

HOUSE BILL NO. 668

INTRODUCED BY R. FITZGERALD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SERVICE CONTRACTS TO INCLUDE VEHICLE THEFT PROTECTION PRODUCTS; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR CONDUCTING BUSINESS; PROVIDING FOR DISCLOSURES; PROVIDING THAT CERTAIN VEHICLE THEFT PROTECTION PRODUCTS AND SERVICE CONTRACTS ARE NOT SUBJECT TO THE INSURANCE CODE; PROVIDING DISCLOSURES FOR VEHICLE THEFT PROTECTION PRODUCT WARRANTIES; AND AMENDING SECTIONS 30-14-1301, 30-14-1302, 30-14-1303, ~~30-14-1304~~, AND 33-1-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-1301, MCA, is amended to read:

"30-14-1301. Definitions. As used in this part, the following definitions apply:

(1) "Administrator" means the person who is responsible for the administration of service contracts.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "Incidental costs" means expenses specified in a vehicle theft protection product warranty that are incurred by the vehicle theft protection product warranty holder due to the failure of a vehicle theft protection product to perform as provided in the contract. Incidental costs may include but are not limited to insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be reimbursed in either a fixed amount specified in the vehicle theft protection product warranty or by use of a formula itemizing specific incidental costs incurred by the warranty holder.

~~(3)~~(4) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, limited liability company, limited liability partnership, joint-stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

1 ~~(4)~~(5) "Provider" means a person who is contractually obligated to the service contract holder or
2 vehicle theft protection product warranty holder under the terms of the service contract or vehicle theft
3 protection product warranty.

4 ~~(5)~~(6) "Reimbursement insurance policy" means a policy of insurance issued to a provider to either
5 provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the
6 provider or, in the event of the provider's nonperformance, to pay on behalf of the provider all covered
7 contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold
8 by the provider.

9 ~~(6)~~(7) "Road hazard" means a hazard that is encountered while driving a motor vehicle, including but
10 not limited to potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

11 (8) (a) "Service contract" has the meaning provided in 33-1-102(10)(b) means a contract or
12 agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or
13 maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an
14 operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with
15 or without an additional provision for incidental payment or indemnity under limited circumstances, including but
16 not limited to towing, rental, and emergency road service. A service contract may provide for the repair,
17 replacement, or maintenance of property for damage resulting from power surges or accidental damage from
18 handling.

19 (b) The term includes a contract or agreement sold for a separately stated consideration for a
20 specific duration that provides for any of the following:

21 (i) the repair or replacement of tires and wheels on a motor vehicle damaged as a result of coming
22 into contact with a road hazard;

23 (ii) the removal of dents, dings, or creases on a motor vehicle that can be repaired using the
24 process of paintless dent removal without affecting the existing paint finish and without sanding, bonding,
25 painting, or replacing a vehicle body panel;

26 (iii) the repair of small motor vehicle windshield chips or cracks, which may include replacement of
27 the windshield for chips or cracks that cannot be repaired;

28 (iv) the replacement of one or more motor vehicle keys or key fobs in the event that the key or key

1 fob becomes inoperable, lost, or stolen;

2 (v) in conjunction with a motor vehicle leased for use, the repair, replacement, or maintenance of
3 property, or indemnification for repair, replacement, or maintenance of property, due to any of the following that
4 result in a lease-end charge or any other charge for damage that is deemed as excess wear and use by a
5 lessor under a motor vehicle lease, provided any payment may not exceed the purchase price of the vehicle:

6 (A) excess wear and use;

7 (B) damage for items such as tires, paint cracks or chips, interior stains, rips or scratches, exterior
8 dents or scratches, windshield cracks or chips, missing interior or exterior parts; or

9 (C) excess mileage; or

10 (vi) other services that may be approved by the department, if not inconsistent with the provisions
11 of this title.

12 (c) The term does not include a motor club service as defined in 61-12-301.

13 ~~(7)~~(9) "Service contract holder" or "contract holder" means the person who is the purchaser or holder
14 of a service contract.

15 (10) (a) "Vehicle theft protection product" means a device or system that:

16 (i) is installed on or applied to a motor vehicle;

17 (ii) is designed to prevent loss or damage to a motor vehicle from theft; and

18 (iii) includes a vehicle theft protection product warranty.

19 (b) The term does not include fuel additives, oil additives, or other chemical products applied to the
20 engine, transmission, or fuel system or to interior or exterior surfaces of a motor vehicle.

21 (11) "Vehicle theft protection product warranty" means a written agreement by a warrantor that
22 provides that if the vehicle theft protection product fails to prevent loss or damage to a motor vehicle from theft,
23 then the warrantor will pay to or on behalf of the vehicle theft protection product warranty holder specified
24 incidental costs as a result of the failure of the vehicle theft protection product to perform pursuant to the terms
25 of the written agreement.

26 (12) "Vehicle theft protection product warranty holder" or "warranty holder" means the person who is
27 the purchaser of a vehicle theft protection product and the holder of a vehicle theft protection product warranty."

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1 **Section 2.** Section 30-14-1302, MCA, is amended to read:

2 **"30-14-1302. Requirements for conducting business.** (1) A provider may appoint an administrator
3 or other designee to be responsible for any or all of the administration of service contracts or vehicle theft
4 protection product warranties in compliance with this part.

5 (2) Service contracts or vehicle theft protection product warranties may not be issued, sold, or
6 offered for sale in the state unless the provider complies with the requirements of one of the following three
7 provisions:

8 (a) insures all service contracts or vehicle theft protection product warranties under a
9 reimbursement insurance policy issued by an insurer that is licensed, registered, or otherwise authorized to do
10 business in the state and either:

11 (i) at the time the policy is issued and during the duration of the policy, maintains a surplus as to
12 policyholders and paid-in capital of at least \$15 million and annually files copies of the insurer's financial
13 statements, its national association of insurance commissioners annual statement, and any actuarial
14 certification required by and filed in the insurer's state of domicile; or

15 (ii) at the time the policy is issued and during the duration of the policy, maintains a surplus as to
16 policyholders and paid-in capital of less than \$15 million but at least equal to or greater than \$10 million and:

17 (A) upon request of the department, demonstrates that the company maintains a ratio of net written
18 premiums, whenever written, to surplus as to policyholders and paid-in capital of not greater than 3-to-1; and

19 (B) annually files copies of the insurer's audited financial statements, its national association of
20 insurance commissioners annual statement, and any actuarial certification required by and filed in the insurer's
21 state of domicile;

22 (b) (i) maintains a funded reserve account, which may be subject to examination and review by the
23 department, for its obligations under its contracts issued and outstanding in this state, the reserves of which
24 may not be less than 40% of gross consideration received, less claims paid, on the sale of the service contract
25 or vehicle theft protection product warranty for all service contracts or vehicle theft protection product warranties
26 issued and in force;

27 (ii) maintains a financial security deposit having a value of not less than 5% of the gross
28 consideration received, less claims paid, on the sale of the service contract or vehicle theft protection product

- 1 for all service contracts or vehicle theft protection product warranties issued and in force, but not less than
2 \$25,000 and consisting of one of the following:
- 3 (A) a surety bond issued by an authorized surety;
 - 4 (B) securities of the type eligible for deposit by authorized insurers in this state;
 - 5 (C) cash; or
 - 6 (D) a letter of credit issued by a qualified financial institution; or
- 7 (c) maintains, either alone or with its parent company, a net worth of stockholders' equity of \$100
8 million and provides the department, upon request, with:
- 9 (i) a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-
10 F filed with the securities and exchange commission within the last calendar year; or
 - 11 (ii) if the company does not file with the securities and exchange commission, a copy of the
12 company's audited financial statements showing a net worth of the provider or its parent company of at least
13 \$100 million.
- 14 (3) If information requested in subsection (2)(c)(i) or (2)(c)(ii) comes from the provider's parent
15 company, then the parent company shall agree to guarantee the obligations of the provider relating to service
16 contracts sold by the provider in this state.
- 17 (4) Except for the requirements provided in subsection (2), no other financial security requirements
18 may be required.
- 19 (5) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration
20 of service contracts or vehicle theft protection products by the providers and related service contract or vehicle
21 theft protection product sellers, administrators, and other persons are exempt from all provisions in Title 33, as
22 provided in 33-1-102(10)(a)."

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24 **Section 3.** Section 30-14-1303, MCA, is amended to read:

25 **"30-14-1303. Required disclosures -- reimbursement insurance policy.** (1) Reimbursement
26 insurance policies insuring service contracts or vehicle theft protection product warranties issued, sold, or
27 offered for sale in this state must state that the insurer that issued the reimbursement insurance policy shall
28 either reimburse or pay on behalf of the provider any covered sums that the provider is legally obligated to pay

1 or, in the event of the provider's nonperformance, shall provide the service that the provider is legally obligated
2 to perform according to the provider's contractual obligations under the service contracts or vehicle theft
3 protection product warranties issued or sold by the provider.

4 (2) If covered service is not provided by the provider within 60 days of proof of loss by the service
5 contract holder or vehicle protection product warranty holder, the contract holder or warranty holder is entitled
6 to apply directly to the reimbursement insurance company."

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8 **Section 4.** Section 30-14-1304, MCA, is amended to read:

9 ~~"30-14-1304. Required disclosure -- service contracts. (1) Service contracts or vehicle theft
10 protection products marketed, sold, offered for sale, issued, made, proposed to be made, or administered in
11 this state must be written, printed, or typed in clear understandable language that is easy to read and must
12 disclose the requirements set forth in this section, as applicable.~~

13 (2) ~~Service contracts or vehicle theft protection products insured under a reimbursement insurance
14 policy pursuant to 30-14-1302 (2)(a) must contain the following items:~~

15 (a) ~~a statement that is in a form identical or similar to the following: "Obligations of the provider
16 under this service contract are insured under a service contract reimbursement insurance policy."; and~~

17 (b) ~~the name and address of the insurer.~~

18 (3) ~~Service contracts or vehicle theft protection products not insured under a reimbursement
19 insurance policy pursuant to 30-14-1302 (2)(a) must contain a statement that is in a form identical or similar to
20 the following: "Obligations of the provider under this service contract are backed by the full faith and credit of
21 the provider."~~

22 (4) ~~Service contracts or vehicle theft protection products must state the name and address of the
23 provider and must identify any administrator if different from the provider, the service contract seller, and the
24 service contract holder or vehicle theft protection product warranty holder if provided by the holder. The
25 identities of all parties referred to in this subsection are not required to be preprinted on the service contract and
26 may be added to the service contract at the time of the sale.~~

27 (5) ~~A service contract or vehicle theft protection product or the service contract or vehicle theft
28 protection product warranty holder's receipt must state the total purchase price and the terms under which the~~

1 contract is sold. The purchase price is not required to be preprinted on the service contract and may be
2 negotiated at the time of the sale with the service contract holder or warranty holder.

3 (6) ~~Service contracts or vehicle theft protection products must state the existence of any deductible~~
4 ~~amount, as applicable.~~

5 (7) ~~Service contracts or vehicle theft protection products must specify the merchandise and~~
6 ~~services to be provided and any limitations, exceptions, or exclusions.~~

7 (8) ~~Service contracts or vehicle theft protection products covering automobiles must state whether~~
8 ~~the use of nonoriginal manufacturer's parts are allowed.~~

9 (9) ~~Service contracts or vehicle theft protection products must state any restrictions governing the~~
10 ~~transferability of the service contract, as applicable.~~

11 (10) ~~Service contracts or vehicle theft protection products must state the terms, restrictions, or~~
12 ~~conditions governing cancellation of the service contract or vehicle theft protection product prior to the~~
13 ~~termination or expiration date of the service contract by either the provider or the service contract holder or~~
14 ~~vehicle theft protection product warranty holder.~~

15 (11) ~~(a) Except as provided in subsection (11)(b), the provider shall mail a written notice to the~~
16 ~~service contract or vehicle theft protection product warranty holder at the last known address of the contract~~
17 ~~holder or warranty holder contained in the records of the provider at least 5 days prior to the cancellation by the~~
18 ~~provider.~~

19 (b) ~~Prior notice is not required if the reason for cancellation is:~~

20 (i) ~~nonpayment of the provider fee;~~

21 (ii) ~~a material misrepresentation by the service contract holder or vehicle theft protection product~~
22 ~~warranty holder to the provider; or~~

23 (iii) ~~substantial breach of duties by the service contract holder or warranty holder relating to the~~
24 ~~covered product or its use.~~

25 (c) ~~Any cancellation notice must state the effective date and reason for the cancellation.~~

26 (12) ~~Service contracts and vehicle theft protection products must set forth all of the obligations and~~
27 ~~duties of the service contract or vehicle theft protection product warranty holder, including the duty to protect~~
28 ~~against any further damage and any requirement to follow the owner's manual. "~~

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NEW SECTION. SECTION 4. REQUIRED DISCLOSURE -- VEHICLE THEFT PROTECTION PRODUCT

WARRANTIES. (1) VEHICLE THEFT PROTECTION PRODUCT WARRANTIES OFFERED, ISSUED, MADE, PROPOSED TO BE MADE, OR ADMINISTERED IN THIS STATE MUST BE WRITTEN, PRINTED, OR TYPED IN CLEAR, UNDERSTANDABLE LANGUAGE THAT IS EASY TO READ AND MUST DISCLOSE THE FOLLOWING, AS APPLICABLE:

(A) THE NAME AND ADDRESS OF THE WARRANTOR, THE SELLER OF THE VEHICLE THEFT PROTECTION PRODUCT, AND THE VEHICLE THEFT PROTECTION PRODUCT WARRANTY HOLDER;

(B) THE TOTAL PURCHASE PRICE OF THE VEHICLE THEFT PROTECTION PRODUCT AND THE TERMS UNDER WHICH IT IS TO BE PAID, HOWEVER, THE PURCHASE PRICE IS NOT REQUIRED TO BE PREPRINTED ON THE VEHICLE THEFT PROTECTION PRODUCT WARRANTY AND MAY BE NEGOTIATED WITH THE CONSUMER AT THE TIME OF SALE;

(C) THE PROCEDURE FOR MAKING A CLAIM, INCLUDING A TELEPHONE NUMBER FOR THE WARRANTOR OR ADMINISTRATOR RESPONSIBLE FOR PROCESSING THE CLAIM;

(D) THE PAYMENTS OR PERFORMANCE TO BE PROVIDED UNDER THE WARRANTY, INCLUDING PAYMENTS FOR INCIDENTAL COSTS, THE MANNER OF CALCULATION OR DETERMINATION OF PAYMENTS OR PERFORMANCE, AND ANY LIMITATIONS, EXCEPTIONS, OR EXCLUSIONS. INCIDENTAL COSTS MAY BE REIMBURSED UNDER THE PROVISIONS OF THE WARRANTY IN EITHER A FIXED AMOUNT SPECIFIED IN THE WARRANTY OR SALES AGREEMENT OR BY THE USE OF A FORMULA ITEMIZING SPECIFIC INCIDENTAL COSTS INCURRED BY THE VEHICLE THEFT PROTECTION PRODUCT WARRANTY HOLDER.

(E) THE OBLIGATIONS AND DUTIES OF THE VEHICLE THEFT PROTECTION PRODUCT WARRANTY HOLDER, SUCH AS THE DUTY TO PROTECT AGAINST ANY FURTHER DAMAGE TO THE VEHICLE, THE OBLIGATION TO NOTIFY THE WARRANTOR IN ADVANCE OF ANY REPAIR, OR OTHER SIMILAR REQUIREMENTS, IF ANY;

(F) ANY TERMS, RESTRICTIONS, OR CONDITIONS GOVERNING TRANSFERABILITY AND CANCELLATION OF THE WARRANTY, IF ANY. A WARRANTOR MAY ONLY CANCEL A VEHICLE THEFT PROTECTION PRODUCT WARRANTY IF THE VEHICLE THEFT PROTECTION PRODUCT WARRANTY HOLDER DOES ANY OF THE FOLLOWING:

(i) FAILS TO PAY FOR THE VEHICLE THEFT PROTECTION PRODUCT;

(ii) MAKES A MATERIAL MISREPRESENTATION TO THE SELLER OF THE VEHICLE THEFT PROTECTION PRODUCT OR TO THE WARRANTOR;

(iii) COMMITS FRAUD RELATED TO THE PURCHASE OF THE VEHICLE THEFT PROTECTION PRODUCT,

1 REGISTRATION OF THE VEHICLE THEFT PROTECTION PRODUCT WARRANTY, OR A CLAIM MADE UNDER THE VEHICLE THEFT
2 PROTECTION PRODUCT WARRANTY;
3 (IV) SUBSTANTIALLY BREACHES THE VEHICLE THEFT PROTECTION PRODUCT WARRANTY HOLDER'S DUTIES
4 UNDER THE WARRANTY;
5 (V) FAILS TO MAKE REQUIRED PAYMENTS ON THE VEHICLE SO THAT THE VEHICLE IS REPOSSESSED; AND
6 (VI) DAMAGES THE VEHICLE IN SUCH A WAY SO THAT THE VEHICLE IS CONSIDERED A TOTAL LOSS.
7 (2) A VEHICLE THEFT PROTECTION PRODUCT WARRANTY THAT IS INSURED BY A REIMBURSEMENT
8 INSURANCE POLICY PURSUANT TO 30-14-1302(2)(A) MUST CONTAIN THE FOLLOWING ITEMS:
9 (A) A STATEMENT THAT IS IN A FORM IDENTICAL OR SIMILAR TO THE FOLLOWING: "THIS CONTRACT IS NOT
10 INSURANCE AND IS NOT SUBJECT TO THE INSURANCE LAWS OF THIS STATE";
11 (B) THAT THE OBLIGATIONS OF THE WARRANTOR ARE INSURED UNDER A REIMBURSEMENT INSURANCE
12 POLICY;
13 (C) THAT IF A WARRANTOR FAILS TO PERFORM OR MAKE A PAYMENT DUE UNDER THE TERMS OF THE
14 WARRANTY WITHIN 60 DAYS AFTER THE VEHICLE THEFT PROTECTION PRODUCT WARRANTY HOLDER REQUESTS
15 PERFORMANCE OR PAYMENT PURSUANT TO THE TERMS OF THE WARRANTY, THE VEHICLE THEFT PROTECTION PRODUCT
16 WARRANTY HOLDER MAY REQUEST PERFORMANCE OR PAYMENT DIRECTLY FROM THE WARRANTOR'S REIMBURSEMENT
17 INSURANCE POLICY INSURER; AND
18 (D) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE WARRANTOR'S REIMBURSEMENT INSURANCE
19 POLICY INSURER.
20 (3) VEHICLE THEFT PROTECTION PRODUCT WARRANTIES NOT INSURED UNDER A REIMBURSEMENT
21 INSURANCE POLICY PURSUANT TO 30-14-1302(2)(A) MUST CONTAIN A STATEMENT THAT IS IN A FORM IDENTICAL OR
22 SIMILAR TO THE FOLLOWING: "THE OBLIGATIONS OF THE WARRANTOR UNDER THIS WARRANTY ARE BACKED BY THE FULL
23 FAITH AND CREDIT OF THE WARRANTOR".

24

25 **Section 5.** Section 33-1-102, MCA, is amended to read:

26 **"33-1-102. Compliance required -- exceptions -- health service corporations -- health**
27 **maintenance organizations -- governmental insurance programs -- service contracts.** (1) A person may
28 not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be

1 performed in Montana without complying with the applicable provisions of this code.

2 (2) The provisions of this code do not apply with respect to:

3 (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

4 (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

5 (c) fraternal benefit societies, except as stated in chapter 7.

6 (3) This code applies to health service corporations as prescribed in 33-30-102. The existence of
7 the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

8 (4) This code does not apply to health maintenance organizations to the extent that the existence
9 and operations of those organizations are governed by chapter 31.

10 (5) This code does not apply to workers' compensation insurance programs provided for in Title
11 39, chapter 71, part 21, and related sections.

12 (6) The department of public health and human services may limit the amount, scope, and duration
13 of services for programs established under Title 53 that are provided under contract by entities subject to this
14 title. The department of public health and human services may establish more restrictive eligibility requirements
15 and fewer services than may be required by this title.

16 (7) This code does not apply to the state employee group insurance program established in Title 2,
17 chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25,
18 part 13.

19 (8) This code does not apply to insurance funded through the state self-insurance reserve fund
20 provided for in 2-9-202.

21 (9) (a) Except as otherwise provided in Title 33, chapters 22 and 28, this code does not apply to
22 any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political
23 subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention,
24 deductible, or self-insurance plan.

25 (b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any
26 arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement,
27 plan, or program of a single political subdivision of this state in which the political subdivision provides to its
28 officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

1 (10) ~~(a)~~—This code does not apply to the marketing of, sale of, offering for sale of, issuance of,
2 making of, proposal to make, and administration of a service contract governed by Title 30, chapter 14, part 13.

3 ~~(b)~~—A "service contract" means a contract or agreement for a separately stated consideration for a
4 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
5 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
6 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
7 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
8 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting
9 from power surges or accidental damage from handling. A service contract does not include motor club service
10 as defined in 61-12-301.

11 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
12 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable
13 for the financial risk under the contract with the third party as provided in 7-34-103.

14 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city,
15 or town, the entity is subject to the provisions of this code.

16 (12) This code does not apply to the self-insured student health plan established in Title 20, chapter
17 25, part 14.

18 (13) Except as provided in 33-2-2212, this code does not apply to private air ambulance services
19 that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership
20 applications, charge membership fees, and provide air ambulance services to subscription members and
21 designated members of their households.

22 (14) This code does not apply to guaranteed asset protection waivers that are governed by Title 30,
23 chapter 14, part 22, or to vehicle theft protection products or vehicle theft protection product warranties that are
24 governed by Title 30, chapter 14, part 13.

25 (15) This code does not apply to direct patient care agreements established pursuant to 50-4-107.

26 (16) This code does not apply to a health care sharing ministry that meets the requirements of 50-4-
27 111."

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