

HOUSE BILL NO. 206

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE LEDOUX

Introduced: 4/12/13

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to motor vehicle service contracts; and exempting motor vehicle**
2 **service contracts from regulation as insurance."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 21.03.021(e) is amended to read:

5 (e) This title does not apply to a service contract offered, issued for delivery,
6 delivered, or renewed in this state. In this subsection, "service contract"

7 (1) means a service contract or agreement for a separate or additional
8 consideration, for a specific duration, to

9 (A) maintain, service, repair, or replace tangible personal
10 property, or to indemnify for repair, replacement, or maintenance, for an
11 operational or structural failure due to a defect in materials or workmanship or
12 normal wear and tear, with or without additional provision for incidental
13 indemnity payments when service, repair, or replacement is not reasonably or
14 commercially feasible;

(B) repair, replace, or maintain tangible personal property damaged as a result of power surges or as a result of accidental damage from the handling of property damaged by power surges; or

(C) repair, replace, or maintain household consumer goods, household appliances, and household systems, including damage resulting from operational or structural failure due to a defect in materials or workmanship or normal wear and tear;

(2) does not include

(A) mechanical breakdown insurance;

(B) a contract that requires an indemnity payment per incident, and the payment exceeds the purchase price of the property serviced [;

(C) A CONTRACT TO PROVIDE SERVICE ON A MOTOR VEHICLE SUBJECT TO REGISTRATION UNDER AS 28.10.011]; or

(C) [(D)] a home warranty; in this subparagraph, "home warranty" means a warranty that covers the entire home and does not include a warranty limited to a household system or appliance.

*** Sec. 2.** AS 21.03.021 is amended by adding new subsections to read:

(g) A motor vehicle service contract shall be governed by AS 21.59 except as expressly provided in this title.

(h) A warranty, maintenance agreement, and a motor vehicle service contract offered for sale or sold to a person other than a consumer are not insurance and do not have to comply with any provision of this title. In this subsection, "maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only and does not include an agreement for repair or replacement.

*** Sec. 3.** AS 21.27.010(h) is amended to read:

(h) This chapter does not apply to a person

(1) licensed to practice as an attorney at law while the person is acting as an attorney at law; or

(2) who sells, solicits, or negotiates a

(A) service contract on a motor vehicle subject to registration under AS 28.10.011; or

(B) home warranty; in this subparagraph, "home warranty" has the meaning given in AS 21.03.021(e)(2)(C) [AS 21.03.021(e)(2)(D)].

* **Sec. 4.** AS 21.59 is amended by adding new sections to read:

Sec. 21.59.110. Motor vehicle service contract. (a) A provider may, for separately stated consideration, enter into a motor vehicle service contract for a specified period

(1) to perform the repair, replacement, or maintenance of a motor vehicle; or

(2) indemnify the service contract holder for repair, replacement, or maintenance, or for the operational or structural failure of a motor vehicle because of a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances; a motor vehicle service contract may also provide for

(A) towing, rental and emergency road service, and road hazard protection;

(B) the repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards;

(C) 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 or requiring sanding, bonding, or painting;

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

(E) the repair of damage to the interior components of a motor vehicle caused by wear and tear not including the replacement of any part or component of a motor vehicle's interior; or

(F) the replacement of a motor vehicle key or key fob if the key or key fob becomes inoperable or is lost or stolen.

(b) A motor vehicle service contract marketed, offered for sale, sold, issued, made, or administered in this state must be written, printed, or typed in clear, understandable language and must include the following:

(1) the name and address of the provider and an administrator if different from the provider, 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; names and addresses of the parties are not required to be preprinted on the motor vehicle service contract and may be added to the motor vehicle service contract at the time of sale;

(2) the provider fee and the terms of the motor vehicle service contract; the provider fee is not required to be preprinted on the service contract and may be negotiated at the time of sale;

(3) the applicable deductible amount, if any;

(4) a description of the materials and services to be provided and applicable limitations, exceptions, or exclusions, including whether the service contract provides for or excludes consequential damages or preexisting conditions;

(5) a description of the obligations and duties of the service contract holder;

(6) whether the use of nonoriginal manufacturer's parts is allowed;

(7) restrictions on the transferability of the service contract, if applicable; and

(8) the terms for return and cancellation of the service contract.

Sec. 21.59.120. Exemptions. (a) The following are exempt from this chapter:

(1) a warranty;

(2) a maintenance agreement; in this paragraph, "a maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only and does not include an agreement for repair or replacement;

(3) a motor vehicle service contract sold or offered for sale to a person other than a consumer.

(b) A motor vehicle manufacturer's motor vehicle service contract that applies to the motor vehicle manufacturer's product must comply only with AS 21.59.110, 21.59.140, and 21.59.160.

(c) A motor vehicle manufacturer is exempt from the registration requirement in this title.

1 **Sec. 21.59.130. Motor vehicle service contract provider; duties.** (a) A
2 provider may not market, offer for sale, sell, issue, or make a motor vehicle service
3 contract in this state unless the provider provides to the motor vehicle service contract
4 holder, within a reasonable time after the date of purchase,

5 (1) a receipt for, or other written evidence of, the purchase of the
6 motor vehicle service contract; and

7 (2) a copy of the motor vehicle service contract.

8 (b) A provider shall, on request, provide a prospective purchaser with a
9 sample copy of the provider's motor vehicle service contract showing terms and
10 conditions. A provider may comply with this subsection by providing the prospective
11 purchaser with a sample copy of the terms and conditions or by directing the
12 prospective purchaser to an Internet website containing a complete sample of the
13 terms and conditions of the proposed motor vehicle service contract.

14 (c) A motor vehicle service contract provider may not use in the provider's
15 name the word "insurance," "casualty," "surety," "mutual," or another word that
16 describes insurance, casualty, or surety business activity, or use a name deceptively
17 similar to the name or description of an insurance or surety corporation or another
18 provider; however, the name of a provider may include the word "guaranty."

19 (d) A provider or the provider's representative may not make, or permit or
20 cause to be made, a false or misleading statement or deliberately omit a material
21 statement that would be misleading if omitted in a motor vehicle service contract or
22 literature associated with the contract.

23 (e) A person may not require the purchase of a motor vehicle service contract
24 as a condition of a loan or a condition for the sale of a motor vehicle.

25 (f) A provider may appoint an administrator or other designee to administer all
26 or a part of a motor vehicle service contract.

27 (g) A provider or the provider's representative may not make a false,
28 deceptive, or misleading statement in a solicitation, during telemarketing, or in other
29 advertising, including a statement regarding

30 (1) the provider's affiliation with a motor vehicle manufacturer;

31 (2) information in the provider's possession regarding a motor vehicle

owner's current motor vehicle manufacturer's original equipment warranty;

(3) the expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty; or

(4) a requirement that a motor vehicle owner register for a new motor vehicle service contract with the provider to maintain coverage under the motor vehicle owner's current motor vehicle service contract or manufacturer's original equipment warranty.

Sec. 21.59.140. Registration. A provider of a motor vehicle service contract sold in this state shall file a registration with the director on a form prescribed by the director and pay an annual fee to the director in an amount determined by the director. If a material change occurs in the information submitted to the director, a provider shall update the information in the registration filing by sending the changes to the director in writing.

Sec. 21.59.150. Return and cancellation. (a) A motor vehicle service contract must allow the service contract holder to cancel the motor vehicle service contract within 20 days after the date that the motor vehicle service contract was delivered to the service contract holder, within 10 days after the date of delivery if the motor vehicle service contract is delivered to the service contract holder at the time of sale, or within a longer period, as set out in the motor vehicle service contract. If the service contract holder returns the motor vehicle service contract to the provider within the applicable time period and a claim has not been made under the motor vehicle service contract before the contract is returned to the provider, the motor vehicle service contract is void and the provider shall refund the full amount of the provider fee to the service contract holder or credit the account of the service contract holder. The right to void the motor vehicle service contract provided in this subsection is not transferable and applies only to the original service contract holder for a contract under which a claim is not made before the contract is returned to the provider. If the provider does not pay or credit a refund owed under this subsection within 45 days after a service contract holder returns a motor vehicle service contract, a penalty in the amount of 10 percent of the provider fee paid by the service contract holder for each month the refund remains unpaid shall be added to the refund.

1 (b) After the time specified in (a) of this section, or if a claim has been made
2 under the motor vehicle service contract within that time, a service contract holder
3 may cancel the motor vehicle service contract and the provider shall refund to the
4 contract holder the prorated amount of the unearned provider fee, less any claims paid.
5 A provider may charge a reasonable cancellation fee not to exceed 10 percent of the
6 provider fee paid by the service contract holder.

7 **Sec. 21.59.160. Provider's financial responsibility.** (a) To ensure the faithful
8 performance of a provider's obligations to its service contract holders, a provider shall
9 either

10 (1) obtain from an insurer licensed, registered, or otherwise authorized
11 to transact the business of insurance in the state insurance that either reimburses the
12 provider for obligations arising from a provider's motor vehicle service contract issued
13 in the state or, if the provider fails to perform its obligations under a motor vehicle
14 service contract issued in the state, pays to the service contract holder the provider's
15 covered contractual obligations under the terms of the service contract on behalf of the
16 provider. An insurer issuing a policy under this paragraph must satisfy one of the
17 following:

18 (A) maintain surplus as to policyholders and paid-in capital of
19 at least \$15,000,000 and annually file with the director copies of the insurer's
20 financial statements, its annual statement to the National Association of
21 Insurance Commissioners, and the actuarial certification required by and filed
22 in the insurer's state of domicile; or

23 (B) maintain surplus as to policyholders and paid-in capital of
24 not less than \$10,000,000 and demonstrate to the satisfaction of the director
25 that the company maintains a ratio of net written premiums, wherever written,
26 to surplus as to policyholders and paid-in capital of not greater than 3 to 1 and
27 annually files with the director copies of the insurer's audited financial
28 statements, its annual statement to the National Association of Insurance
29 Commissioners, and the actuarial certification required by and filed in the
30 insurer's state of domicile; or

31 (2) maintain, solely or together with the provider's parent company, a

1 net worth or stockholders' equity of \$100,000,000.

2 (b) A motor vehicle service contract provider that has obtained insurance
3 under this section shall state the name and address of the insurer and include a
4 statement in substantially the following form: "Performance or payment of the
5 obligations of the provider under this service contract are insured." If the provider has
6 not obtained insurance under this section, the service contract shall contain a statement
7 in substantially the following form: "Obligations of the provider under this service
8 contract are not insured and are guaranteed only by the assets of the provider."

9 (c) If the provider fails to provide a covered service under the terms of the
10 motor vehicle service contract within 60 days after the service contract holder notifies
11 the provider of the claim, the service contract holder is entitled to apply directly to the
12 insurer for payment of the provider's obligation.

13 **Sec. 21.59.170. Records.** (a) The provider shall keep accurate accounts, books,
14 and records related to the sale of motor vehicle service contracts, including

- 15 (1) copies of each type of motor vehicle service contract sold;
- 16 (2) the name and address of each service contract holder to the extent
17 that the name and address have been furnished by the service contract holder;
- 18 (3) the locations where motor vehicle service contracts are marketed,
19 sold, or offered for sale; and
- 20 (4) claim files describing claims related to the motor vehicle service
21 contracts.

22 (b) The provider shall retain all records required by this section for at least one
23 year after a motor vehicle service contract has expired.

24 (c) Records required to be maintained under this section may be maintained
25 electronically.

26 (d) A provider discontinuing business in this state shall maintain records as
27 required by this section until the provider's obligations to all service contract holders
28 in this state have been discharged.

29 **Sec. 21.59.180. Examination, enforcement, and penalties.** (a) The director
30 may conduct examinations of a provider, administrator, insurer, or other person to
31 enforce the provisions of this chapter and to protect service contract holders in this

1 state. On request of the director, the provider shall make available to the director
 2 accounts, books, and records relating to a service contract sold by the provider as
 3 necessary to enable the director reasonably to determine compliance or noncompliance
 4 with this chapter.

5 (b) The director may take necessary or appropriate action to enforce this
 6 chapter and protect service contract holders in this state.

7 (c) A person found to have violated this chapter may be assessed a civil
 8 penalty in an amount determined by the director not to exceed \$500 for each violation
 9 and not to exceed \$10,000 in the aggregate for all violations of a similar nature. In this
 10 subsection, a violation is of a similar nature if the violation consists of the same or a
 11 similar course of conduct, action, or practice of another violation, notwithstanding the
 12 number of times the act, conduct, or practice occurred.

13 (d) A service contract holder may bring an action in a court of competent
 14 jurisdiction for damages, injunctive relief, restitution, or other appropriate relief for a
 15 threatened or existing violation relating to the motor vehicle service contract.

16 **Sec. 21.59.190. Definitions.** In this chapter,

17 (1) "administrator" means a person who is responsible for the
 18 administration of a motor vehicle service contract or the motor vehicle service contract
 19 plan, or who is responsible for an act required in AS 21.59;

20 (2) "motor vehicle" means an automobile, truck, motorcycle,
 21 recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, personal
 22 watercraft, motorcycle, or other self-propelled or towable vehicle;

23 (3) "motor vehicle manufacturer" means a person that

24 (A) manufactures or produces motor vehicles and sells motor
 25 vehicles under the person's own name or label;

26 (B) is a subsidiary of a person who manufactures or produces
 27 motor vehicles;

28 (C) is a corporation that owns 100 percent of the person that
 29 manufactures motor vehicles;

30 (D) that sells motor vehicles under the trade name or label of a
 31 person that manufactures or produces motor vehicles;

(E) manufactures and sells motor vehicles under the trade name or label of another person that manufactures or produces motor vehicles; or

(F) under a written contract, licenses the use of its trade name or label to another person that manufactures motor vehicles and sells motor vehicles under the licensor's trade name or label;

(4) "nonoriginal manufacturer's parts" means replacement parts or "after market" parts not made for or by the original manufacturer of the motor vehicle;

(5) "provider" means a person that is contractually obligated to provide motor vehicle services to a service contract holder under the terms of a motor vehicle service contract;

(6) "provider fee" means the consideration paid for a motor vehicle service contract;

(7) "road hazard" means obstacles in the road, including potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps;

(8) "service contract holder" means a person who is the purchaser or holder of a motor vehicle service contract;

(9) "warranty" means a warranty made solely by the manufacturer, importer, or seller of a motor vehicle without consideration, that is not negotiated or separated from the sale of the motor vehicle and is incidental to the sale of the motor vehicle, and that guarantees indemnity for defective parts, mechanical or electrical breakdown, and labor or other remedial measures, such as repair or replacement of the motor vehicle or repetition of services.

* **Sec. 5.** AS 45.25.620(a) is amended to read:

(a) A motor vehicle service contract must be in writing and contain all **disclosures required by AS 21.59** [ESSENTIAL PROVISIONS REGARDING THE ADMINISTRATION OF THE CONTRACT].

* **Sec. 6.** AS 21.59.010, 21.59.020, 21.59.030, 21.59.040, 21.59.050, 21.59.060, 21.59.070, and 21.59.900 are repealed.

* **Sec. 7.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITION. AS 21.59.130(c), enacted by sec. 4 of this Act, does not apply to a

- 1 person using words prohibited by that subsection in the person's name before the effective
- 2 date of this Act. However, a person using the prohibited language in the person's name shall
- 3 include in all motor vehicle service contracts a statement in substantially the following form:
- 4 "This agreement is not an insurance contract."