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97th Legislative Session



# 2022 South Dakota Legislature

## Senate Bill 160

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*Introduced by: Senator Wheeler*

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

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

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

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**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;

- 35 (10) "Insurer," every person engaged as indemnitor, surety, or contractor in the business  
36 of entering into contracts of insurance;
- 37 (11) "License," permission granted to an agent or broker to engage in those activities  
38 permitted by such persons under this title;



- 39 (12) Repealed by SL 2001, ch 263, § 1.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

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

- 60 **58-1-3.** No provision of this title applies with respect to:
- 61 (1) Fraternal benefit societies, except as stated in chapter 58-37A;
- 62 (2) Bail bondsmen, other than corporate sureties and their agents, except as stated in  
63 chapter 58-22;
- 64 (3) Motor vehicle service contracts ~~which are contracts~~ or agreements to perform or  
65 indemnify for a specific duration the repair, replacement, or maintenance of motor  
66 vehicles for operational or structural failure due to a defect in materials,  
67 workmanship, or normal wear and tear, with or without additional provisions for  
68 incidental payment of indemnity under limited circumstances, including towing,  
69 rental, and emergency road service. Consideration for a motor vehicle service  
70 contract ~~shall~~ must be stated separately from the price of the motor vehicle. A motor  
71 vehicle service contract may also provide for:

- 72           (a)    The repair or replacement of motor vehicle windshields, tires, or wheels that  
 73                    are damaged as a result of contact with road hazards;
- 74           (b)    The removal of dents, dings, or creases on a motor vehicle that can be  
 75                    repaired using the process of paintless dent removal without affecting the  
 76                    existing paint finish and without replacing vehicle body panels, sanding,  
 77                    bonding, or painting;
- 78           (c)    The replacement of a motor vehicle key or key-fob in the event that the key  
 79                    or key-fob becomes inoperable, lost, or stolen; or
- 80           (d)    The use, repair, replacement, or maintenance of property; indemnification  
 81                    for repair, replacement, or maintenance, due to excess wear; and the use,  
 82                    damage, or excess mileage that result in a lease-end charge, or any other  
 83                    charge for damage that is deemed as excess wear and use by a lessor under  
 84                    a motor vehicle lease; provided any such payment does not exceed the  
 85                    purchase price of the vehicle;
- 86    (4)    Service agreements or extended warranty plans for which the primary purpose is  
 87            to provide service, repair, or replacement on consumer goods or products, or for  
 88            indemnification for repair, replacement, or maintenance; for operational or  
 89            structural failure due to a defect in materials or workmanship, normal wear and  
 90            tear, power surge; or accidental damage from handling of a consumer good or  
 91            product, including appliances, merchandise, or equipment, or mechanical/electrical  
 92            systems in single or multiple-family dwellings. Incidental indemnity payments under  
 93            such plans where service, repair, or replacement is not feasible or economical does  
 94            not void this exemption;
- 95    (5)    Vehicle theft protection product warranties that provide the warrantor is required to  
 96            pay to or on behalf of the warranty holder, specified incidental costs as a result of  
 97            the failure of the vehicle theft protection product to perform pursuant to the terms  
 98            of the warranty;
- 99    ~~(5)~~(6) Any person, trust, or other entity proven to be under the exclusive regulatory  
 100            authority of the federal government or another state agency;
- 101    ~~(6)~~(7) Any agreement to provide liability protection entered into pursuant to chapter 124  
 102            is exempt from the regulatory requirements of Title 58, except to forms of  
 103            insurance coverage provided by an insurer otherwise subject to the insurance laws  
 104            of this state;

105        ~~(7)~~(8) Any church plan, as defined in section 414(e) of the Internal Revenue Code of  
106                1986, as amended through December 31, 1999, and section (3)(33)(C)(i) of the  
107                Employee Retirement Income Security Act of 1974 (29 U.S. C. § 1002(33)(C)(i));  
108                or any church benefits board, as described in section 414(e)(3)(A) of the Internal  
109                Revenue Code of 1986, as amended through December 31, 1999, and section  
110                (3)(33)(C)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.  
111                § 1002(33)(C)(i));

112        ~~(8)~~(9) Any debt cancellation contract or debt suspension contract as defined by  
113                subdivisions 51A-1-2(10) and 51A-1-2(11) and §§ 54-4-73 and 54-4-74; or

114        ~~(9)~~(10) Any damage guarantee program for renters administered by a nonprofit  
115                corporation that is recognized as an exempt organization under § 501(c)(3) of the  
116                Internal Revenue Code and whose mission is to increase the availability of  
117                affordable housing to low and moderate income tenants.