



2022 South Dakota Legislature
Senate Bill 160
ENROLLED

AN ACT

ENTITLED An Act to exempt motor vehicle service contracts from the insurance code.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 58-1-2 be AMENDED:

58-1-2. Terms used in this title mean:

- (1) "Alien insurer," one formed under the laws of any country or jurisdiction other than the United States of America, its states, districts, territories, and commonwealths;
- (2) "Authorized insurer," one authorized, by a subsisting certificate of authority issued by the director, to engage in the insurance business in this state;
- (3) "Certificate of authority," permission granted to an insurer to issue policies or make contracts of insurance in this state;
- (4) "Director," the director of the Division of Insurance;
- (5) "Division," the Division of Insurance of the Department of Labor and Regulation;
- (6) "Domestic insurer," one formed under the laws of this state;
- (7) "Foreign insurer," one formed under the laws of any jurisdiction other than this state; except where distinguished by context, foreign insurer includes an alien insurer;
- (8) "Insurance," a contract whereby one undertakes to indemnify another or to pay or provide a specified or determinable amount or benefit upon determinable contingencies;
- (9) "Insurance business," includes the transaction of all matters pertaining to a contract of insurance, both before and after the effectuation of that contract, and all matters arising out of that contract or any claim thereunder;
- (10) "Insurer," every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance;

- (11) "License," permission granted to an agent or broker to engage in those activities permitted by such persons under this title;
- (12) Repealed by SL 2001, ch 263, § 1.
- (13) "Mechanical breakdown insurance," any contract or agreement, issued by an authorized insurer, to perform or indemnify for a specific duration the repair, replacement, or maintenance of property for operational or structural failure due to a defect in materials, workmanship, or normal wear and tear;
- (14) "Person," an individual, insurer, company, association, organization, Lloyds, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, and any other legal entity;
- (15) "Principal office" or "principal place of business," the office or regional home office from which the business affairs of the insurer are directed and managed;
- (16) "Producer," any person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. The terms also means an insurance agent;
- (17) "State," when used in context signifying a jurisdiction other than the State of South Dakota, a state, the District of Columbia, a territory, commonwealth, or possession of the United States of America, or a province of the Dominion of Canada; and
- (18) "Unauthorized insurer," one which does not hold a subsisting certificate of authority issued by the director to engage in the insurance business in this state.
- (19) "Vehicle theft protection product," a device or system installed on or applied to a motor vehicle that is designed to prevent loss or damage to a motor vehicle from theft.

Section 2. That § 58-1-3 be AMENDED:

58-1-3. No provision of this title applies with respect to:

- (1) Fraternal benefit societies, except as stated in chapter 58-37A;
- (2) Bail bondsmen, other than corporate sureties and their agents, except as stated in chapter 58-22;
- (3) Motor vehicle service contracts or agreements to perform or indemnify for a specific duration the repair, replacement, or maintenance of motor vehicles for 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 towing, rental, and emergency road service. Consideration for a motor vehicle service contract must be stated separately from

the price of the motor vehicle. A motor vehicle service contract may also provide for:

- (a) The repair or replacement of motor vehicle windshields, tires, or wheels that are damaged as a result of 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 replacing vehicle body panels, sanding, bonding, or painting;
 - (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; or
 - (d) The use, repair, replacement, or maintenance of property; indemnification for repair, replacement, or maintenance, due to excess wear; and the use, damage, or excess mileage that result in a lease-end charge, or any other charge for damage that is deemed as excess wear and use by a lessor under a motor vehicle lease; provided any such payment does not exceed the purchase price of the vehicle;
- (4) Service agreements or extended warranty plans for which the primary purpose is to provide service, repair, or replacement on consumer goods or products, or for indemnification for repair, replacement, or maintenance; for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge; or accidental damage from handling of a consumer good or product, including appliances, merchandise, or equipment, or mechanical/electrical systems in single or multiple-family dwellings. Incidental indemnity payments under such plans where service, repair, or replacement is not feasible or economical does not void this exemption;
 - (5) Vehicle theft protection product warranties that provide the warrantor is required to pay to or on behalf of the warranty holder, specified incidental costs as a result of the failure of the vehicle theft protection product to perform pursuant to the terms of the warranty;
 - (6) Any person, trust, or other entity proven to be under the exclusive regulatory authority of the federal government or another state agency;
 - (7) Any agreement to provide liability protection entered into pursuant to chapter 1-24 is exempt from the regulatory requirements of Title 58, except to forms of insurance coverage provided by an insurer otherwise subject to the insurance laws of this state;

- (8) Any church plan, as defined in section 414(e) of the Internal Revenue Code of 1986, as amended through December 31, 1999, and section (3)(33)(C)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S. C. § 1002(33)(C)(i)); or any church benefits board, as described in section 414(e)(3)(A) of the Internal Revenue Code of 1986, as amended through December 31, 1999, and section (3)(33)(C)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002(33)(C)(i));
- (9) Any debt cancellation contract or debt suspension contract as defined by subdivisions 51A-1-2(10) and 51A-1-2(11) and §§ 54-4-73 and 54-4-74; or
- (10) Any damage guarantee program for renters administered by a nonprofit corporation that is recognized as an exempt organization under § 501(c)(3) of the Internal Revenue Code and whose mission is to increase the availability of affordable housing to low and moderate income tenants.

An Act to exempt motor vehicle service contracts from the insurance code.

I certify that the attached Act originated in the:

Received at this Executive Office this ____ day of _____,

Senate as Bill No. 160

2022 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby approved this _____ day of _____, A.D., 2022

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2022
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 160
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State