

Superintendent of Insurance

Interpretation Bulletin

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Purpose

Pursuant to section 792.1 of the [Insurance Act \(Act\)](#), the purpose of this Interpretation Bulletin (Bulletin) is to provide Superintendent of Insurance (Superintendent) interpretation of insurance legislation with respect to products commonly marketed by automobile dealerships in conjunction with the sale of motor vehicles. This Bulletin applies to all those involved in the marketing, sale, and provision of these products.

For reference, section 1(aa) of the Act defines “insurance” as *the undertaking by one person to indemnify another person against loss or liability for loss in respect of certain risk or peril to which the object of the insurance might be exposed or to pay a sum of money or other thing of value on the happening of a certain event...*

This Bulletin applies to motor vehicle warranty contracts, motor vehicle dealership loyalty programs and motor vehicle protection products (collectively referred to as the “products”). Each of these product categories is dealt with in more detail below. When these products are considered insurance, as identified herein, they are subject to the Act and must be underwritten by a [licensed insurance company](#), and must be sold through a [licensed insurance agent](#). If any element of a product offered is insurance, the product is insurance and is subject to the Act.

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In Alberta, certain types of insurance may be sold by a prescribed business holding an insurance agency licence called a restricted certificate of authority (RCA). The Superintendent also sets out below whether each insurance product falls under a prescribed type of insurance that may be sold under an RCA. For more information about an RCA, please see the Alberta Insurance Council (AIC) [website](#).

The Superintendent urges entities currently offering or endeavouring to offer products of this nature to seek independent legal advice to ensure compliance with Alberta legislation and this Bulletin.

If you have concerns that your current products or practices may not be compliant with the Act or this Bulletin, you should immediately take steps to bring yourself into compliance. In addition, report your circumstances to the Superintendent (insurers) and/or the [AIC](#) (agents), who will work with you to ensure compliance.

Motor vehicle warranty contracts

There are two main categories of motor vehicle warranty contracts addressed in this Bulletin. The Superintendent's interpretation of the application of the insurance legislation in respect to motor vehicle warranty contracts for each category is as follows:

1. **Motor vehicle manufacturer warranties and extended warranties:**

Most motor vehicle manufacturers offer warranty protections on their vehicles and many offer extended warranties that can be purchased separately. Such manufacturers' warranties are **not** insurance and instead are subject to the provisions of the [Consumer Protection Act](#). Inquiries concerning compliance with the *Consumer Protection Act* can be made to Service Alberta and Red Tape Reduction at 780-427-4088 (Edmonton and area) or 1-877-427-4088 (toll-free in Alberta). This includes motor vehicle warranty contracts which are issued by the manufacturer, or by a wholly-owned subsidiary of the manufacturer.

Manufacturers motor vehicle warranty and extended warranty exception: If the coverage includes any risk, peril, damage or loss beyond those inherent deficiencies in the workmanship or materials arising from the production of the motor vehicle, such products are contracts of insurance. For example, if the product includes a promise to pay all or part of the loss if the vehicle is stolen due to a failure of the security system, this is insurance.

Many motor vehicle manufacturers also participate in the Canadian Motor Vehicle Arbitration Plan (CAMVAP). CAMVAP is a free national arbitration program that helps consumers and participating manufacturers resolve disputes about vehicle assembly, material defects and how a new vehicle warranty is applied, through binding arbitration. For more information on CAMVAP or to determine if your vehicle is eligible, please visit <https://camvap.ca/>.

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- 2. Third party extended motor vehicle warranties:** This includes motor vehicle warranty contracts which are issued by a person (e.g., automotive dealer) other than the motor vehicle manufacturer or its wholly-owned subsidiary. They can be issued at any point in time during the sale or after the sale of the motor vehicle. These products are contracts of insurance. Third party warranty companies which are not licensed as insurers may need to transfer their warranty contracts to an Alberta licensed insurer.

Third party extended motor vehicle warranty exception: Warranty contracts issued by a person (e.g., automotive repairer) providing coverage solely for those inherent deficiencies in the workmanship arising from the person's service or repairs of a motor vehicle, are not considered insurance.

The Superintendent interprets that motor vehicle warranty insurance falls under the class "equipment warranty insurance" as defined in the [Classes of Insurance Regulation](#) under the Act, and is therefore included in the restricted insurance type "[equipment warranty insurance](#)."

Motor vehicle dealership loyalty programs

Typically, these products are sold at dealerships in conjunction with the purchase, lease or finance of a new or used motor vehicle. The price is typically described as a membership fee. These products provide a dealership discount to consumers on a future replacement motor vehicle should an event occur that results in damage or total loss of the original motor vehicle. Discount values can vary and are based on several factors including, but not limited to, the type of loss, the sale price of the original motor vehicle, and motor vehicle age at the time of purchase.

Since these products indemnify consumers for part of the cost of purchasing a replacement motor vehicle only on the happening of a certain risk or peril, such as theft or collision, this is insurance, and these products must be developed, sold, and underwritten in compliance with the Act.

Exception: A debt waiver underwritten by the financing company is **not** insurance. For example, vehicle finance companies sometimes agree to waive up to a certain amount of a vehicle loan in the instance that the vehicle is written off, and the insurance payment is less than the outstanding loan amount.

The Superintendent interprets that motor vehicle dealership loyalty programs insurance as described in this Bulletin falls under the type "[GAP insurance](#)" as defined by the [General Insurance Council](#).

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Ancillary motor vehicle protection products

There are a variety of motor vehicle protection products (VPPs) available in the marketplace that are ancillary to the primary automobile insurance policy.

Some examples of the more common VPPs that are insurance include, but are not limited to:

- Deductible reimbursement and/or monetary credits given in the event of loss, damage, or theft of a motor vehicle.¹
- Non-manufacturer tire and rim warranties providing for tire and rim replacement. This does not include warranties provided by the motor vehicle manufacturer for tires and rims it included in the motor vehicle's assembly.²
- Glass protection products promising to pay some or all of the cost of a windshield replacement;³
- Products intended to deter theft that include a promise to make a payment in the event of the theft and/or non-recovery of the motor vehicle (or part thereof), such as theft-deterrent etching or tagging and catalytic converter anti-theft devices, that include a promise to pay if the product fails;³
- Key fob replacement coverage;³ and
- Payment for a motor vehicle rental provided in conjunction with a VPP that is insurance.³

The Superintendent does not consider roadside service plans, or motor vehicle service plans which provide solely for planned maintenance or routine service of a motor vehicle, or minor repairs that are routine to the ownership of a motor vehicle, to be contracts of insurance. Examples of such services/repairs are:

- Oil changes;
- Windshield repairs;
- Tire and rim repairs;
- Wiper blade replacements;
- Air filter replacements; and
- Scuff, ding, chip, cut, tear, and scratch repairs (interior or exterior).

Whether a service plan contract falls within this exception will depend on whether the service relates directly to wear and tear due to use of the item as opposed to damage from an external risk such as collision or theft. If the service/repair provided is for reasonable and expected wear and tear, it is likely not insurance.

¹ The Superintendent interprets that this insurance falls under the type "[GAP insurance](#)" as defined by the [General Insurance Council](#).

² The Superintendent interprets that this insurance falls under the class "equipment warranty insurance" as defined in the [Classes of Insurance Regulation](#) under the Act, and is therefore included in the restricted insurance type "[equipment warranty insurance](#)."

³ The Superintendent interprets that this insurance falls under the class of automobile insurance and is not currently included in any restricted insurance type. It must be sold by a general insurance agent and cannot be sold under an RCA.

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Background

Over the last several years, the Superintendent's office has received inquiries regarding whether certain automobile products are insurance. As a result, the Superintendent's office conducted a thorough review of these products. This review included a wide variety of products offered to Alberta consumers, and of products in development. Many of these products contain traditional elements of a contract of insurance, namely:

- 1) an insurable interest,
- 2) terms of coverage,
- 3) consideration (e.g. premiums, charges, or fees) paid in exchange for coverage,
- 4) the requirement of a fortuitous event to trigger payment, and
- 5) a promise to compensate another on the happening of such a fortuitous event.

Many of these products were determined to be insurance, and either the provider subsequently ceased production, or adjusted in order to become compliant. Since there continues to be a high level of interest in selling these products, the Superintendent issues this Bulletin.

Fair treatment of customers is fundamental to sound insurance market conduct and is central to expectations set out in insurance legislation and in this Bulletin. Insurance policies represent a promise to perform in the future. Since the event giving rise to a loss may happen years down the road, and because costs associated with such an event may be significant, the Act has important safeguards in place to protect consumers so they can be assured that benefits will be available in the case they suffer a covered loss. These safeguards are not in place when a product is not developed, sold, and underwritten in compliance with the Act.

The interpretations contained in this Bulletin are focused on products where there is material risk of financial harm to consumers if the provider is unable to fulfill its financial obligations under the contract.

Penalty for non-compliance

Where the Superintendent is of the opinion that an insurer (whether licensed or unlicensed) has contravened a prescribed provision of the Act or its associated regulations, the Superintendent may require that insurer to pay an administrative penalty of up to \$25,000 for each contravention.

In the alternative to an administrative penalty, and pursuant to section 780 of the Act, a person convicted under section 786 of the Act is subject to a fine of up to \$200,000 (and if of a continuing nature, each day or part of a day constitutes a separate offence).

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If you have any questions regarding this Bulletin, please contact my office at (780) 643-2237 or tbf.insurance@gov.ab.ca.

[ORIGINAL SIGNED]

Chris Merriman
Superintendent of Insurance

Contact information and useful links

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