, sanding, bonding or painting;
- 35 (c) The repair of chips or cracks in or the replacement of motor vehicle
36 windshields as a result of damage caused by road hazards;
- 37 (d) The replacement of a motor vehicle key or key fob in the event that
38 the key or key fob becomes inoperable or is lost or stolen; or
- 39 (e) Other similar services if not inconsistent with this chapter and if
40 not disapproved by the director.
- 41 (6) "Motor vehicle service contract holder" means a person who pur-
42 chases a motor vehicle service contract or a permitted transferee.
- 43 (7) "Motor vehicle service contract provider" means a person who is
44 contractually obligated to a motor vehicle service contract holder under the
45 terms of a motor vehicle service contract.
- 46 (8) "Person" means an individual or a company, an association, an or-
47 ganization, a partnership, a business trust, a corporation or another form
48 of legal entity.

1 (9) "Road hazard" means a hazard that is encountered while driving a mo-
2 tor vehicle and that may include, but is not limited to, potholes, rocks,
3 wood debris, metal parts, glass, plastic, curbs or composite scraps.

4 41-6203. SERVICE CONTRACT REIMBURSEMENT POLICY REQUIREMENTS. (1)
5 Mandatory insurance.

6 (a) No motor vehicle service contract shall be issued, sold or of-
7 fered for sale in this state unless the motor vehicle service contract
8 provider is insured under a service contract liability policy issued
9 by an insurer admitted to do business in this state or as otherwise
10 provided in subsection (2) of this section. The policy shall provide
11 that the insurer will pay to or on behalf of the motor vehicle service
12 contract provider all sums that the motor vehicle service contract
13 provider is legally obligated to pay according to the motor vehicle
14 service contract provider's contractual obligations under the motor
15 vehicle service contracts issued or sold by the motor vehicle service
16 contract provider.

17 (b) All service contract liability policies insuring motor vehicle
18 service contracts issued, sold or offered for sale in this state must
19 conspicuously state that, upon failure of the motor vehicle service
20 contract provider to perform under the contract, the issuer of the pol-
21 icy shall pay on behalf of the provider any sums that the provider is
22 legally obligated to perform, according to the provider's contractual
23 obligations under the motor vehicle service contracts issued or sold by
24 the provider.

25 (2) The service contract liability policy shall be obtained from an in-
26 surer authorized, registered or otherwise permitted to transact insurance
27 in this state or a surplus lines insurer meeting the requirements of chapter
28 12, title 41, Idaho Code, and which insurer or surplus lines insurer meets
29 one (1) of the following requirements:

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

32 (ii) Annually file copies of the insurer's financial statements,
33 its national association of insurance commissioners (NAIC) annual
34 statement and the actuarial certification required by and filed in
35 the insurer's state of domicile; or

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

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

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

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

1 (4) Cancellation of service contract liability insurance policy. The
2 issuer of a service contract liability policy may not cancel the policy until
3 a thirty (30) days' advance notice of cancellation has been mailed or deliv-
4 ered to each motor vehicle service contract provider. The cancellation of a
5 service contract liability policy shall not reduce the insurer's responsi-
6 bility for motor vehicle service contracts issued by motor vehicle service
7 contract providers prior to the date of the cancellation.

8 41-6204. MOTOR VEHICLE SERVICE CONTRACT PROVISIONS. The following
9 provisions shall apply to the sale of motor vehicle service contracts in the
10 state:

11 (1) A motor vehicle service contract may not be issued, sold or offered
12 for sale in this state unless the contract contains a statement in substan-
13 tially the following form: "Obligations of the motor vehicle service con-
14 tract provider under this motor vehicle service contract are guaranteed un-
15 der a service contract liability policy. Should the motor vehicle service
16 contract provider fail to pay or provide service on any claim within sixty
17 (60) days after proof of loss has been filed, the motor vehicle service con-
18 tract holder is entitled to make a claim directly against the insurance com-
19 pany." The motor vehicle service contract shall also conspicuously state the
20 name and address and a toll-free claim service telephone number of the in-
21 surer.

22 (2) The motor vehicle service contract must identify the motor vehicle
23 service contract provider, the seller and the motor vehicle service contract
24 holder.

25 (3) The motor vehicle service contract must conspicuously state the to-
26 tal purchase price of the motor vehicle service contract; however, the pur-
27 chase price is not required to be preprinted on the motor vehicle service
28 contract and may be negotiated with the consumer at the time of sale.

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

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

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

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

42 (8) The motor vehicle service contract must state the terms, restric-
43 tions or conditions governing cancellation of the service contract by either
44 the motor vehicle service contract holder or motor vehicle service contract
45 provider.

46 (9) A motor vehicle service contract may not be issued, sold or offered
47 for sale in this state unless the contract contains a statement in substan-
48 tially the following form: "Coverage afforded under this motor vehicle

1 service contract is not guaranteed by the Idaho Insurance Guaranty Associa-
2 tion."

3 (10) Cancellation. No motor vehicle service contract may be issued,
4 sold or offered in this state unless the service contract conspicuously
5 states that the motor vehicle service contract holder is allowed to cancel
6 the service contract:

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

11 (b) At any other time and receive a pro rata refund of the service con-
12 tract retail price for the unexpired term of the service contract, based
13 on the number of the lapsed months, miles or such other measure that is
14 clearly disclosed in the service contract, less any cancellation fees
15 stated in the service contract not exceeding fifty dollars (\$50.00).

16 41-6205. MOTOR VEHICLE SERVICE CONTRACT REQUIREMENTS. Before the sale
17 of any motor vehicle service contract, the motor vehicle service contract
18 provider shall give written notice to the customer clearly disclosing that
19 the purchase of the contract is not required either to purchase or to obtain
20 financing for a motor vehicle. No motor vehicle service contract may be used
21 in this state by any motor vehicle service contract provider if the contract:

22 (1) In any respect violates or does not comply with the laws of this
23 state;

24 (2) Contains or incorporates by reference any inconsistent, ambiguous
25 or misleading clauses or any exceptions and conditions that affect the risk
26 assumed or to be assumed in the general coverage of the contract;

27 (3) Has any title, heading or other indication of its provisions that is
28 misleading; or

29 (4) Is printed or otherwise reproduced in any manner that renders any
30 material provision of the contract substantially illegible.

31 41-6206. UNFAIR AND DECEPTIVE ACTS OR PRACTICES -- PENALTIES. (1) It
32 shall be unlawful for a service contract provider to commit any of the de-
33 ceptive and unfair acts or practices specified in sections 41-1301 through
34 41-1305, 41-1308, 41-1309, 41-1311 and 41-1312, Idaho Code. Violations of
35 these sections shall be subject to enforcement and penalty by the director
36 pursuant to sections 41-1321 and 41-1327, Idaho Code.

37 (2) It shall be unlawful for a service contract provider to commit any
38 of the deceptive and unfair acts or practices specified in section 41-1329,
39 Idaho Code. Violations of this section shall be subject to enforcement and
40 penalty by the director pursuant to section 41-1329A, Idaho Code.

41 41-6207. PROHIBITED ACTS. (1) A motor vehicle service contract
42 provider may not use in its name, contracts or literature:

43 (a) Any of the following words: insurance, casualty, surety, mutual or
44 any other words descriptive of the insurance, casualty or surety busi-
45 ness; or

1 (b) A name deceptively similar to the name or description of any insur-
2 ance or surety corporation, or any other motor vehicle service contract
3 provider.

4 (2) A motor vehicle service contract provider, its representative or
5 any other person may not make, permit or allow to be made any false, deceptive
6 or misleading statement, or deliberately omit any material statement that
7 would be considered misleading if omitted, in connection with the sale, of-
8 fer to sell or advertisement of a motor vehicle service contract.

9 (3) A motor vehicle service contract provider, its representative or
10 any other person may not make, permit or allow to be made any advertisement to
11 sell a motor vehicle service contract that is false or misleading.

12 41-6208. RECORDKEEPING REQUIREMENTS. All motor vehicle service con-
13 tract providers shall keep accurate accounts, books and records concerning
14 transactions regulated under the provisions of this act. A motor vehicle
15 service contract provider's accounts, books and records shall include:

16 (1) Copies of all motor vehicle service contracts issued;

17 (2) The name and address of each motor vehicle service contract holder;
18 and

19 (3) Claim files.

20 All motor vehicle service contract providers shall retain all records
21 pertaining to each motor vehicle service contract holder for at least three
22 (3) years after the specified period of coverage has expired. It shall be the
23 responsibility of the insurer issuing the liability policy to make an exam-
24 ination at least every two (2) years of each motor vehicle service contract
25 provider that they insure to assure that each provider is in compliance with
26 the recordkeeping requirements.

27 41-6209. LICENSING. Motor vehicle service contract providers and
28 persons marketing, administering, selling or offering to sell motor vehi-
29 cle service contracts for motor vehicle service contract providers are not
30 required to obtain a license under title 41, Idaho Code. A service contract
31 provider shall not be subject to regulation under any provision of title 41,
32 Idaho Code, not made expressly applicable to it.

33 41-6210. GUARANTY. The provisions of the Idaho insurance guaranty as-
34 sociation act, chapter 36, title 41, Idaho Code, shall not apply to any motor
35 vehicle service contract, mechanical breakdown insurance or motor vehicle
36 service contract liability insurance policy, as defined in this chapter, and
37 no claim under any motor vehicle service contract, mechanical breakdown in-
38 surance or motor vehicle service contract liability insurance policy shall
39 be deemed to be a "covered claim" within the scope of section 41-3605(7),
40 Idaho Code, as to which the Idaho insurance guaranty association has any
41 obligation under section 41-3608, Idaho Code, or other provisions of chapter
42 36, title 41, Idaho Code.

43 41-6211. ENFORCEMENT BY DIRECTOR. (1) The director may conduct exami-
44 nations of motor vehicle service contract providers, administrators, insur-
45 ers or other persons to enforce the provisions of this chapter and protect
46 motor vehicle service contract holders in this state. Upon request of the

1 director, the provider shall make available to the director all accounts,
2 books and records concerning motor vehicle service contracts sold or issued
3 by the provider that are necessary to enable the director to reasonably de-
4 termine compliance or noncompliance with this chapter.

5 (2) The director may take action that is necessary or appropriate to en-
6 force the provisions of this chapter to protect motor vehicle service con-
7 tract holders in this state.

8 (3) This chapter does not create a separate civil cause of action.

9 SECTION 3. That Title 41, Idaho Code, be, and the same is hereby amended
10 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
11 ter 63, Title 41, Idaho Code, and to read as follows:

12 CHAPTER 63

13 IDAHO VEHICLE THEFT PROTECTION PROGRAM ACT

14 41-6301. SHORT TITLE -- SCOPE. The provisions of this chapter shall
15 be known as the "Idaho Vehicle Theft Protection Program Act." This chapter
16 shall apply to all theft protection programs offered for sale in the state by
17 any person other than the motor vehicle manufacturer and shall not apply to
18 the customary and usual performance guarantees or warranties offered at no
19 additional charge by motor vehicle manufacturers in connection with the sale
20 of motor vehicles.

21 41-6302. DEFINITIONS. As used in this chapter:

22 (1) "Administrator" means the person who is responsible for the admin-
23 istration of a theft protection program warranty.

24 (2) "Director" means the director of the state department of insurance.

25 (3) "Incidental costs" means expenses specified in a theft protection
26 program warranty that are incurred by the warranty holder due to the failure
27 of a theft protection program to perform as provided in the contract. Inci-
28 dental costs may include, without limitation, insurance policy deductibles,
29 rental vehicle charges, the difference between the actual value of the
30 stolen vehicle at the time of theft and the cost of a replacement vehicle,
31 sales taxes, registration fees, transaction fees and mechanical inspection
32 fees. Incidental costs may be reimbursed in either a fixed amount specified
33 in the theft protection program warranty or by use of a formula itemizing
34 specific incidental costs incurred by the warranty holder.

35 (4) "Liability insurance policy" means a policy of insurance providing
36 coverage for all contractual obligations incurred by a warrantor under the
37 terms of a theft protection program warranty issued by the warrantor.

38 (5) "Person" means an individual or a company, an association, an or-
39 ganization, a partnership, a business trust, a corporation or another form
40 of legal entity.

41 (6) "Theft protection program" means a device or system that:

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

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

44 and

45 (c) Includes a theft protection program warranty.

46 For purposes of this subsection, the term "theft protection program" in-
47 cludes, but is not limited to, alarm systems, body part marking products,

1 steering locks, window etch products, pedal and ignition locks, fuel and ig-
2 nition kill switches, and electronic, radio and satellite tracking devices.
3 A theft protection program does not include fuel additives, oil additives,
4 or other chemical products applied to the engine, transmission or fuel sys-
5 tem, or interior or exterior surfaces of a motor vehicle.

6 (7) "Theft protection program warranty" means a written agreement by
7 a warrantor providing that if the theft protection program fails to prevent
8 loss or damage to a motor vehicle from theft, then the warrantor will pay to
9 or on behalf of the warranty holder specified incidental costs as a result of
10 the failure of the theft protection program to perform pursuant to the terms
11 of the theft protection program warranty.

12 (8) "Warrantor" means a person who is contractually obligated to the
13 warranty holder under the terms of a theft protection program warranty.

14 (9) "Warranty holder" means the person who purchases a theft protection
15 program, any authorized transferee or assignee of the purchaser or any other
16 person legally assuming the purchaser's rights under the theft protection
17 program warranty.

18 41-6303. THEFT PROTECTION PROGRAM WARRANTY REIMBURSEMENT POLICY RE-
19 QUIREMENTS. (1) Mandatory insurance.

20 (a) No theft protection program warranty shall be issued in this state
21 unless the warrantor is insured under a theft protection program war-
22 ranty contract liability policy issued by an insurer admitted to do
23 business in this state or as otherwise provided in subsection (2) of
24 this section. The policy shall provide that the insurer will pay to or
25 on behalf of the warrantor all sums that the warrantor is legally obli-
26 gated to pay according to the warrantor's contractual obligations under
27 the theft protection program warranties issued by the warrantor.

28 (b) All theft protection program warranty liability policies insuring
29 theft protection program warranties issued in this state must conspic-
30 uously state that, upon failure of the warrantor to perform under the
31 contract, the issuer of the policy shall pay on behalf of the warrantor
32 any sums that the warrantor is legally obligated to perform, according
33 to the warrantor's contractual obligations under the theft protection
34 program warranties issued by the warrantor.

35 (2) The theft protection program warranty liability policy shall be
36 obtained from an insurer authorized, registered or otherwise permitted to
37 transact insurance in this state or a surplus lines insurer meeting the re-
38 quirements of chapter 12, title 41, Idaho Code, and which insurer or surplus
39 lines insurer meets one (1) of the following requirements:

- 40 (a) (i) Maintain surplus as to policyholders and paid-in capital of at
41 least fifteen million dollars (\$15,000,000); and
42 (ii) Annually file copies of the insurer's financial statements,
43 its national association of insurance commissioners (NAIC) annual
44 statement and the actuarial certification required by and filed in
45 the insurer's state of domicile; or
46 (b) (i) Maintain surplus as to policyholders and paid-in capital of
47 less than fifteen million dollars (\$15,000,000) but at least equal
48 to ten million dollars (\$10,000,000);

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

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

7 (3) Premiums. Premiums are defined as those funds paid by or on behalf
8 of the warrantor to the liability insurance policy issuer for such risks cov-
9 ered under such liability insurance policy. Such premiums or the method of
10 developing such premiums shall be filed with the director for approval.

11 (4) Cancellation of theft protection program warranty liability insur-
12 ance policy. The issuer of a theft protection program warranty liability
13 policy may not cancel the policy until a thirty (30) days' advance notice of
14 cancellation has been mailed or delivered to each warrantor. The cancella-
15 tion of a theft protection program warranty liability policy shall not re-
16 duce the insurer's responsibility for theft protection program warranties
17 issued by warrantors prior to the date of the cancellation.

18 41-6304. THEFT PROTECTION PROGRAM WARRANTY PROVISIONS. The following
19 provisions shall apply to the issuance of theft protection program war-
20 ranties in the state:

21 (1) A theft protection program warranty may not be issued in this state
22 unless the warranty contains a statement in substantially the following
23 form: "Obligations of the warrantor under this theft protection program
24 warranty are guaranteed under a theft protection program warranty liability
25 policy. Should the warrantor fail to pay or provide service on any claim
26 within sixty (60) days after proof of loss has been filed, the warranty
27 holder is entitled to make a claim directly against the insurance company."
28 The theft protection program warranty shall also conspicuously state the
29 name and address and a toll-free claim service telephone number of the in-
30 surer.

31 (2) The theft protection program warranty must identify the warrantor,
32 the seller of the theft protection program and the warranty holder.

33 (3) The theft protection program warranty must conspicuously state the
34 total purchase price of the theft protection program; however, the purchase
35 price is not required to be preprinted on the theft protection program war-
36 ranty and may be negotiated with the consumer at the time of sale.

37 (4) The theft protection program warranty must conspicuously state the
38 existence of any deductible amount.

39 (5) The theft protection program warranty must specify the merchandise
40 and services to be provided and any limitations, exceptions or exclusions.

41 (6) The theft protection program warranty must state any terms,
42 restrictions or conditions governing the transferability of the theft pro-
43 tection program warranty.

44 (7) The theft protection program warranty must state the terms, re-
45 strictions or conditions governing cancellation of the theft protection
46 program warranty by either the warranty holder or warrantor, if any.

47 (8) A theft protection program warranty may not be issued in this state
48 unless the theft protection program warranty contains a statement in sub-
49 stantially the following form: "Coverage afforded under this theft protec-

1 tion program warranty is not guaranteed by the Idaho Insurance Guaranty As-
2 sociation."

3 41-6305. THEFT PROTECTION PROGRAM WARRANTY REQUIREMENTS. Before the
4 issuance of any theft protection program warranty, the warrantor shall give
5 written notice to the customer clearly disclosing that the purchase of the
6 contract is not required either to purchase or to obtain financing for a mo-
7 tor vehicle. No theft protection program warranty may be used in this state
8 by any warrantor if the contract:

9 (1) In any respect violates, or does not comply with, the laws of this
10 state;

11 (2) Contains or incorporates by reference any inconsistent, ambiguous
12 or misleading clauses or any exceptions and conditions that affect the risk
13 assumed or to be assumed in the general coverage of the contract;

14 (3) Has any title, heading or other indication of its provisions that is
15 misleading; or

16 (4) Is printed or otherwise reproduced in any manner that renders any
17 material provision of the contract substantially illegible.

18 41-6306. DECEPTIVE SOLICITATION OF THEFT PROTECTION PROGRAMS PROHIB-
19 ITED -- PENALTIES. (1) It shall be unlawful for a warrantor to commit any
20 of the deceptive and unfair acts or practices specified in sections 41-1301
21 through 41-1305, 41-1308, 41-1309, 41-1311 and 41-1312, Idaho Code. Viola-
22 tions of these sections shall be subject to enforcement and penalty by the
23 director pursuant to sections 41-1321 and 41-1327, Idaho Code.

24 (2) It shall be unlawful for a warrantor to commit any of the deceptive
25 and unfair acts or practices specified in section 41-1329, Idaho Code. Vi-
26 olations of this section shall be subject to enforcement and penalty by the
27 director pursuant to section 41-1329A, Idaho Code.

28 41-6307. PROHIBITED ACTS. (1) A warrantor may not use in its name, con-
29 tracts or literature:

30 (a) Any of the following words: insurance, casualty, surety, mutual or
31 any other words descriptive of the insurance, casualty or surety busi-
32 ness; or

33 (b) A name deceptively similar to the name or description of any insur-
34 ance or surety corporation, or any other warrantor.

35 (2) A warrantor, its representative or any other person may not make,
36 permit or allow to be made any false, deceptive or misleading statement, or
37 deliberately omit any material statement that would be considered mislead-
38 ing if omitted, in connection with the sale of a theft protection program.

39 (3) A warrantor, its representative or any other person may not make,
40 permit or allow to be made any advertisement to sell a theft protection pro-
41 gram that is false or misleading.

42 41-6308. RECORDKEEPING REQUIREMENTS. All warrantors shall keep accu-
43 rate accounts, books and records concerning transactions regulated under
44 the provisions of this act. A warrantor's accounts, books and records shall
45 include:

46 (1) Copies of all theft protection program warranties issued;

- 1 (2) The name and address of each warranty holder; and
2 (3) Claim files.

3 All warrantors shall retain all records pertaining to each warranty
4 holder for at least three (3) years after the specified period of coverage
5 has expired. It shall be the responsibility of the insurer issuing the li-
6 ability policy to make an examination at least every two (2) years of each
7 warrantor that they insure to assure that each provider is in compliance with
8 the recordkeeping requirements.

9 41-6309. LICENSING. Warrantors, and persons marketing, administer-
10 ing, selling or offering to sell theft protection programs for warrantors
11 are not required to obtain a license under title 41, Idaho Code. A theft
12 protection program warrantor shall not be subject to any provision of title
13 41, Idaho Code, not made expressly applicable to it.

14 41-6310. GUARANTY. The provisions of the Idaho insurance guaranty as-
15 sociation act, chapter 36, title 41, Idaho Code, shall not apply to any theft
16 protection program warranty or theft protection program warranty liability
17 insurance policy, as defined in this chapter, and no claim under any theft
18 protection program warranty or theft protection program warranty liability
19 insurance policy shall be deemed to be a "covered claim" within the scope
20 of section 41-3605(7), Idaho Code, as to which the Idaho insurance guaranty
21 association has any obligation under section 41-3608, Idaho Code, or other
22 provisions of chapter 36, title 41, Idaho Code.

23 41-6311. ENFORCEMENT BY DIRECTOR. (1) The director may conduct exami-
24 nations of warrantors, administrators, insurers or other persons to enforce
25 the provisions of this chapter and protect warranty holders in this state.
26 Upon request of the director, the warrantor shall make available to the di-
27 rector all accounts, books and records concerning theft protection program
28 warranties issued by the provider that are necessary to enable the director
29 to reasonably determine compliance or noncompliance with this chapter.

30 (2) The director may take action that is necessary or appropriate to
31 enforce the provisions of this chapter to protect warranty holders in this
32 state.

33 (3) This chapter does not create a separate civil cause of action.