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Our Way or The Highway: New Clarity on Alberta Regulation of Motor Vehicle Warranties and Other Products

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On December 19, 2024, the Office of the Alberta Superintendent of Insurance (the Superintendent) published a revised version of Interpretation Bulletin No. 05-2024 (the Superintendent's Bulletin). This bulletin clarifies that certain motor vehicle products that may have previously been considered "warranty" products by some industry stakeholders, fall under the definition of "insurance" in the *Insurance Act*, R.S.A 2000, c. I-3 (the Act) and will be regulated accordingly. The Superintendent's Bulletin applies to motor vehicle warranty contracts, motor vehicle dealership loyalty programs, and ancillary motor vehicle protection products.

Under the Act, products meeting the definition of "insurance" must be underwritten by a licensed insurance company and sold through a licensed insurance agent, although certain types of insurance products may be sold by businesses holding a "restricted certificate of authority." The Act defines "insurance" as the undertaking by one person to indemnify another against loss in respect of certain risks or perils or to pay a sum of money or other value upon the occurrence of a specific event.

In tandem with the release of the Superintedent's Bulletin, the Alberta Insurance Council (AIC) released Information Bulletin IB-2024-01 (the AIC Bulletin), outlining licensing requirements for dealerships selling certain types of motor vehicle warranty and other products considered to be insurance. The AIC Bulletin introduces a new restricted certificate of authority (Restricted Certificate of Authority) insurance type for "dealership loyalty programs and vehicle protection products," indicating that certain products sold by auto dealerships and equipment dealers must be underwritten by licensed insurers and sold under this new certificate.

Product Characterization

The Superintedent's Bulletin addresses three types of products commonly marketed by automobile dealerships and equipment dealers:

1. Motor Vehicle Warranty Contracts.

a. Manufacturer warranty and extended warranty exception – manufacturer warranties are not insurance, but if the product covers any risk, peril damage, or loss beyond inherent deficiencies in workmanship or materials arising from the production of the motor vehicle, the product will be regarded as insurance.

b. Third party extended warranties - include motor vehicle warranty contracts issued by a person (e.g. automotive dealer) other than the manufacturer or a subsidiary at any point during or after the sale of the motor vehicle. These products are regarded as insurance.

2. Motor Vehicle Dealership Programs. These products are often sold by dealerships at the time of purchase, lease, or finance of a vehicle and the purchase price for the product may be referred to as a membership fee. The product will typically entitle a customer to a discount on the purchase price of a future replacement vehicle if the original is damaged or lost. As these products indemnify customers for some part of the cost of a replacement vehicle in the event of loss due to a peril such as theft or collision, they are considered insurance.

3. Ancillary Motor Vehicle Protection Products. A non-exhaustive list of common ancillary motor vehicle protection products considered to be insurance and the applicable class of insurance (automobile or property), as set out in the AIC Bulletin, includes:

Description	**Class of Insurance**
Motor vehicle dealership loyalty programs that provide a dealership discount on a future replacement motor vehicle in the event of damage or total loss of the original motor vehicle	Property insurance
Deductible reimbursement and/or monetary credits given in the event of loss, damage, or theft of a motor vehicle	Property insurance
Non-manufacturer tire and rim warranties 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)	Automobile insurance
Glass protection products promising to pay some or all of the cost of a windshield replacement	Automobile insurance
Anti-theft products promising to make a payment in the event of theft and/or non-recovery of the motor vehicle or any part thereof (includes etching/tagging and catalytic converter anti-theft devices that include a promise to pay if the product fails)	Automobile insurance
Key fob replacement	Property insurance
Payment for a motor vehicle rental provided in conjunction with a vehicle protection product that is considered to be insurance	Same class as the vehicle protection product the coverage is attached to

As noted in the Superintendent's Bulletin, an appreciation for the applicable class of insurance is of particular importance for automobile insurance products, as automobile insurance product wordings are subject to the Superintendent's approval and rates must be approved by the Alberta Automobile Insurance

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Rate Board.

Exceptions

The Superintendent’s Bulletin very helpfully identifies a few instances where warranty contracts, dealership loyalty programs, and ancillary products may not be considered insurance.

Motor Vehicle Warranty Contracts

Warranties issued by a person (e.g., auto repairer) that cover inherent deficiencies in the workmanship of that person are not considered insurance.

Motor Vehicle Dealership Loyalty Programs

Debt waivers provided by financing companies are not insurance (e.g., where a vehicle finance company has agreed in the finance contract to waive up to a certain amount of the loan in the event that the vehicle is written off and insurance does not cover the full loan amount outstanding).

Ancillary Motor Vehicle Protection Products

Roadside service and other motor vehicle service plans that provide solely for planned maintenance, periodic service or minor repairs that are routine to the ownership of a motor vehicle (such as oil changes, windshield repairs, tire and rim repairs, wiper blade replacements, air filter replacements, and scuff, ding, chip, cut, tear, and scratch repairs) are not considered insurance.

Licensing Requirements

Products considered insurance must be underwritten by licensed insurers and sold by dealerships holding an appropriate Restricted Certificate of Authority, either an “equipment warranty insurance” type or a new “dealership loyalty programs and vehicle protection products” type.

Equipment Warranty Insurance

Motor vehicle warranty contracts fall under the already-existing “equipment warranty insurance” type for Restricted Certificates of Authority.

New Type: Motor Vehicle Dealership Loyalty Programs and Ancillary Motor Vehicle Protection Products

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Dealers wishing to sell motor vehicle dealership loyalty programs and/or ancillary motor vehicle protection products must apply to the AIC for a new "dealership loyalty program and vehicle protection products" type of Restricted Certificate of Authority.

Applications for this new type of Restricted Certificate of Authority are available as of January 7, 2025, by logging into the AIC Portal. Failure to comply with the Act or its associated regulations, may result in an administrative penalty of up to $25,000 for each contravention or fines. 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).

Takeaways

These two new bulletins may require that some industry participants amend product offerings and adjust sales processes in Alberta, and will certainly require that some obtain new Restricted Certificates of Authority, but they also provide helpful and needed clarity with respect to the characterization and regulation of motor vehicle protection products and programs in Alberta.
