

AN ACT
RELATING TO CONTRACTS; ENACTING THE SERVICE CONTRACT
REGULATION ACT TO IMPOSE RESTRICTIONS AND REQUIREMENTS ON
SALES OF SERVICE CONTRACTS; PROVIDING FOR THE SUPERINTENDENT
OF INSURANCE TO ADMINISTER THAT ACT; PROVIDING CIVIL
PENALTIES FOR VIOLATION.

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

Section 1. SHORT TITLE. -- Sections 1 through 19 of this act may be cited as the "Service Contract Regulation Act".

Section 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;

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

D. "maintenance agreement" means a contract for a

limited period that provides only for scheduled maintenance;

E. "major manufacturing company" means a person who:

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

(2) maintains or its parent company maintains a net worth or stockholders' equity of at least one hundred million dollars (\$100,000,000).

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

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

H. "service contract" means a contract pursuant to which a provider, in exchange for separately stated consideration, is obligated for a specified period to a holder to repair, replace or perform maintenance on, or indemnify or reimburse the holder for the costs of repairing, replacing or performing maintenance on, property that is described in the service contract and that has an operational or structural failure as a result of a defect in

materials, workmanship or normal wear and tear, including:

(1) a contract that includes a provision for incidental payment of indemnity under limited circumstances, including towing, rental and emergency road service and food spoilage; and

(2) a contract that provides for the repair, replacement or maintenance of property for damages that result from power surges or accidental damage from handling;

I. "superintendent" means the superintendent of insurance of the insurance division of the public regulation commission; and

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

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

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

(3) guarantees to indemnify the consumer for defective parts, mechanical or electrical failure, labor or other remedial measures required to repair or replace the property.

Section 3. EXCLUSIONS FROM ACT. -- The provisions of the Service Contract Regulation Act do not apply to:

- A. a warranty;
- B. a maintenance agreement;
- C. a service contract provided by a public utility on its transmission device if the service contract is regulated by the public regulation commission;
- D. a service contract sold or offered for sale to a person who is not a consumer; or
- E. a service contract for property if the purchase price of the property is less than two hundred fifty dollars (\$250) and the consideration for the service contract is less than twenty-five dollars (\$25.00).

Section 4. PROHIBITION OF SALE OF SERVICE CONTRACT UNLESS REGISTERED. -- A provider shall not issue, sell or offer for sale service contracts in this state unless he has been registered with the superintendent pursuant to the provisions of the Service Contract Regulation Act. The provisions of this section shall not apply to major manufacturing companies' service contracts.

Section 5. REGISTRATION REQUIREMENTS. --

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

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

(2) proof that he has complied with the requirements for security pursuant to Section 7 of the Service Contract Regulation Act;

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

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

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

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

Section 6. SECURITY REQUIRED FOR REGISTRATION OF PROVIDER. --

A. To assure the faithful performance of a provider's obligations to his contract holders, a provider shall maintain a deposit with the superintendent as provided in this section.

B. A provider of a service contract shall deposit fifty thousand dollars (\$50,000) unless the contract covers the following, in which case he shall deposit one hundred thousand dollars (\$100,000):

(1) a motor vehicle; and

(2) mechanical, plumbing and electrical systems and appliances at a residential dwelling when the service contract was sold in conjunction with the sale of the residential dwelling.

C. Deposits required pursuant to Subsection B of this section shall be:

(1) a surety bond issued by a surety company authorized to do business in New Mexico on a form acceptable to the superintendent;

(2) securities of the type eligible for deposit by an insurance company;

(3) cash; or

(4) a clean and irrevocable letter of credit issued by a financial institution acceptable to the superintendent.

D. Additional financial security may be required of any provider when it is determined by the superintendent that an additional deposit is necessary for the protection of the public.

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

Section 7. TRANSACTIONS EXEMPT FROM PREMIUM TAX. -- The premium tax imposed pursuant to Chapter 59A, Article 6 NMSA 1978 does not apply to any business transacted pursuant to the provisions of the Service Contract Regulation Act.

Section 8. TRANSACTIONS NOT SUBJECT TO NEW MEXICO

INSURANCE CODE- - EXCEPTIONS. - -

A. Except as otherwise provided in the Service Contract Regulation Act, the marketing, issuance, sale, offering for sale, making, proposing to make and administration of service contracts are not subject to the provisions of the New Mexico Insurance Code, except, when applicable, the provisions of Chapter 59A, Article 16 NMSA 1978.

B. A provider, person who sells service contracts, administrator or any other person is not required to obtain a certificate of authority or license from the superintendent to issue, sell, offer for sale or administer service contracts.

Section 9. RIGHT OF HOLDER TO RETURN SERVICE CONTRACT FOR REFUND. - -

A. A service contract is void and a provider shall refund to the holder the purchase price of the service contract if the holder has not made a claim under the service contract and the holder returns the service contract to the provider:

(1) within twenty days after the date the provider mails a copy of the service contract to the holder;

(2) within ten days after the purchaser receives a copy of the service contract if the provider furnishes the holder with the copy at the time the contract is purchased; or

(3) within a longer period specified in the service contract.

B. The right of a holder to return a service contract pursuant to this section applies only to the original purchaser of the service contract.

C. A service contract must include a provision that clearly states the right of a holder to return a service contract pursuant to this section.

D. The provider shall refund to the holder or credit to the account of the holder the purchase price of the service contract within sixty days after a service contract is returned pursuant to Subsection A of this section. If the provider fails to refund the purchase price or credit the account of the holder within that time, the provider shall pay the holder a penalty of ten percent of the purchase price for each thirty-day period or portion thereof that the refund and any accrued penalties remain unpaid.

Section 10. INFORMATION REQUIRED IN SERVICE CONTRACT. -

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A. A service contract shall:

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

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

(3) include the name, address and telephone number of the provider and, if applicable:

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

(b) the name of the holder, if provided by the holder; however, the names and addresses of the foregoing persons are not required to be preprinted on the service contract and may be added to the service contract at the time of the sale;

(4) include the purchase price of the service contract;

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

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

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

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

(9) include the terms, restrictions or conditions for canceling the service contract before it expires and the procedure for canceling the service

contract. The conditions for canceling the service contract shall include the provisions of Section 13 of the Service Contract Regulation Act;

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

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

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

B. A provider shall not allow, make or cause to be made a false or misleading statement in any of his service contracts or intentionally omit a material statement that causes a service contract to be misleading. The superintendent may require the provider to amend any service contract that the superintendent determines is false or misleading.

Section 11. RECEIPT FOR AND COPY OF SERVICE CONTRACT REQUIRED. --

A. A provider shall provide a receipt for, or other written evidence of, the purchase of a service contract.

B. The provider shall furnish a copy of the service contract to the holder within a reasonable time after the contract is purchased.

Section 12. CANCELLATION OF SERVICE CONTRACT. --

A. No service contract that has been in effect for at least seventy days may be canceled by the provider before the expiration of the agreed term or one year after the effective date of the service contract, whichever occurs first, except on any of the following grounds:

(1) failure by the holder to pay an amount when due;

(2) conviction of the holder of a crime that results in an increase in the service required under the service contract;

(3) discovery of fraud or material misrepresentation by the holder in obtaining the service contract or in presenting a claim for service thereunder; or

(4) discovery of either of the following if it occurred after the effective date of the service contract and substantially and materially increased the service required under the service contract:

(a) an act or omission by the holder; or

(b) a violation by the holder of any condition of the service contract.

B. No cancellation of a service contract may become effective until at least fifteen days after the notice of cancellation is mailed to the holder.

Section 13. BUSINESS NAME RESTRICTIONS. --

A. Except as otherwise provided in this section, a provider shall not include in the name of his business:

(1) the words "insurance", "casualty", "surety", "mutual" or any other word or term that implies that he is engaged in the business of transacting insurance or is a surety company; or

(2) a name that is deceptively similar to the name or description of an insurer or surety company or the name of another provider.

B. A provider may include the word "guaranty" or a similar word in the name of his business.

C. This section does not apply to a provider who, before January 1, 2002, includes in the name of his business a name that does not comply with the provisions of Subsection A of this section. Such a provider shall include in each service contract he issues, sells or offers for sale a statement that the service contract is not a contract of insurance.

Section 14. PROHIBITION OF REQUIRING PURCHASE OF SERVICE CONTRACT AS A CONDITION OF LOAN APPROVAL OR PURCHASE OF PROPERTY. -- No person may require the purchase of a

service contract as a condition for the approval of a loan or the purchasing of property.

Section 15. RECORDS REQUIREMENTS. --

A. A provider shall maintain records of the transactions governed by the Service Contract Regulation Act. The records of a provider shall include:

(1) a copy of each type of service contract that the provider issues, sells or offers for sale;

(2) the name and address of each holder who possesses a service contract under which the provider has a duty to perform, to the extent that the provider knows the name and address of each holder;

(3) a list that includes each location where the provider issues, sells or offers for sale service contracts; and

(4) the date and a description of each claim made by a holder under a service contract.

B. Except as otherwise provided in this subsection, a provider shall retain all records relating to a service contract for at least one year after the contract has expired. A provider who intends to discontinue doing business in this state shall provide the superintendent with satisfactory proof that he has discharged his duties to the holders in this state and shall not destroy his records without the prior approval of the superintendent.

C. The records required to be maintained pursuant

to this section may be stored on a computer disk or other storage device for a computer from which the records can be readily printed.

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

Section 16. EXAMINATIONS AND INSPECTION OF BOOKS BY SUPERINTENDENT. --

A. The superintendent may conduct examinations to enforce the provisions of the Service Contract Regulation Act pursuant to Chapter 59A, Article 4 NMSA 1978 at such times as he deems necessary.

B. A provider shall, upon the request of the superintendent, make available to the superintendent for inspection any accounts, books and records concerning any service contract issued, sold or offered for sale by the provider that are reasonably necessary to enable the superintendent to determine whether the provider is in compliance with the provisions of the Service Contract Regulation Act.

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

Section 17. CIVIL PENALTY FOR VIOLATION. -- A person who violates any provision of the Service Contract Regulation Act or an order or rule of the superintendent issued or adopted pursuant thereto may be assessed a civil penalty by the superintendent of not more than five thousand dollars

(\$5,000) for each act or violation, not to exceed an aggregate amount of one hundred thousand dollars (\$100,000) for violations of a similar nature. For the purposes of this section, violations shall be deemed to be of a similar nature if the violations consist of the same or similar conduct, regardless of the number of times the conduct occurred.

Section 18. RULEMAKING. --The superintendent may adopt rules necessary to carry out the provisions of the Service Contract Regulation Act.

Section 19. Section 59A-16-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 269, as amended) is amended to read:

"59A-16-1. SCOPE OF ARTICLE. --The provisions of Chapter 59A, Article 16 NMSA 1978 as applicable shall apply as to insurers, fraternal benefit societies, nonprofit health care plans, health maintenance organizations, prepaid dental services organizations, motor clubs, agents, brokers, solicitors, adjusters, providers of services contracts pursuant to the Service Contract Regulation Act and all other persons engaged in any business which is now or hereafter subject to the superintendent's supervision under the Insurance Code, as well as all alien and foreign insurers delivering or issuing for delivery in New Mexico any certificate or other evidence of coverage. For the purposes of that article, the societies, organizations,

