

**RULES AND REGULATIONS
FOR
VEHICLE SERVICE CONTRACTS**

Section

120-2-47-.01	Statutory Authority
120-2-47-.02	Purpose
120-2-47-.03	Definitions
120-2-47-.04	Insurance Required
120-2-47-.05	Filing Requirements
120-2-47-.06	Disclosure to Provider
120-2-47-.07	Disclosure to Service Contract Holder
120-2-47-.08	Prohibited Acts
120-2-47-.09	Recordkeeping
120-2-47-.10	Cancellation of a Reimbursement Insurance Policy or Surety Bond
120-2-47-.11	Procedures for Public Complaint
120-2-47-.12	Exemptions
120-2-47-.13	Severability

120-2-47-.01 Statutory Authority.

This Regulation is made and promulgated by the Commissioner of Insurance pursuant to the authority set forth in O.C.G.A. Section 33-7- 6.

Authority O.C.G.A. Secs . 33-2-9, 33-7-6.

120-2-47-.02 Purpose.

The purpose of this Regulation is to provide for the regulation of vehicle service agreements and extended warranty agreements.

120-2-47-.03 Definitions.

- (1) "Commissioner" means the Commissioner of Insurance.
- (2) "Extended warranty agreement" means a vehicle service contract.
- (3) "Service contract holder" means a person who purchases or otherwise obtains a service contract.
- (4) "Vehicle service contract" or "VSC" means a contract or agreement that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear.

- (5) "Vehicle service contract provider" or "VSC provider" means a person who issues, makes, provides, sells, or offers to sell a vehicle service contract.
- (6) "Vehicle service contract reimbursement insurance policy" or "VSC reimbursement insurance policy" means a policy of insurance providing coverage for all sums which the provider is legally obligated to pay for failure to perform under the terms of vehicle service contracts issued by the provider.
- (7) "Service contract" shall mean a vehicle service contract (VSC).
- (8) "Person" shall mean any person, firm, partnership, association or other entity which transacts vehicle service contract business.
- (9) "Provider" shall mean a vehicle service contract (VSC) provider.
- (10) "Reimbursement insurance policy" shall mean a vehicle contract service (VSC) reimbursement insurance policy.
- (11) "Retail Installment Seller" shall have the same meaning as provided in Code Section 10-1-31.
- (12) "Security Deposit" means amount(s) posted with the Commissioner's Office to cover provider's legal obligations under the terms of vehicle service contracts or extended warranty issued by the retail installment service.
- (13) "Surety Bond" means a bond providing coverage for all sums which the provider is legally obligated to pay for failure to perform.

Authority O.C.G.A. Secs. 33-2-9, 33-7-6.

120-2-47-.04 Insurance Required.

A service contract shall not be issued, sold, or offered for sale in this State unless the provider of the service contract is a named insured under a service contract reimbursement insurance policy issued by an insurer authorized to do business in this state, or by a surplus lines insurer meeting all of the requirements of O.C.G.A. Section 33-5-21, which has not been rejected by the Commissioner for such purpose, and which is provided by a licensed surplus lines broker pursuant to O.C.G.A. § 33-5-20 et seq.

Authority O.C.G.A. Secs. 33-2-9, 33-7-6.

120-2-47-.05 Filing Requirements.

- (1) In order to issue, sell, or offer for sale a service contract in this state:
- (a) The service contract must not be unduly restrictive, ambiguous, inequitable, misleading or unreadable by a person with normal vision;
- (b) The service contract must comply with any general or specific filing requirement

published by the Commissioner;

(c) The provider's reimbursement insurance policy must be filed with and accepted by the Commissioner; and

(d) The rates for the reimbursement insurance policy must conform to the requirements of O.C.G.A. Title 33 Chapter 9.

(2) In order to issue, sell, or offer for sale a vehicle service contract in this state:

(a) A true and correct copy of the vehicle service contract must be filed and accepted by the Commissioner; and

(b) The rates charged for the vehicle service contract reimbursement insurance policies must be filed with the Commissioner by the insurer issuing vehicle service contract reimbursement insurance policies.

Authority O.C.G.A. Secs. 33-2-9, 33-7-6.

120-2-47-.06 Disclosure to Provider.

A reimbursement insurance policy shall not be issued, sold, or offered for sale in this State unless the reimbursement insurance policy conspicuously states that the issuer of the policy shall pay on behalf of the provider all sums which the provider is legally obligated to pay for failure to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.

Authority O.C.G.A. Secs. 33-2-9, 33-7-6.

120-2-47-.07 Disclosure to Service Contract Holder.

(1) A service contract shall not be issued, sold or offered for sale in this State unless the contract conspicuously states that the obligations of the provider to the service contract holder are guaranteed under a service contract reimbursement policy, and unless the contract conspicuously states the name and address of the insurer of the reimbursement policy.

(2) Every service contract shall be written in clear, understandable language and shall be printed or typed in easy-to-read type, size, and style, and shall not be issued, sold, or offered for sale in this State unless the contract:

(a) Conspicuously states that the obligations of the provider to the service contract holder are guaranteed under a service contract reimbursement policy; Surety bond provides that contract holder is entitled to file direct claim after 60 days.

(b) Conspicuously states the name and address of the issuer of the reimbursement policy;

(c) Conspicuously states the name, address and telephone number of the provider(s);

(d) Conspicuously states the name, address and telephone number of the administrator, if

any;

- (e) Identifies the provider, the seller and the service contract holder;
- (f) Sets forth the total purchase price, if any, and the terms under which it is to be paid;
- (g) Sets forth the procedure for making a claim, or request for benefits including a telephone number;
- (h) Conspicuously states the existence of a deductible amount, if any;
- (i) Specifies the merchandise or services, or both, to be provided and the limitations, exceptions or exclusions;
- (j) Sets forth the conditions on which substitution will be allowed;
- (k) Conspicuously sets forth all of the obligations and duties of the service contract holder (such as the duty to protect against any further damage to the vehicle, the obligation to notify the provider in advance of any repair, etc.), if any;
- (l) Sets forth any terms, restrictions, or conditions governing transferability of the service contract, if any;
- (m) Conspicuously sets forth the term or duration of the contract; and
- (n) Contains the provisions required under O.C.G.A. § 33-7-6.

Authority O.C.G.A. Secs. 33-2-9, 33-7-6.

120-2-47-.08 Prohibited Acts.

- (1) Unless licensed as an insurance company, a service contract provider shall not use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other service contract provider.
- (2) A service contract provider shall not, without the written consent of the purchaser, knowingly charge a purchaser for duplication of coverage or duties required by state or federal law, a warranty expressly issued by a manufacturer or seller of a product or any implied warranty enforceable against the lessor, seller, or manufacturer of a product.
- (3) A service contract provider shall not make, permit, or cause any false or misleading statements, either oral or written, in connection with the sale, offer to sell, or advertisement of a service contract.
- (4) A service contract provider shall not permit or cause the omission of any material statement in connection with the sale, offer to sell, or advertisement of a service contract, which under the circumstances should have been made in order to make the statements that were made not misleading.

(5) A service contract provider shall not make, permit, or cause any false or misleading statements, either oral or written, about the benefits or services available under the service contract.

(6) A service contract provider shall not make, permit, or cause any statement or practice which has the effect of creating or maintaining a fraud.

(7) A service contract provider is prohibited from making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the service contract industry or with respect to any service contract provider which is untrue, deceptive, or misleading.

(8) A bank, savings and loan association, insurance company, other lending institution, or insurance producer shall not require the purchase of a service contract as a condition of a loan or insurance.

(9) A service contract provider is prohibited from making publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

(10) A service contract provider is prohibited from entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in the service contract industry.

(11) A service contract provider is prohibited from knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

(12) A service contract provider is prohibited from knowingly making any false entry of a material fact in any book, report, or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

(13) A service contract provider shall not invoke any arbitration provision contained in the service contract.

(14) No provider or insurance producer shall finance the consideration due from the sale of a service contract with a premium finance company.

Authority O.C.G.A. Secs. 7-3-1 et seq., 33-2-9, 33-7-6.

120-2-47-.09 Recordkeeping.

- (1) All service contract providers shall keep accurate accounts, books, and records concerning transactions regulated under this Chapter.
- (2) A service contract provider's accounts, books, and records shall include
 - (a) Copies of all service contracts;
 - (b) The name and address of each service contract holder; and
 - (c) The dates, amounts, and descriptions of all receipts, claims and expenditures.
- (3) A service contract provider shall retain all required accounts, books, and records pertaining to each service contract holder for at least two (2) years, unless a longer period is required by statute or regulation, after the specified period of coverage has expired. A provider discontinuing business in this State shall maintain its records until it furnishes the Commissioner satisfactory proof that it has discharged all obligations to contract holders in this State.
- (4) Service contract providers shall make all accounts, books, and records concerning transactions regulated under this Regulation available to the Commissioner for the purpose of examination.

Authority O.C.G.A. Secs. 33-2-9, 33-7-6.

120-2-47-.10 Cancellation of a Reimbursement Insurance Policy or Surety Bond

- (1) The issuer of a reimbursement insurance policy or surety bond shall not cancel such policy or bond until a notice of cancellation in accordance with O.C.G.A. Section 33-24-47 has been mailed or delivered to the Commissioner at the following address:

Office of Commissioner of Insurance
604 West Tower, Floyd Building
#2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334

and to each insured provider, including but not limited to automobile dealers and third party administrators.

- (2) The cancellation of a reimbursement insurance policy or surety bond shall not reduce the issuer's responsibility for vehicle service contracts issued by providers prior to the date of cancellation.

Authority O.C.G.A. Secs. 33-2-9, 33-7-6.

120-2-47-.11 Procedures for Public Complaint.

(1) The Commissioner may receive and process each complaint made against any service contract provider which alleges certain acts or practices which may constitute one or more violations of this Chapter. Any member of the public, or any federal, state, or local official, may file a complaint with the Commissioner. Complaints may be received from sources outside the State of Georgia and processed in the same manner as those originating in Georgia.

(2) Complaints may be mailed or delivered to the following address:

Office of Commissioner of Insurance
716 West Tower, Floyd Building
#2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334

(3) All complaints shall be made in writing and shall fully identify the complainant by name and address. If required by the Commissioner, complaints shall be made on forms prescribed and provided by the Office of Commissioner of Insurance.

(4) Oral or telephone communications may not be considered or processed as complaints. However, any member of the staff of the Office of Commissioner of Insurance may file a complaint based upon information and belief, in reliance upon oral, telephone, or written communications received by the Office of Commissioner of Insurance.

Authority O.C.G.A. Secs. 33-2-9, 33-7-6.

120-2-47-.12 Exemptions.

(1) This Regulation is not applicable to vehicle service contracts or extended warranty agreements, if the vehicle service contract or extended warranty is made by the automobile vehicle manufacturer or otherwise excluded from property insurance as defined by O.C.G.A. § 33-7-6(b)(1).

(2) Code Section 33-7-6(b) is not applicable to vehicle service contracts or extended warranty agreements if such contract or agreement has a term not exceeding nine months, has been approved by the Commissioner before its use, and is issued by a retail installment seller in conjunction with the sale of a vehicle. Moreover, such retail installment seller must:

- (a) Maintain or have a parent company which maintains a net worth or stockholders' equity of a least \$50 million, provided the parent company guarantees the obligations of the retail installment seller arising from vehicle service contracts or extended warranty agreements issued by the retail installment seller.
- (b) Comply with the exemption application requirements prescribed by the Commissioner including but not limited to the provision of names, addresses, FEIN numbers, affiliates, and corporate officers.
- (c) Files with the Commissioner, a copy of its form 10-K or form 20-F disclosure statements, or if it does not file such statements with the United States Securities and Exchange Commission a copy of its audited financial statement on a GAAP basis. If the retail

installment seller's financial statements are consolidated with those of its parent company, then the retail installment seller may comply with this provision by filing the statements of its parent company. The statement shall be filed with the Commissioner 30 days prior to the retail installment sellers initial offering or delivering of a service contract or extended warranty agreement and thereafter the statement shall be filed with the Commissioner annually; and

(d) Upon the request of the Commissioner posts a security deposit or surety bond guaranteeing the retail installment sellers obligations in accordance with the terms of vehicle service contracts or extended warranty agreements issued by the retail installment seller in an amount not to exceed \$250,000.

(3) This Regulation is not applicable to insurance policies issued by an authorized insurer providing service contract benefits to its insured.

Authority O.C.G.A. Sec. 33-7-6.

120-2-47-.13 Severability.

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the Chapter or the applicability of such provision to other persons or circumstances shall not be affected.

Authority O.C.G.A. Sec. 33-7-6.