

SERVICE CONTRACTS MODEL ACT

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Section 1. Scope and Purposes

A. The purposes of this Act are to:

- (1) Create a legal framework within which service contracts may be sold in this state;
- (2) Encourage innovation in the marketing and development of more economical and effective means of providing services under service contracts, while placing the risk of innovation on the providers rather than on consumers; and
- (3) Permit and encourage fair and effective competition among different systems of providing and paying for these services.

Drafting Note: This model assumes that service contracts are exempt from the insurance code.

B. This Act shall not apply to:

- (1) Warranties;
- (2) Maintenance agreements;
- (3) Commercial transactions;
- (4) Warranties, service contracts or maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated by [insert name of the state agency that regulates public utilities]; and
- (5) Service contracts sold or offered for sale to persons other than consumers.

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- D. This Act shall not apply to service contracts:
- (1) Paid for with separate and additional consideration;
 - (2) Issued at the point of sale, or within sixty (60) days of the original purchase date of the property; and
 - (3) Where the tangible property has a purchase price of \$[insert monetary threshold] or less, exclusive of sales tax.

Section 2. Definitions

As used in this Act:

- A. "Administrator" means the person who is responsible for the administration of the service contracts or the service contracts plan and who is responsible for any filings required.

- F. "Mechanical breakdown insurance" means a policy, contract or agreement issued by an authorized insurer that provides for the repair, replacement or maintenance of property or indemnification for repair, replacement or service, for the operational or structural failure of the property due to a defect in materials or workmanship or to normal wear and tear.
- G. "Non-original manufacturer's parts" means replacement parts not made for or by the original manufacturer of the property, commonly referred to as "after market parts."
- H. "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate or any similar entity or combination of entities acting in concert.
- I. "Premium" means the consideration paid to 3 -1.217-0.007 (s)-1.3 (u)2.2 (re)-3 (r)11 (fo)-6.61(Ha)10.7c(0a)w3.

Section 3. Requirements For Doing Business

- A. Service contracts shall not be issued, sold or offered for sale in this state unless the administrator or its designee has:
 - (1) Provided a receipt for the purchase of the service contract to the contract holder;
 - (2) Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase; and,
 - (3) Complied with this Act.
- B. All administrators of service contracts sold in this state shall file a registration with the commissioner on a form, at a fee and at a frequency prescribed by the commissioner.
- C. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider who is contractually obligated to provide service under a service contract shall:
 - (1) Insure all service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or issued pursuant to [insert code section permitting surplus lines business] or;
 - (2)
 - (a) Maintain a funded reserve account for its obligations under its contracts issued and outstanding in this state. The reserves shall not be less than forty percent (40%) of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the commissioner; and
 - (b) Place in trust with the commissioner a financial security deposit, having a value of not less than five percent (5%) of the gross consideration

- (3)
 - (a) Maintain a net worth of \$100 million; and
 - (b) Upon request, provide the Commissioner with a copy of the provider's or, if the provider's financial statements are consolidated with those of its parent company, the provider's parent company's most recent Form 10-K filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's audited financial statements, which shows a net worth of the provider or its parent company of at least \$100 million.

- C. Service contracts not insured under a reimbursement insurance policy pursuant to Section 3C(1) of this Act shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a service contract reimbursement insurance policy." A claim against the provider shall also include a claim for return of the unearned provider fee. The service contract shall also conspicuously state the name and address of the provider.
- D. Service contracts shall identify any administrator, the provider obligated to perform the service under the contract, the service contract seller, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.
- E. Service contracts shall conspicuously state the total purchase price and the terms under which the service contract is sold. The purchase price is not required to be pre-printed on the service contract and may be negotiated at the time of sale with the service contract holder.
- F. If prior approval of repair work is required, the service contracts shall conspicuously state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.
- G. Service contracts shall conspicuously state the existence of any deductible amount.
- H. Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions or exclusions.
- I. Service contracts shall state the conditions upon which the use of non-original manufacturers' parts, or substitute service, may be allowed. Conditions stated shall comply with applicable state and federal laws.
- J. Service contracts shall state any terms, restrictions or conditions governing the transferability of the service contract.
- K. Service contracts shall state the terms, restrictions or conditions governing termination of the service contract by the service contract holder. The provider of the service contract shall mail a written notice to the contract holder within fifteen (15) days of the date of termination.
- L. Service contracts shall require every provider to permit the service contract holder to return the contract within at least tw

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- B. An administrator discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to contract holders in this state.
- C. An administrator shall make all accounts, books and records concerning tran-3 (all a)126 0.783 0 Th-3 (s)

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