

# ANCILLARY AND THIRD PARTY MOTOR VEHICLE PROTECTION PRODUCTS CONSIDERED INSURANCE IN ALBERTA

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Following the issuance of a draft bulletin with comments invited in June, on October 18, 2024, the Alberta Superintendent of Insurance ("**Superintendent**") issued *Interpretation Bulletin 05-2024: Motor vehicle warranty contracts, dealership loyalty programs and vehicle protection products\**.

The bulletin characterizes motor vehicle protection products as (i) motor vehicle warranty contracts, (ii) motor vehicle dealership loyalty programs, (iii) ancillary motor vehicle protection products, and (iv) motor vehicle service plans.

## *(i) Motor vehicle warranty contracts*

Motor vehicle warranty contracts respond to inherent deficiencies in the workmanship or materials arising from the production of the vehicle. Motor vehicle warranty contracts (including extended warranties) issued by OEMs or a wholly-owned subsidiary are not considered insurance. Similarly, warranties provided by repair facilities covering inherent deficiencies in their workmanship are not considered insurance. However, motor vehicle warranty contracts issued by third parties are considered equipment warranty insurance and must be underwritten by an insurer authorized to conduct equipment warranty insurance business in the province of Alberta.

## *(ii) Motor vehicle dealership loyalty programs*

These products provide a dealership discount on a future replacement motor vehicle in the event of damage or total loss of the vehicle. Since they indemnify consumers for part of the cost of a replacement vehicle upon the occurrence of risks or perils such as theft or collision), the Superintendent considers them to be GAP insurance. Note that a debt waiver underwritten by the relevant finance company are not considered insurance.

## *(iii) Ancillary motor vehicle protection products*

The bulletin provides the following non-exhaustive list of common vehicle protection products that the Superintendent considers to be insurance:

Description	Categorization
Deductible reimbursement or monetary credit for loss, damage, or theft of a motor vehicle	GAP insurance
Non-manufacturer tire and rim warranty providing for tire and rim replacement (does not include warranties provided by the OEM for tires and rims it included in the vehicle's assembly)	Equipment warranty insurance
Glass protection products covering windshield replacement	Automobile insurance
Theft-deterrent products with a promise to make a payment in case of theft or non-recovery	Automobile insurance
Key fob replacement	Automobile insurance
Vehicle rental coverage provided alongside a vehicle protection product that is considered to be insurance	Automobile insurance

Note that the above categorizations may be subject to change following the Superintendent's announcement on October 21, 2024 regarding a revised bulletin, which is pending release.

*(iv) Motor vehicle service plans*

Importantly, the Superintendent has carved out motor vehicle and roadside service plans that provide for minor repairs for reasonable and expected wear and tear routine to the ownership of a motor vehicle from the gambit of insurance. Examples include windshield repairs, tire and rim repairs and scuff, ding, chip, cut, tear, and scratch repairs (interior or exterior). This differentiates the bulletin from the recent Regulatory Statement issued by the British Columbia Financial Services Authority ("**BCFSA**") which does not contain a similar carve-out.

*The curious treatment of glass protection*

As noted above, glass protection products promising to pay some or all of the cost of a windshield replacement are considered automobile insurance, while minor windshield repairs for reasonable and expected wear and tear are considered service plans. It is unclear what is considered a glass protection product and how product warranty insurance may interact with its treatment under this bulletin. It is also odd that service plans must be limited to repairs. Many existing service plans provide for windshield replacement if the technician is unable to reasonably repair a chip or crack. Stripping out the replacement option may result in technicians being pressured into repairing a windshield that should be replaced, resulting in a sub-par product that may be dangerous for consumers. Alternatively, the consumer will likely be left to pay for a replacement out-of-pocket,

as the relatively low cost means that consumers are unlikely to submit a claim under their primary automobile insurance (which would require the payment of a deductible and a likely increase in their premiums going forward).

Faced with the Superintendent's interpretation as set out in the bulletin, OEMs, dealers and third-party providers are left to make the difficult decision of whether to modify or pull "offending" motor vehicle protection products from the market, or to engage with an insurer authorized to conduct insurance business in Alberta to underwrite their contracts. This comes at a time when the industry is still reeling from the BCFSAs' Regulatory Statement issued in April of this year and adds to the significant compliance burden.

\*Note: As of October 25, 2024, the Superintendent has retracted *Interpretation Bulletin 05-2024*. A revised bulletin is expected to be released by the Superintendent within the next 2 weeks, pending further review and amendments.

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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#### **A Cautionary Note**

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