

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Bulletin 2016-20-INS

In the matter of

Road Service Clubs and Motor Clubs
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**Issued and entered
This 30th day of November 2016
by Patrick M. McPharlin
Director**

This bulletin supersedes Bulletin 81-20, issued October 20, 1981.

Under common-law principles, accepting payment in exchange for assuming the risk of, and agreeing to reimburse for, future expenses constitutes the business of insurance. Insurance is a highly regulated industry because consumers' financial well-being depends on the ability of insurers to keep the promises they make well into the future. Therefore, it is important that consumers know that an entity doing the business of insurance has a certificate of authority from the Department of Insurance and Financial Services (DIFS) demonstrating it meets the financial requirements of the Michigan Insurance Code (Code).

Road service clubs and motor clubs (Clubs) provide their members protection against expenses such as towing and emergency road services. It has been DIFS' longstanding position that when a Club agrees to provide reimbursement for the expense of certain risks (except on a *de minimis* basis), as opposed to directly providing a service, the Club is transacting insurance. This position is supported by common-law principles as well as by Continental Auto Club, Inc. v. Commissioner of Insurance, 337 Mich 434 (1953) and Attorney General Opinion No. 1534, p. 458 (1952). Indemnification against the expenses of towing and emergency road services, legal services, and arrest and bail bond certificates are specifically addressed in Continental Auto Club and Attorney General Opinion No. 1534 as constituting "insurance."

Sections 120, 402, and 402a of the Code, MCL 500.120, 500.402, and 500.402a, prohibit the transaction of insurance in Michigan without holding a certificate of authority. Limited exceptions to this requirement are set forth in Section 402b of the Code, MCL 500.402b.

Recently, DIFS has had the opportunity to review Bulletin 81-20 and has determined that the guidelines it contains do not provide accurate or complete guidance regarding

whether Club activities constitute insurance such that an entity would be required to obtain a certificate of authority.

It remains DIFS' position that a Club's agreement for provision of services will not be considered insurance because it provides for occasional, de minimis reimbursement of expenses; but only if such reimbursement is incidental to the Club's operation which, taken as a whole, has as its principal object and purpose of the provision of services rather than indemnity.

Alternatively, if a Club chooses to provide benefits and services by reimbursing its members, it may do so through a policy issued by an insurance company authorized to transact business in Michigan pursuant to the Code.

DIFS will determine whether the activities of a Club constitutes insurance on a case-by-case basis. Clubs which provide reimbursement for, or indemnification against, the expense of certain risks must contact DIFS to determine whether a certificate of authority is required for the particular product(s) they offer or plan to offer.

Bulletin 81-20 is rescinded.

Any questions regarding this bulletin should be directed to:

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/s/

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