



2022 South Dakota Legislature

Senate Bill 160

Introduced by: **Senator Wheeler**

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

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

3 **Section 1. That § 58-1-2 be AMENDED:**

4 **58-1-2.** Terms used in this title mean:

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

- 1 (12) Repealed by SL 2001, ch 263, § 1.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

21 **Section 2. That § 58-1-3 be AMENDED:**

22 **58-1-3.** No provision of this title applies with respect to:

- 23 (1) Fraternal benefit societies, except as stated in chapter 58-37A;
- 24 (2) Bail bondsmen, other than corporate sureties and their agents, except as stated in
25 chapter 58-22;
- 26 (3) Motor vehicle service contracts ~~which are contracts~~ or agreements to perform or
27 indemnify for a specific duration the repair, replacement, or maintenance of motor
28 vehicles for operational or structural failure due to a defect in materials,
29 workmanship, or normal wear and tear, with or without additional provisions for
30 incidental payment of indemnity under limited circumstances, including towing,
31 rental, and emergency road service. Consideration for a motor vehicle service
32 contract ~~shall~~ must be stated separately from the price of the motor vehicle. A
33 motor vehicle service contract may also provide for:

- 1 (a) The repair or replacement of motor vehicle windshields, tires, or wheels that
 2 are damaged as a result of contact with road hazards;
- 3 (b) The removal of dents, dings, or creases on a motor vehicle that can be
 4 repaired using the process of paintless dent removal without affecting the
 5 existing paint finish and without replacing vehicle body panels, sanding,
 6 bonding, or painting;
- 7 (c) The replacement of a motor vehicle key or key-fob in the event that the key
 8 or key-fob becomes inoperable, lost, or stolen; or
- 9 (d) The use, repair, replacement, or maintenance of property; indemnification
 10 for repair, replacement, or maintenance, due to excess wear; and the use,
 11 damage, or excess mileage that result in a lease-end charge, or any other
 12 charge for damage that is deemed as excess wear and use by a lessor under
 13 a motor vehicle lease; provided any such payment does not exceed the
 14 purchase price of the vehicle;
- 15 (4) Service agreements or extended warranty plans for which the primary purpose is
 16 to provide service, repair, or replacement on consumer goods or products, or for
 17 indemnification for repair, replacement, or maintenance; for operational or
 18 structural failure due to a defect in materials or workmanship, normal wear and
 19 tear, power surge; or accidental damage from handling of a consumer good or
 20 product, including appliances, merchandise, or equipment, or mechanical/electrical
 21 systems in single or multiple-family dwellings. Incidental indemnity payments
 22 under such plans where service, repair, or replacement is not feasible or
 23 economical does not void this exemption;
- 24 (5) Vehicle theft protection product warranties that provide the warrantor is required
 25 to pay to or on behalf of the warranty holder, specified incidental costs as a result
 26 of the failure of the vehicle theft protection product to perform pursuant to the
 27 terms of the warranty;
- 28 ~~(5)~~(6) Any person, trust, or other entity proven to be under the exclusive regulatory
 29 authority of the federal government or another state agency;
- 30 ~~(6)~~(7) Any agreement to provide liability protection entered into pursuant to chapter 1-
 31 24 is exempt from the regulatory requirements of Title 58, except to forms of
 32 insurance coverage provided by an insurer otherwise subject to the insurance laws
 33 of this state;
- 34 ~~(7)~~(8) Any church plan, as defined in section 414(e) of the Internal Revenue Code of
 35 1986, as amended through December 31, 1999, and section (3)(33)(C)(i) of the

1 Employee Retirement Income Security Act of 1974 (29 U.S. C. § 1002(33)(C)(i));
2 or any church benefits board, as described in section 414(e)(3)(A) of the Internal
3 Revenue Code of 1986, as amended through December 31, 1999, and section
4 (3)(33)(C)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.
5 § 1002(33)(C)(i));
6 ~~(8)~~(9) Any debt cancellation contract or debt suspension contract as defined by
7 subdivisions 51A-1-2(10) and 51A-1-2(11) and §§ 54-4-73 and 54-4-74; or
8 ~~(9)~~(10) Any damage guarantee program for renters administered by a nonprofit
9 corporation that is recognized as an exempt organization under § 501(c)(3) of the
10 Internal Revenue Code and whose mission is to increase the availability of
11 affordable housing to low and moderate income tenants.