

**Chapter 90.
Automobiles.**

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Subchapter 3. Aftermarket Crash Parts.

4-90-301. Legislative intent.

This subchapter is intended to apply only to parts that are aftermarket crash parts as defined in this subchapter and to the documents prepared in the repair estimate process. It is not intended to apply to any mechanical automotive parts or used parts of any kind or to any invoice or final invoicing forms.

4-90-302. Definitions.

As used in this subchapter:

- (1) "Aftermarket crash part" means a replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels;
- (2) "Installer" means an individual who performs the work of replacing or repairing parts of a motor vehicle;

(3) "Insurer" means an insurance company and any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person's authority;

(4) "Nonoriginal equipment manufacturer aftermarket crash part" means an aftermarket crash part made by any manufacturer other than the original vehicle manufacturer or his or her suppliers; and

(5) "Repair facility" means a motor vehicle dealer, garage, body shop, or other commercial entity which undertakes the repair or replacement of those parts that generally constitute the exterior of a motor vehicle.

4-90-303. Penalties.

Any person who violates any provision of this subchapter shall, upon conviction, be guilty of a violation and shall be subject to the penalty prescribed in § 5-4-201(c)(1).

4-90-304. Required identification.

Any nonoriginal equipment manufacturer aftermarket crash part manufactured or supplied for use in this state on or after January 1, 1992, shall have affixed thereto or inscribed thereon the logo, identification number, or name of its manufacturer. The manufacturer's logo, identification number, or name shall be visible after installation whenever practicable.

4-90-305. Repair estimates.

(a) In all instances where nonoriginal equipment manufacturer aftermarket crash parts are used in preparing an estimate for repairs, the written estimate prepared by the insurer or repair facility shall clearly identify such parts.

(b) A disclosure document attached to the estimate shall contain the following information in no smaller than 10-point type:

"THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AFTERMARKET CRASH PARTS SUPPLIED BY A SOURCE OTHER THAN THE MANUFACTURER OF YOUR MOTOR VEHICLE. THE AFTERMARKET CRASH PARTS USED IN THE PREPARATION OF THIS ESTIMATE ARE WARRANTED BY THE MANUFACTURER OR DISTRIBUTOR OF SUCH PARTS INSTEAD OF THE MANUFACTURER OF YOUR VEHICLE."

4-90-306. Repairs.

Whenever repairs are made involving replacement crash parts, as defined in this subchapter, and the vehicle is still under the manufacturer's original warranty, only original equipment manufacturer replacement crash parts may be used by the repair facility unless the owner gives or has given written consent otherwise.

4-90-307. Insurance.

Every insurer that writes motor vehicle insurance and that intends to require or specify the use of aftermarket parts must disclose to its policyholders in writing, either in the policy or on an attached sticker, the following information in no smaller than 10-point type:

"IN THE REPAIR OF YOUR COVERED MOTOR VEHICLE UNDER THE PHYSICAL DAMAGE COVERAGE PROVISIONS OF THIS POLICY, WE MAY REQUIRE OR SPECIFY THE USE OF MOTOR VEHICLE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. THESE PARTS ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, PERFORMANCE, AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY REPLACE."

Subchapter 5. Motor Vehicle Service Contract Act.

4-90-501. Title.

This subchapter is known and may be cited as the "Motor Vehicle Service Contract Act".

4-90-502. Definitions.

For purposes of this subchapter:

- (1) "Commissioner" shall mean the Insurance Commissioner for the State of Arkansas;
- (2) "Mechanical breakdown insurance" shall mean a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to a defect in materials or workmanship or normal wear and tear and that is issued by an insurer that is authorized or approved to transact the business of insurance in this state;
- (3) "Motor vehicle" shall mean any vehicle designed for highway use and subject to registration under § 27-14-701 et seq.;
- (4) "Motor vehicle service contract" or "service contract" shall mean a contract or agreement given for separate and identifiable consideration pursuant to which a service contract provider undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to a defect in materials or workmanship or normal wear and tear, but does not include mechanical breakdown insurance;
- (5) "Motor vehicle service contract provider" or "provider" shall mean a person who, as the principal or obligor, issues, makes, sells, or offers to sell a service contract;
- (6) "Motor vehicle service contract reimbursement insurance policy" shall mean a policy of insurance providing coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of the motor vehicle service contracts issued or sold by the provider; and
- (7) "Service contract holder" or "holder" shall mean the person who purchases a service contract or a permitted transferee.

4-90-503. Applicability.

This subchapter shall apply to motor vehicle service contracts sold on or after May 1, 1993.

4-90-504. Exclusive governance of provisions.

(a) Except as provided in this subchapter, motor vehicle service contract providers shall be governed by the provisions of this subchapter and shall be exempt from all other provisions of the Arkansas Insurance Code.

(b) Nothing in this subchapter shall, however, prohibit or affect the giving, free of charge, of the usual warranties or performance guarantees by manufacturers, distributors, or dealers in connection with the sale of new motor vehicles; further, the requirements of this subchapter shall not apply to motor vehicle service contracts issued by a motor vehicle manufacturer, distributor, importer, or dealer of motor vehicles, nor shall the requirements of this subchapter apply to any nonrenewable motor vehicle service contract issued for a period of less than six (6) months, provided that the issuer of such motor vehicle service contract is the entity which sold the motor vehicle to which the service contract applies or is an affiliate of such entity.

(c) For purposes of this subchapter, an "affiliate" is an entity whose ownership is held fifty-one percent (51%) or more by the same entity which holds fifty-one percent (51%) or more ownership of the seller of the motor vehicle.

4-90-505. Mandatory insurance.

(a) No motor vehicle service contract shall be issued, sold, or offered for sale in this state unless the motor vehicle service contract provider is insured under a motor vehicle service contract reimbursement insurance policy issued by an insurer authorized to do business in this state, and providing that the insurer will pay on behalf of the provider all sums which the provider is legally obligated to pay and will guarantee the performance of the provider's obligations undertaken according to the provider's contractual obligations under the service contracts issued or sold by the provider.

(b) No policy of insurance may be cancelled, terminated, or nonrenewed by the insurer unless a sixty-day written notice has been given to the motor vehicle service contract provider before the date of the cancellation, termination, or nonrenewal.

(c) No cancellation, termination, or nonrenewal shall affect the liability of the insurer to guarantee the provider's performance under the motor vehicle service contracts issued or sold prior to the effective date of cancellation or termination or nonrenewal.

(d) The insured motor vehicle service contract must conspicuously state:

(1) That the obligations of the provider to the service contract holder are guaranteed under a motor vehicle service contract reimbursement insurance policy;

(2) The name, address, and telephone number of the issuer of the provider's motor vehicle service contract reimbursement insurance policy; and

(3) The procedure for filing a claim under the service contract directly with the motor vehicle service contract reimbursement insurer.

(e) The motor vehicle service contract reimbursement insurer shall establish and maintain unearned premium reserves and claims reserves for the gross policy obligations under the motor vehicle service contract reimbursement insurance policy, net of reinsurance ceded, for which the insurer is entitled to full reserve credit on its financial statements, in accordance with the provisions of this subchapter.

4-90-506. Required service contract disclosures.

All motor vehicle service contracts issued or sold for delivery in this state shall contain the following disclosures in a conspicuous and readable manner:

- (1) The name and address of the provider and the holder;
- (2) The total retail price of the service contract;
- (3) The procedure for making a claim under the service contract, including the name, address, and telephone number of any person from whom approval is required before covered repairs may be commenced;
- (4) The existence and amount of a deductible, if any;
- (5) The motor vehicle parts and components covered under the service contract, and any limitations, exceptions, or exclusions;
- (6) The terms, conditions, and restrictions governing transferability of the service contract, if any;
- (7) The provisions governing termination and refunds in accordance with § 4-90-507; and
- (8) A statement that purchase of the motor vehicle service contract is not required in order to purchase or obtain financing for a motor vehicle.

4-90-507. Termination and refunds.

No motor vehicle service contract may be issued, sold, or offered for sale or delivery in this state unless the service contract conspicuously states that the holder is allowed to cancel the service contract:

- (1) Within thirty (30) days of its purchase, if no claim has been made, and receive a full refund of the service contract retail price, less any cancellation fee stated in the service contract not exceeding fifty dollars (\$50.00); or
- (2) At any other time, and receive a pro rata refund of the service contract retail price for the unexpired term of the service contract based on the number of elapsed months or miles, less any cancellation fee stated in the service contract not exceeding fifty dollars (\$50.00).

4-90-508. Incidental benefits.

A motor vehicle service contract may provide reimbursement for towing and rental vehicle expenses incurred by the service contract holder as a direct and proximate result of an operational or structural failure covered by the service contract, emergency road service, and such other incidental benefits as may be approved by the Insurance Commissioner.

4-90-509. Rulemaking power.

- (a) The Insurance Commissioner may adopt such administrative rules and regulations as are necessary to implement the provisions of this subchapter.
- (b) The commissioner may promulgate rules and regulations providing for the filing with the commissioner of motor vehicle service contract forms by providers authorized under § 4-90-504; provided, that any such rules and regulations may not require the approval of such forms by the commissioner prior to their initial use.

4-90-510. Investigations and enforcement.

- (a) The Insurance Commissioner is authorized to conduct such investigations of the motor vehicle service contract business, of any provider, and of any person assisting the provider in the conduct of such business as the commissioner may deem necessary.
- (b) The commissioner shall have and may exercise all of the powers conferred by §§ 23-61-103, 23-61-108 - 23-61-110, 23-61-201(a)(1), 23-61-203 - 23-61-206, and 23-61-301 et seq. in the conduct of such investigations and in the enforcement of this subchapter and any rules and regulations promulgated by the commissioner.

4-90-511. Unfair trade practices.

Motor vehicle service contract providers shall be subject to the provisions of the Arkansas Trade Practices Act, § 23-66-201 et seq., to the extent such act may be appropriately applied to motor vehicle service contract providers given the nature of such contracts.

4-90-512. Form of service contracts.

No motor vehicle service contract may be issued which:

- (1) Is in any respect in violation of or does not comply with this subchapter, any specifically applicable provision of the Arkansas Insurance Code, or any applicable rule of the department;
- (2) Contains, or incorporates by reference when such incorporation is otherwise permissible, any inconsistent, ambiguous, illusory, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the service agreement;
- (3) Has any title, heading, or other indication of its provisions which is misleading;
- (4) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible;
- (5) Contains any provision which is unconscionable or which encourages misrepresentation;
- (6) Contains any provision which makes it difficult to determine the actual provider issuing the form; or
- (7) Contains any provision for reducing claim payments due to depreciation of parts.