

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 220

3 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

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10 AN ACT

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

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "59A-58-1. SHORT TITLE.--~~[Sections 1 through 19 of this~~  
20 ~~act]~~ Chapter 59A, Article 58 NMSA 1978 may be cited as the  
21 "Service Contract Regulation Act"."

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

24 "59A-58-2. DEFINITIONS.--As used in the Service Contract  
25 Regulation Act:

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underscored material = new  
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1           A. "administrator" means a person who is  
2 responsible for administering a service contract that is  
3 issued, sold or offered for sale by a provider or sold by a  
4 seller;

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

9           C. "holder" means a resident of this state who:  
10                 (1) purchases a service contract; or  
11                 (2) is legally in possession of a service  
12 contract and is entitled to enforce the rights of the original  
13 purchaser of the service contract;

14           D. "incidental costs" means expenses specified in a  
15 warranty that are incurred by the warranty holder due to the  
16 failure of the product to perform as provided in the contract.  
17 Incidental costs may include, without limitation, insurance  
18 policy deductibles, rental vehicle charges, the difference  
19 between the actual value of a motor vehicle at the time of  
20 failure and the cost of a replacement vehicle, gross receipts  
21 taxes, registration fees, transaction fees and mechanical  
22 inspection fees. Incidental costs may be reimbursed in either  
23 a fixed amount specified in the warranty or by use of a formula  
24 itemizing specific incidental costs incurred by the warranty  
25 holder;

1           ~~[D.]~~ E. "maintenance agreement" means a contract  
 2 for a limited period that provides only for scheduled  
 3 maintenance;

4           ~~[E.]~~ F. "major manufacturing company" means a  
 5 person who:

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

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

13           ~~[F.]~~ G. "property" means all property, whether  
 14 movable at the time of purchase or a fixture, that is used  
 15 primarily for personal, family or household purposes;

16           ~~[G.]~~ H. "provider" means a person who is  
 17 contractually obligated to a holder or to indemnify the holder  
 18 for the costs of repairing, replacing or performing maintenance  
 19 on property;

20           I. "reimbursement insurance policy" means a policy  
 21 of insurance issued to a provider to either provide  
 22 reimbursement to the provider under the terms of the insured  
 23 service contracts issued or sold by the provider or, in the  
 24 event of the provider's non-performance, to pay on behalf of  
 25 the provider all covered contractual obligations incurred by

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1 the provider under the terms of the insured service contracts  
2 issued or sold by the provider;

3 J. "road hazard" means a hazard that is encountered  
4 while driving a motor vehicle and that may include potholes,  
5 rocks, wood debris, metal parts, glass, plastic, curbs or  
6 composite scraps;

7 K. "seller" means a person who sells service  
8 contracts that contractually obligate another party or parties;

9 ~~[H.]~~ L. "service contract" means a contract  
10 pursuant to which a provider, in exchange for separately stated  
11 consideration, is obligated for a specified period to a holder  
12 to repair, replace or perform maintenance on, or indemnify or  
13 reimburse the holder for the costs of repairing, replacing or  
14 performing maintenance on, property that is described in the  
15 service contract and that has an operational or structural  
16 failure as a result of a defect in materials, workmanship or  
17 normal wear and tear, including a contract that provides or  
18 includes one or more of the following:

19 (1) ~~[a contract that includes a provision for]~~  
20 incidental payment of indemnity under limited circumstances,  
21 including towing, rental and emergency road service and food  
22 spoilage; ~~[and]~~

23 (2) ~~[a contract that provides for]~~ the repair,  
24 replacement or maintenance of property for damages that result  
25 from power surges or accidental damage from handling; ~~[and]~~

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

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

9                   (5) the repair of chips or cracks in motor  
10 vehicle windshields or the replacement of motor vehicle  
11 windshields as a result of damage caused by road hazards;

12                   (6) the replacement of a motor vehicle key or  
13 key fob in the event the key or key fob becomes inoperable or  
14 is lost or stolen; and

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

18                   ~~[I.]~~ M. "warranty" means a warranty provided solely  
19 by a manufacturer, importer or seller of property for which the  
20 manufacturer, importer or seller did not receive separate  
21 consideration and that:

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

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

25 and

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

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

7 "59A-58-4. PROHIBITION OF SALE OF SERVICE CONTRACT UNLESS  
8 REGISTERED.--A provider shall not issue, sell or offer for sale  
9 service contracts in this state unless ~~[he]~~ the provider has  
10 been registered with the superintendent pursuant to the  
11 provisions of the Service Contract Regulation Act. However, an  
12 administrator or seller of a service contract is not required  
13 to be registered. The provisions of this section shall not  
14 apply to major manufacturing companies' service contracts."

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

17 "59A-58-5. REGISTRATION REQUIREMENTS.--

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

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

23 (2) proof that ~~[he]~~ the provider has complied  
24 with the requirements for security pursuant to Section ~~[7 of~~  
25 ~~the Service Contract Regulation Act]~~ 59A-58-6 NMSA 1978;

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

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

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

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

13 D. Service contract forms are not required to be  
 14 filed with the superintendent."

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

17 "59A-58-6. SECURITY REQUIRED FOR REGISTRATION OF  
 18 PROVIDER.--

19 A. To ensure the faithful performance of a  
 20 provider's obligations to the provider's service contract  
 21 holders, a provider shall comply with the requirements of one  
 22 of the following:

23 (1) maintain a deposit with the superintendent  
 24 as provided in this [~~section~~] paragraph:

25 [~~B.~~] (a) a provider of a service

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underscored material = new  
 [bracketed material] = delete

1 contract shall deposit fifty thousand dollars (\$50,000) unless  
2 the contract covers the following, in which case the provider  
3 shall deposit one hundred thousand dollars (\$100,000): [~~1~~]  
4 1) a motor vehicle; and [~~2~~] 2) mechanical, plumbing and  
5 electrical systems and appliances at a residential dwelling  
6 when the service contract was sold in conjunction with the sale  
7 of the residential dwelling;

8 [~~E~~] (b) deposits required pursuant to  
9 [Subsection B of this section] Subparagraph (a) of this  
10 paragraph shall be: [~~1~~] 1) a surety bond issued by a surety  
11 company authorized to do business in New Mexico on a form  
12 acceptable to the superintendent; [~~2~~] 2) securities of the  
13 type eligible for deposit by an insurance company; or [~~3~~] 3)  
14 a clean and irrevocable letter of credit issued by a financial  
15 institution acceptable to the superintendent; and

16 [~~D~~] (c) additional [~~financial security~~]  
17 deposits may be required of any provider when it is determined  
18 by the superintendent that an additional deposit is necessary  
19 for the protection of the public; or

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

24 (a) at the time the policy is filed with  
25 the superintendent, and continuously thereafter: 1) maintains

1 a surplus as to policyholders and paid-in capital of at least  
 2 fifteen million dollars (\$15,000,000); and 2) annually files  
 3 copies of the insurer's financial statements, its national  
 4 association of insurance commissioners annual statement and the  
 5 actuarial certification required by and filed in the insurer's  
 6 state of domicile; or

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

19 B. Except for the requirements specified in this  
 20 section, no other financial security requirements shall be  
 21 required by the superintendent.

22 ~~[E.]~~ C. The provisions of this section shall not  
 23 apply to major manufacturing companies' service contracts."

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

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1 "59A-58-10. INFORMATION REQUIRED IN SERVICE CONTRACT.--

2 A. A service contract shall:

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

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

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

9 (a) the name, address and telephone  
10 number of the administrator; ~~[and]~~

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

16 (c) the name, address and telephone  
17 number of the seller; however, the names and addresses of the  
18 foregoing persons are not required to be preprinted on the  
19 service contract and may be added to the service contract at  
20 the time of the sale;

21 (4) include the purchase price of the service  
22 contract; however, the purchase price of the service contract  
23 is not required to be preprinted on the service contract and  
24 may be added to the service contract at the time of the sale;

25 (5) include a description of the property

1 covered by the service contract;

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

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

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

10 (9) include the terms, restrictions or  
11 conditions for canceling the service contract before it expires  
12 and the procedure for canceling the service contract. The  
13 conditions for canceling the service contract shall include the  
14 provisions of Section [~~13 of the Service Contract Regulation~~  
15 ~~Act~~] 59A-58-12 NMSA 1978;

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

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

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

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[bracketed material] = delete

1 contract.

2 B. A provider shall not allow, make or cause to be  
3 made a false or misleading statement in any of [~~his~~] the  
4 provider's service contracts or intentionally omit a material  
5 statement that causes a service contract to be misleading. The  
6 superintendent may require the provider to amend any service  
7 contract that the superintendent determines is false or  
8 misleading."

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