

HOUSE BILL 329

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Joseph L. Sanchez

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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

.212359.1

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

responsible for administering a service contract that is issued, sold or offered for sale by a provider or sold by a seller;

HCPAC→~~B. "automatic renewal provision" means that a provision pursuant to a service contract is renewed for a specified period of more than one month if the renewal causes the service contract to continue in effect more than two months after the end of the term of the original contract 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;~~←HCPAC

HCPAC→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;←HCPAC

~~[B.]~~ 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;

~~[G.]~~ D. "holder" means a resident of this state who:

- (1) purchases a service contract; or

.212359.1

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

(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-]~~ E. "incidental costs" means expenses specified in a warranty that are incurred by the warranty holder due to the failure of the product to perform as provided in the contract. Incidental costs may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of a motor vehicle at the time of failure and the cost of a replacement vehicle, gross receipts taxes, registration fees, transaction fees and mechanical inspection fees. Incidental costs may be reimbursed in either a fixed amount specified in the warranty or by use of a formula itemizing specific incidental costs incurred by the warranty holder;

~~[E-]~~ F. "maintenance agreement" means a contract for a limited period that provides only for scheduled maintenance;

~~[F-]~~ G. "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 or affiliate of the person who manufactures or produces products; and

(2) maintains, or its parent company

.212359.1

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

maintains, a net worth or stockholders' equity of at least one hundred million dollars (\$100,000,000);

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

[H-] I. "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;

[I-] J. "reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the provider's non-performance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider;

[J-] K. "road hazard" means a hazard that is encountered while driving a motor vehicle and that may include potholes, rocks, wood debris, metal parts, glass, plastic, curbs or composite scraps;

[K-] L. "seller" means a person who sells service contracts that contractually obligate another party or parties;

[L-] M. "service contract" means a contract pursuant to which a provider, in exchange for separately stated

.212359.1

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

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 a contract that provides or includes one or more of the following:

- (1) incidental payment of indemnity under limited circumstances, including towing, rental and emergency road service and food spoilage;
- (2) the repair, replacement or maintenance of property for damages that result from power surges or accidental damage from handling;
- (3) the repair or replacement of tires and wheels on a motor vehicle damaged as a result of coming into contact with road hazards;
- (4) the removal of dents, dings or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding or painting;
- (5) the repair of chips or cracks in motor vehicle windshields or the replacement of motor vehicle windshields as a result of damage caused by road hazards;

.212359.1

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

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

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

[M-] N. "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 and may provide specified incidental costs."

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

"59A-58-9. 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

.212359.1

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

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 Subsection A of this section applies only to the original purchaser of the service contract.

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

[G-] D. A service contract must include a provision that clearly states the right of a holder to return a service contract pursuant to this section. Notwithstanding Subsection

.212359.1

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

C of this section, a provider is not required to deduct the amount of any claims paid under a service contract from the amount of a refund a holder is entitled to.

[D-] E. 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 3.** A new section of the Service Contract Regulation Act is enacted to read:

"[NEW MATERIAL] AUTOMATIC RENEWAL--NOTICE.--

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

B. A provider shall provide notice to a holder specifying, in a clear and conspicuous manner, the procedure by which the holder may cancel the service contract, and such

.212359.1



underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

notice shall be provided at least thirty days before the last day on which the holder may give notice of the holder's intention to terminate the service contract but not sooner than sixty days before the last day on which the holder may give notice.

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