

SERVICE CONTRACTS

This Bulletin is directed to all providers, sellers, and purchasers of service contracts. It is intended, in light of Public Law 129-2014 (HEA 1206), to explain and clarify Indiana law regarding service contracts.

This Bulletin does not exhaustively list all requirements of the new law, and providers of service contracts must refer to the statute to ensure full compliance. Additionally, the law applies only to certain automobile service contracts, and providers are responsible for knowing whether their product is affected by the new law. Failure to comply with the new law may subject a service contract provider to administrative action under IC 27-1-43.2-15.

Indiana's definition of insurance, found at IC 27-1-2-3, includes an agreement by which one party, for consideration, promises to pay money or its equivalent or to do an act valuable to the purchaser upon the destruction, loss, or injury of something in which the purchaser has an interest. Thus, under Indiana's definition, many service contracts are insurance. However, in 1992 the Department issued Bulletin 78, which exempted automobile service contracts from its regulation if either (1) the contract was issued by the manufacturer; or (2) three provisions were followed substantially. As other types of service contracts have come into being, the Department has expanded its application of Bulletin 78 to essentially all service contracts.

Effective July 1, 2014, a new state law will apply to automobile service contracts. Section 10 of PL 129-2014, to be codified at IC 27-1-43.2, provides that automobile service contracts are generally not considered insurance. The Department notes that IC 9-13-2-105(a) defines a motor vehicle as "a vehicle that is self-propelled" and IC 9-13-2-196 defines a "vehicle" as a "device . . . by which a person or property is, or may be, transported or drawn upon a highway"; thus, the automobile service contract law does not apply to service contracts covering watercraft. Automobile service contracts must meet certain statutory requirements, including:

- Be legible;
- Be understandable;
- Provide contact information for certain parties involved in the service contract;
- State the total purchase price and the terms of the service contract;
- State the existence and amount of any applicable deductible;
- State provisions regarding transfer of the service contract;
- State all obligations imposed on the service contract holder;
- Conspicuously state that the contract is not insurance and provide other necessary disclosures.

In addition, providers of automobile service contracts must either (1) obtain a reimbursement policy that has been filed with the Commissioner and include the obligations and name and address of the reimbursement policy insurer in the service contract; or (2) maintain a funded reserve account.

IC 27-1-43.2-11(a)(1)(B) states that automobile service contract reimbursement policies must be filed with the Department. The Department interprets this provision as a requirement to file only the reimbursement policy and not the service contract itself. Insurance companies filing a service contract reimbursement policy under IC 27-1-22 should follow standard filing procedures found at the Indiana Department of Insurance website, www.in.gov/idoi, under Company Compliance, Filing Procedures and General Rules. Instructions for submitting filings via SERFF (System for Electronic Rate and Form Filing) can be found on the SERFF system under Indiana – General Instructions. Service contract providers making an informational filing of a service contract reimbursement policy under IC 27-1-43.2-11(a)(1)(B) (an “Informational Filing”) should attach the policy in PDF format to an email addressed to servicecontracts@idoi.IN.gov and include the phrase “Service Contract Reimbursement Policy Informational Filing” in the subject line. Informational Filings should identify the service contract provider using the reimbursement policy along with the contact person’s name, email, and phone number. Once an informational filing is received, the Department will respond via email to acknowledge receipt.

In the past, some service contract providers have filed service contracts with the Department, and the Department has marked those “filed.” The Department will no longer accept filings of service contracts. The Department will continue to apply the concepts announced in Bulletin 78 to those service contracts that are considered insurance based on Indiana law and not addressed in PL 129-2014, including many service contracts covering homes, personal goods, and utilities.

Under IC 27-1-43.2-15, the Commissioner may investigate or examine persons involved in the sale of automobile service contracts and will expect providers, administrators, insurers, and others to maintain copies of service contracts issued for examination by the Department. Any automobile service contract provider that does not file a reimbursement policy with the Department will be expected, upon request, to provide proof of a funded reserve account as required by IC 27-1-43.2-11(a)(2).

Questions regarding this Bulletin should be directed to the Department of Insurance legal division at idoi@IN.gov or (317) 232-0143.

INDIANA DEPARTMENT OF INSURANCE

A handwritten signature in black ink, appearing to read "Stephen W. Robertson", is written over a horizontal line.

Stephen W. Robertson
Insurance Commissioner