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AN ACT

RELATING TO SERVICE CONTRACTS; AMENDING THE SERVICE CONTRACT  
REGULATION ACT; AMENDING THE PROCEDURE FOR CANCELLATION;  
PROVIDING FOR AUTOMATIC RENEWAL OF SERVICE CONTRACTS.

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

SECTION 1. 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. "automatic renewal provision" means a provision  
within a service contract that acts to automatically renew  
the service contract after the end of the original term for a  
renewal term greater than two months, and such renewal is  
effective unless the holder gives notice to the provider or  
administrator of the holder's intention to terminate the  
service contract;

C. "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;

1 D. "holder" means a resident of this state who:

2 (1) purchases a service contract; or

3 (2) is legally in possession of a service

4 contract and is entitled to enforce the rights of the

5 original purchaser of the service contract;

6 E. "incidental costs" means expenses specified in

7 a warranty that are incurred by the warranty holder due to

8 the failure of the product to perform as provided in the

9 contract. Incidental costs may include, without limitation,

10 insurance policy deductibles, rental vehicle charges, the

11 difference between the actual value of a motor vehicle at the

12 time of failure and the cost of a replacement vehicle, gross

13 receipts taxes, registration fees, transaction fees and

14 mechanical inspection fees. Incidental costs may be

15 reimbursed in either a fixed amount specified in the warranty

16 or by use of a formula itemizing specific incidental costs

17 incurred by the warranty holder;

18 F. "maintenance agreement" means a contract for a

19 limited period that provides only for scheduled maintenance;

20 G. "major manufacturing company" means a person

21 who:

22 (1) manufactures or produces and sells

23 products under its own name or label or is a wholly owned

24 subsidiary or affiliate of the person who manufactures or

25 produces products; and

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

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

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

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

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

23                   L. "seller" means a person who sells service  
24 contracts that contractually obligate another party or  
25 parties;

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

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

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

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

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

25 (5) the repair of chips or cracks in motor

1 vehicle windshields or the replacement of motor vehicle  
2 windshields as a result of damage caused by road hazards;

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

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

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

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

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

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

21 SECTION 2. Section 59A-58-9 NMSA 1978 (being Laws 2001,  
22 Chapter 206, Section 9) is amended to read:

23 "59A-58-9. RIGHT OF HOLDER TO RETURN SERVICE CONTRACT  
24 FOR REFUND.--

25 A. A service contract is void and a provider shall

1 refund to the holder the purchase price of the service  
2 contract if the holder has not made a claim under the service  
3 contract and the holder returns the service contract to the  
4 provider:

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

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

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

13 B. The right of a holder to return a service  
14 contract pursuant to Subsection A of this section applies  
15 only to the original purchaser of the service contract.

16 C. Subsequent to the time period specified in  
17 Subsection A of this section, or if a claim was made during  
18 that time period, a holder may cancel a service contract and  
19 the provider shall refund to the contract holder one hundred  
20 percent of the unearned pro rata provider fee, less any  
21 claims paid. If the service contract is canceled by the  
22 holder, a reasonable administrative fee may be charged by the  
23 provider, not to exceed ten percent of the purchase price of  
24 the service contract. A provider who cancels a service  
25 contract may not impose an administrative fee.

1           D. A service contract must include a provision  
2 that clearly states the right of a holder to return a service  
3 contract pursuant to this section. Notwithstanding  
4 Subsection C of this section, a provider is not required to  
5 deduct the amount of any claims paid under a service contract  
6 from the amount of a refund a holder is entitled to.

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

16           SECTION 3. A new section of the Service Contract  
17 Regulation Act is enacted to read:

18           "AUTOMATIC RENEWAL--NOTICE.--

19           A. A provider shall not include an automatic  
20 renewal provision within a service contract offered in this  
21 state unless the provider discloses the terms of the  
22 automatic renewal provision in a clear and conspicuous  
23 manner, or in the case of an offer conveyed by voice, in  
24 temporal proximity, to the request for consent to the offer  
25 and the consumer consents to the terms of the automatic

1 renewal provision.

2 B. A provider shall provide notice to a holder  
3 specifying, in a clear and conspicuous manner, the procedure  
4 by which the holder may cancel the service contract, and such  
5 notice shall be provided at least thirty days before the last  
6 day on which the holder may give notice of the holder's  
7 intention not to renew the service contract but not sooner  
8 than sixty days before the last day on which the holder may  
9 give notice of the holder's intention not to renew.

10 C. The notice required by Subsection B of this  
11 section may be provided by United States mail, postage  
12 prepaid, or electronic mail if the consumer consents to  
13 receive notice via electronic mail at the inception of the  
14 service contract." \_\_\_\_\_

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