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AN ACT

RELATING TO SERVICE CONTRACTS; AMENDING THE SERVICE CONTRACT  
REGULATION ACT; ADDING AND AMENDING DEFINITIONS; PROVIDING  
FOR SURETY THROUGH INSURANCE POLICIES; SPECIFYING INFORMATION  
TO BE INCLUDED IN CONTRACTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 59A-58-1 NMSA 1978 (being Laws 2001,  
Chapter 206, Section 1) is amended to read:

"59A-58-1. SHORT TITLE.--Chapter 59A, Article 58 NMSA  
1978 may be cited as the "Service Contract Regulation Act".

SECTION 2. Section 59A-58-2 NMSA 1978 (being Laws 2001,  
Chapter 206, Section 2, as amended) is amended to read:

"59A-58-2. DEFINITIONS.--As used in the Service  
Contract Regulation Act:

A. "administrator" means a person who is  
responsible for administering a service contract that is  
issued, sold or offered for sale by a provider or sold by a  
seller;

B. "consumer" means a person who purchases, other  
than for resale, property used primarily for personal, family  
or household purposes and not for business or research  
purposes;

C. "holder" means a resident of this state who:

(1) purchases a service contract; or

1                   (2) is legally in possession of a service  
2 contract and is entitled to enforce the rights of the  
3 original purchaser of the service contract;

4                   D. "incidental costs" means expenses specified in  
5 a warranty that are incurred by the warranty holder due to  
6 the failure of the product to perform as provided in the  
7 contract. Incidental costs may include, without limitation,  
8 insurance policy deductibles, rental vehicle charges, the  
9 difference between the actual value of a motor vehicle at the  
10 time of failure and the cost of a replacement vehicle, gross  
11 receipts taxes, registration fees, transaction fees and  
12 mechanical inspection fees. Incidental costs may be  
13 reimbursed in either a fixed amount specified in the warranty  
14 or by use of a formula itemizing specific incidental costs  
15 incurred by the warranty holder;

16                   E. "maintenance agreement" means a contract for a  
17 limited period that provides only for scheduled maintenance;

18                   F. "major manufacturing company" means a person  
19 who:

20                   (1) manufactures or produces and sells  
21 products under its own name or label or is a wholly owned  
22 subsidiary or affiliate of the person who manufactures or  
23 produces products; and

24                   (2) maintains, or its parent company  
25 maintains, a net worth or stockholders' equity of at least

1 one hundred million dollars (\$100,000,000);

2 G. "property" means all property, whether movable  
3 at the time of purchase or a fixture, that is used primarily  
4 for personal, family or household purposes;

5 H. "provider" means a person who is contractually  
6 obligated to a holder or to indemnify the holder for the  
7 costs of repairing, replacing or performing maintenance on  
8 property;

9 I. "reimbursement insurance policy" means a policy  
10 of insurance issued to a provider to either provide  
11 reimbursement to the provider under the terms of the insured  
12 service contracts issued or sold by the provider or, in the  
13 event of the provider's non-performance, to pay on behalf of  
14 the provider all covered contractual obligations incurred by  
15 the provider under the terms of the insured service contracts  
16 issued or sold by the provider;

17 J. "road hazard" means a hazard that is  
18 encountered while driving a motor vehicle and that may  
19 include potholes, rocks, wood debris, metal parts, glass,  
20 plastic, curbs or composite scraps;

21 K. "seller" means a person who sells service  
22 contracts that contractually obligate another party or  
23 parties;

24 L. "service contract" means a contract pursuant to  
25 which a provider, in exchange for separately stated

1 consideration, is obligated for a specified period to a  
2 holder to repair, replace or perform maintenance on, or  
3 indemnify or reimburse the holder for the costs of repairing,  
4 replacing or performing maintenance on, property that is  
5 described in the service contract and that has an operational  
6 or structural failure as a result of a defect in materials,  
7 workmanship or normal wear and tear, including a contract  
8 that provides or includes one or more of the following:

9 (1) incidental payment of indemnity under  
10 limited circumstances, including towing, rental and emergency  
11 road service and food spoilage;

12 (2) the repair, replacement or maintenance  
13 of property for damages that result from power surges or  
14 accidental damage from handling;

15 (3) the repair or replacement of tires and  
16 wheels on a motor vehicle damaged as a result of coming into  
17 contact with road hazards;

18 (4) the removal of dents, dings or creases  
19 on a motor vehicle that can be repaired using the process of  
20 paintless dent removal without affecting the existing paint  
21 finish and without replacing vehicle body panels, sanding,  
22 bonding or painting;

23 (5) the repair of chips or cracks in motor  
24 vehicle windshields or the replacement of motor vehicle  
25 windshields as a result of damage caused by road hazards;

1 (6) the replacement of a motor vehicle key  
2 or key fob in the event the key or key fob becomes inoperable  
3 or is lost or stolen; and

4 (7) other services approved by the  
5 superintendent if not inconsistent with other provisions of  
6 the Service Contract Regulation Act; and

7 M. "warranty" means a warranty provided solely by  
8 a manufacturer, importer or seller of property for which the  
9 manufacturer, importer or seller did not receive separate  
10 consideration and that:

11 (1) is not negotiated or separated from the  
12 sale of the property;

13 (2) is incidental to the sale of the  
14 property; and

15 (3) guarantees to indemnify the consumer for  
16 defective parts, mechanical or electrical failure, labor or  
17 other remedial measures required to repair or replace the  
18 property and may provide specified incidental costs."

19 SECTION 3. Section 59A-58-4 NMSA 1978 (being Laws 2001,  
20 Chapter 206, Section 4) is amended to read:

21 "59A-58-4. PROHIBITION OF SALE OF SERVICE CONTRACT  
22 UNLESS REGISTERED.--A provider shall not issue, sell or offer  
23 for sale service contracts in this state unless the provider  
24 has been registered with the superintendent pursuant to the  
25 provisions of the Service Contract Regulation Act. However,

1 an administrator or seller of a service contract is not  
2 required to be registered. The provisions of this section  
3 shall not apply to major manufacturing companies' service  
4 contracts."

5 SECTION 4. Section 59A-58-5 NMSA 1978 (being Laws 2001,  
6 Chapter 206, Section 5) is amended to read:

7 "59A-58-5. REGISTRATION REQUIREMENTS.--

8 A. A provider who wishes to issue, sell or offer  
9 for sale service contracts in this state must submit to the  
10 superintendent:

11 (1) a registration application on a form  
12 prescribed by the superintendent;

13 (2) proof that the provider has complied  
14 with the requirements for security pursuant to Section  
15 59A-58-6 NMSA 1978;

16 (3) the name, address and telephone number  
17 of each administrator with whom the provider intends to  
18 contract, if any; and

19 (4) a fee of five hundred dollars (\$500).

20 B. A provider's registration is valid for one year  
21 after the date the registration is filed. A provider may  
22 renew the provider's registration if, before the registration  
23 expires, the provider submits to the superintendent an  
24 application on a form prescribed by the superintendent and a  
25 fee of five hundred dollars (\$500).

1 C. The provisions of this section shall not apply  
2 to major manufacturing companies' service contracts.

3 D. Service contract forms are not required to be  
4 filed with the superintendent."

5 SECTION 5. Section 59A-58-6 NMSA 1978 (being Laws 2001,  
6 Chapter 206, Section 6, as amended) is amended to read:

7 "59A-58-6. SECURITY REQUIRED FOR REGISTRATION OF  
8 PROVIDER.--

9 A. To ensure the faithful performance of a  
10 provider's obligations to the provider's service contract  
11 holders, a provider shall comply with the requirements of one  
12 of the following:

13 (1) maintain a deposit with the  
14 superintendent as provided in this paragraph:

15 (a) a provider of a service contract  
16 shall deposit fifty thousand dollars (\$50,000) unless the  
17 contract covers the following, in which case the provider  
18 shall deposit one hundred thousand dollars (\$100,000): 1) a  
19 motor vehicle; and 2) mechanical, plumbing and electrical  
20 systems and appliances at a residential dwelling when the  
21 service contract was sold in conjunction with the sale of the  
22 residential dwelling;

23 (b) deposits required pursuant to  
24 Subparagraph (a) of this paragraph shall be: 1) a surety  
25 bond issued by a surety company authorized to do business in

1 New Mexico on a form acceptable to the superintendent;  
2 2) securities of the type eligible for deposit by an  
3 insurance company; or 3) a clean and irrevocable letter of  
4 credit issued by a financial institution acceptable to the  
5 superintendent; and

6 (c) additional deposits may be required  
7 of any provider when it is determined by the superintendent  
8 that an additional deposit is necessary for the protection of  
9 the public; or

10 (2) insure all service contracts under a  
11 reimbursement insurance policy issued by an insurer licensed,  
12 registered or otherwise authorized to do business in this  
13 state, and who either:

14 (a) at the time the policy is filed  
15 with the superintendent, and continuously thereafter:  
16 1) maintains a surplus as to policyholders and paid-in  
17 capital of at least fifteen million dollars (\$15,000,000);  
18 and 2) annually files copies of the insurer's financial  
19 statements, its national association of insurance  
20 commissioners annual statement and the actuarial  
21 certification required by and filed in the insurer's state of  
22 domicile; or

23 (b) at the time the policy is filed  
24 with the superintendent, and continuously thereafter:  
25 1) maintains a surplus as to policyholders and paid-in

1 capital of less than fifteen million dollars (\$15,000,000)  
2 but at least equal to ten million dollars (\$10,000,000);  
3 2) demonstrates to the satisfaction of the superintendent  
4 that the company maintains a ratio of net written premiums,  
5 wherever written, to surplus as to policyholders and paid-in  
6 capital of not greater than three to one; and 3) annually  
7 files copies of the insurer's audited financial statements,  
8 its national association of insurance commissioners annual  
9 statement and the actuarial certification required by and  
10 filed in the insurer's state of domicile.

11 B. Except for the requirements specified in this  
12 section, no other financial security requirements shall be  
13 required by the superintendent.

14 C. The provisions of this section shall not apply  
15 to major manufacturing companies' service contracts."

16 SECTION 6. Section 59A-58-10 NMSA 1978 (being Laws  
17 2001, Chapter 206, Section 10) is amended to read:

18 "59A-58-10. INFORMATION REQUIRED IN SERVICE CONTRACT.--

19 A. A service contract shall:

20 (1) be written in language that is  
21 understandable and printed in a typeface that is easy to  
22 read;

23 (2) include the amount, if applicable, of  
24 any deductible that the holder is required to pay;

25 (3) include the name, address and telephone

1 number of the provider and, if applicable:

2 (a) the name, address and telephone  
3 number of the administrator;

4 (b) the name of the holder, if provided  
5 by the holder; and

6 (c) the name, address and telephone  
7 number of the seller; however, the names and addresses of the  
8 foregoing persons are not required to be preprinted on the  
9 service contract and may be added to the service contract at  
10 the time of the sale;

11 (4) include the purchase price of the  
12 service contract; however, the purchase price of the service  
13 contract is not required to be preprinted on the service  
14 contract and may be added to the service contract at the time  
15 of the sale;

16 (5) include a description of the property  
17 covered by the service contract;

18 (6) specify the duties of the provider and  
19 any limitations, exceptions or exclusions;

20 (7) if the service contract covers a motor  
21 vehicle, indicate whether replacement parts that are not made  
22 for or by the original manufacturer of the motor vehicle may  
23 be used to comply with the terms of the service contract;

24 (8) include, if applicable, any restrictions  
25 on transferring or renewing the service contract;

1 (9) include the terms, restrictions or  
2 conditions for canceling the service contract before it  
3 expires and the procedure for canceling the service contract.  
4 The conditions for canceling the service contract shall  
5 include the provisions of Section 59A-58-12 NMSA 1978;

6 (10) include the duties of the holder under  
7 the contract, including the duty to protect against damage to  
8 the property covered by the service contract or to comply  
9 with any instructions included in the owner's manual for the  
10 property;

11 (11) indicate whether the service contract  
12 authorizes the holder to recover consequential damages; and

13 (12) indicate whether any defect in the  
14 property covered by the service contract existing on the date  
15 the contract is purchased is not covered under the service  
16 contract.

17 B. A provider shall not allow, make or cause to be  
18 made a false or misleading statement in any of the provider's  
19 service contracts or intentionally omit a material statement  
20 that causes a service contract to be misleading. The  
21 superintendent may require the provider to amend any service  
22 contract that the superintendent determines is false or  
23 misleading." \_\_\_\_\_