

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 656 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/13/07 H3/19/07

A Bill

HOUSE BILL 2691

5 By: Representative Maloch
6
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH A LEGAL FRAMEWORK FOR THE
10 REGULATION OF SERVICE CONTRACTS; AND FOR OTHER
11 PURPOSES.
12

Subtitle

14 TO ESTABLISH A LEGAL FRAMEWORK FOR THE
15 REGULATION OF SERVICE CONTRACTS.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 *SECTION 1. Arkansas Code Title 4 is amended to add an additional*
21 *chapter to read as follows:*

22 CHAPTER 112 – SERVICE CONTRACTS ACT
23

24 4-112-101. Title.

25 This chapter shall be known and may be cited as the "Service Contracts
26 Act".
27

28 4-112-102. Scope and purpose.

29 (a) The purpose of this chapter is to:

30 (1) Create a legal framework within which service contracts are
31 defined, may be sold, and are regulated in this state;

32 (2) Add significant consumer protections; and

33 (3) Eliminate unnecessary administration.

34 (b) A service contract under § 4-112-103 is not insurance and is not
35 subject to the Arkansas Insurance Code.



1 (c) This chapter does not apply to:

2 (1) Warranties;

3 (2) Maintenance agreements;

4 (3) Commercial transactions;

5 (4) A person or entity or the affiliate of a person or entity
6 licensed or certificated by the Arkansas Public Service Commission or the
7 Federal Communications Commission with respect to warranties, service
8 contracts, or maintenance agreements covering wiring, transmission devices,
9 equipment, or services offered or provided by the person, entity, or
10 affiliate to their customers.

11 (5) Service contracts sold or offered for sale to persons other
12 than consumers;

13 (6) Motor vehicle service contracts as defined in and regulated
14 pursuant to the Motor Vehicle Service Contract Act, § 4-90-501, et seq.; or

15 (7) Mechanical breakdown insurance.

16 (d) Manufacturer's service contracts on the manufacturer's products
17 are subject only to §§ 4-112-106(a), 4-112-106(d) – (g), 4-112-107, and 4-
18 112-111.

19 (e) Other than mechanical breakdown insurance, the types of agreements
20 referred to in subsections (c) and (d) of this section, and service contracts
21 governed under this chapter are not insurance and are not subject to
22 compliance with any provision of the insurance laws of this state.

23
24 4-112-103. Definitions.

25 As used in this chapter:

26 (1) "Administrator" means the person who is responsible for the
27 administration of a service contract;

28 (2) "Consumer" means an individual who buys other than for
29 purposes of resale any tangible personal property that is distributed in
30 commerce and that is normally used for personal, family, or household
31 purposes and not for business or resale purposes;

32 (3) "Maintenance agreement" means a contract of limited duration
33 that provides for scheduled maintenance only;

34 (4) "Manufacturer" means a person that:

35 (A) Manufactures or produces property and sells the
36 property under its own name or label;

1 (B) Is a wholly owned subsidiary of the person that
2 manufactures or produces that property;

3 (C) Is a corporation that owns one hundred percent (100%)
4 of the person that manufactures or produces the property;

5 (D) Does not manufacture or produce the property, but the
6 property is sold under its trade name label;

7 (E) Manufactures or produces the property and the property
8 is sold under the trade name or label of another person; or

9 (F) Does not manufacture or produce the property but
10 licenses the use of its trade name or label under a written contract with
11 another person that sells the property under the licensor's trade name or
12 label;

13 (5) "Mechanical breakdown insurance" means a policy, a contract,
14 or an agreement issued by an authorized insurer that provides for the repair,
15 replacement, or maintenance of property, or indemnification for repair,
16 replacement, or service, for the operations or structural failure of the
17 property due to a defect in materials or workmanship or to normal wear and
18 tear;

19 (6) "Nonoriginal manufacturer's parts" means replacement parts
20 not made for or by the original manufacturer of the property, commonly
21 referred to as "after market parts";

22 (7) "Person" means an individual, a partnership, a corporation,
23 an incorporated or unincorporated association, a joint stock company, a
24 reciprocal, a syndicate, or any similar entity or combination of entities
25 acting in concert;

26 (8) "Premium" means the consideration paid to an insurer for a
27 reimbursement insurance policy;

28 (9) "Provider" means a person that is contractually obligated to
29 the service contract holder under the terms of the service contract;

30 (10) "Provider fee" means the consideration paid for a service
31 contract;

32 (11) "Reimbursement insurance policy" means a policy of
33 insurance issued to a provider to either:

34 (A) Provide reimbursement to the provider under the terms
35 of the insured service contracts issued or sold by the provider; or

36 (B) In the event of the provider's nonperformance, to pay

1 on behalf of the provider all covered contractual obligations incurred by the
2 provider under the terms of the insured service contracts issued or sold by
3 the provider;

4 (12)(A) "Service contract" means a contract or an agreement for
5 a separately stated consideration and for a specific duration to perform the
6 service, repair, replacement, or maintenance of property or indemnification
7 for service, repair, replacement, or maintenance, for the operational or
8 structural failure of property due to a defect in materials, workmanship, or
9 normal wear and tear, with or without additional provision for incidental
10 payment of indemnity under limited circumstances, including without
11 limitation, unavailability of parts, obsolescence, food spoilage, rental, or
12 shipping.

13 (B) "Service contract" does not include mechanical
14 breakdown insurance or maintenance agreements.

15 (C) A service contract may provide for the repair,
16 replacement, or maintenance of property for damage resulting from power
17 surges or accidental damage from handling.

18 (D) A service contract is not insurance in this state or
19 otherwise regulated under the Arkansas Insurance Code;

20 (13) "Service contract holder" means a person that is the
21 purchaser or holder of a service contract; and

22 (14) "Warranty" means a warranty made solely by the
23 manufacturer, importer, or seller of property or services without charge
24 that:

25 (A) Is not negotiated or separated from the sale of the
26 product;

27 (B) Is incidental to the sale of the product; and

28 (C) Guarantees indemnity for defective parts, mechanical
29 breakdown, or electrical breakdown, and labor or other remedial measures,
30 such as repair or replacement of the property or repetition of services.

31
32 4-112-104. Requirements for doing business.

33 (a) A provider may appoint an administrator or other designee to be
34 responsible for all or part of the administration of service contracts and
35 compliance with this chapter.

36 (b) Service contracts shall not be issued, sold, or offered for sale

1 in this state unless the provider or its designee has:

2 (1) Provided a receipt or other written evidence of the purchase
3 of the service contract to the contract holder;

4 (2) Provided a copy of the service contract to the service
5 contract holder within a reasonable period of time from the date of purchase;
6 and

7 (3) Complied with this chapter.

8 (c)(1) Each provider of service contracts sold in this state shall
9 file a registration with the Insurance Commissioner consisting of its name,
10 full corporate address, telephone number and contact person, evidence of
11 compliance with subsection (d) of this section, a designation of a person in
12 this state for service of process, and any other information required to be
13 submitted by rule of the commissioner.

14 (2) Each provider shall pay to the commissioner a fee in the
15 amount of two hundred dollars (\$200) upon initial registration and every year
16 thereafter.

17 (3) The registration shall be updated by written notification to
18 the commissioner if material changes occur in the registration.

19 (d) In order to assure the faithful performance of a provider's
20 obligations to its contract holders, each provider that is contractually
21 obligated to provide service under a service contract shall:

22 (1) Insure all service contracts under a reimbursement insurance
23 policy issued by an insurer licensed, registered, or authorized to transact
24 insurance in this state, or a surplus lines insurer that is authorized under
25 § 23-65-310 and maintains statutory capital and surplus of at least fifteen
26 million dollars (\$15,000,000) at all times while the reimbursement insurance
27 policy is in force;

28 (2)(A) Maintain a funded reserve account for its obligations
29 under its contracts issued and outstanding in this state.

30 (B) The reserves shall not be less than forty percent
31 (40%) of gross consideration received less claims paid on the sale of all
32 unexpired service contracts.

33 (C) The reserve account shall be subject to examination
34 and review by the commissioner;

35 (3) Place in trust with the commissioner a financial security
36 deposit having a value of not less than five percent (5%) of the gross

1 consideration received less claims paid on the sale of all unexpired service
2 contracts, but not less than twenty-five thousand dollars (\$25,000),
3 consisting of a surety bond issued by an authorized surety; or

4 (4)(A) Maintain a net worth of one hundred million dollars
5 (\$100,000,000) on its own or together with its parent company if the parent
6 company executes a parental guarantee in a form acceptable to the
7 commissioner.

8 (B) Upon request, the provider shall provide the
9 commissioner with a copy of the provider's or, if the provider's financial
10 statements are consolidated with those of its parent company, the provider's
11 parent company's most recent Form 10-K or Form 20-F filed with the Securities
12 and Exchange Commission within the last calendar year, or if the company does
13 not file with the Securities and Exchange Commission, a copy of the company's
14 audited financial statements, which shows an independent net worth of the
15 provider or its parent company of at least one hundred million dollars
16 (\$100,000,000).

17 (C) If the provider's parent company's Form 10-K, Form 20-
18 F or audited financial statements are filed to meet the provider's financial
19 stability requirement, then the parent company shall agree to guarantee the
20 obligations of the obligor relating to service contracts sold by the provider
21 in this state.

22 (e) Except for the requirements specified in subsection (d) of this
23 section, no other financial security requirements shall be required by the
24 commissioner for a provider.

25 (f)(1) Provider fees collected on service contracts shall not be
26 subject to premium taxes.

27 (2) Premiums for reimbursement insurance policies shall be
28 subject to applicable taxes.

29 (g) Except for the registration requirements in subsection (c) of this
30 section, persons marketing, selling, or offering to sell service contracts
31 for providers that comply with this chapter are exempt from this state's
32 licensing requirements.

33 (h) Providers complying with this chapter are not required to comply
34 with other provisions of the Arkansas Insurance Code.

35
36 4-112-105. Required disclosures – Reimbursement insurance policy.

1 (a) Reimbursement insurance policies insuring service contracts
2 issued, sold, or offered for sale in this state shall state that the insurer
3 that issued the reimbursement insurance policy shall:

4 (1) Reimburse or pay on behalf of the provider any covered sums
5 the provider is legally obligated to pay; or

6 (2) In the event of the provider's nonperformance, shall provide
7 the service that the provider is legally obligated to perform according to
8 the provider's contractual obligations under the service contracts issued or
9 sold by the provider.

10 (b) In the event covered service is not provided by the provider
11 within sixty (60) days of proof of loss by the service contract holder, the
12 service contract holder is entitled to apply directly to the reimbursement
13 insurance company.

14
15 4-112-106. Required disclosure – Service contracts.

16 (a) A service contract issued, sold, or offered for sale in this state
17 shall:

18 (1) Be written in clear, understandable language that is easy to
19 read; and

20 (2) Conspicuously disclose the applicable requirements of this
21 section.

22 (b)(1) A service contract insured under a reimbursement insurance
23 policy under § 4-112-104(d)(1) shall contain the name and address of the
24 insurer and a statement in substantially the following form: "Obligations of
25 the provider under this service contract are guaranteed under a service
26 contract reimbursement insurance policy. If the provider fails to pay or
27 provide service on a claim within sixty (60) days after proof of loss has
28 been filed, the service contract holder is entitled to make a claim directly
29 against the insurance company".

30 (2) A claim against the provider may include a claim for return
31 of the unearned provider fee.

32 (c)(1) A service contract not insured under a reimbursement insurance
33 policy under § 4-112-104(d)(1) shall conspicuously state the name and address
34 of the provider and contain a statement in substantially the following form:
35 "Obligations of the provider under this service contract are backed only by
36 the full faith and credit of the provider (issuer) and are not guaranteed

1 under a service contract reimbursement insurance policy”.

2 (2) A claim against the provider shall also include a claim for
3 return of the unearned provider fee.

4 (d) A service contract shall identify the administrator, the provider
5 obligated to perform the service under the contract, the service contract
6 seller, and the service contract holder to the extent that the name and
7 address of the service contract holder has been furnished by the service
8 contract holder.

9 (e)(1) A service contract or a service contract holder’s receipt shall
10 state the total purchase price and the terms under which service contract is
11 sold.

12 (2) The purchase price is not required to be preprinted on the
13 service contract and may be negotiated at the time of sale with the service
14 contract holder.

15 (f) If prior approval of repair work is required, a service contract
16 shall state the procedure for obtaining prior approval and for making a
17 claim, including a toll-free telephone number for claim service and a
18 procedure for obtaining emergency repairs performed outside of normal
19 business hours.

20 (g) A service contract shall:

21 (1) Disclose the deductible amount;

22 (2) Specify the merchandise and services to be provided and any
23 limitations, exceptions, or exclusions;

24 (3)(A) State the conditions upon which the use of the
25 nonoriginal manufacturer’s parts or substitute service may be allowed.

26 (B) Conditions stated shall comply with applicable state
27 and federal laws;

28 (4) State any terms, restrictions, or conditions governing the
29 transferability of the service contract;

30 (5)(A) State the terms, restrictions, or conditions governing
31 termination of the service contract by the service contract holder.

32 (B)(i) The provider of the service contract shall mail a
33 written notice to the contract holder within fifteen (15) days of the date of
34 termination in the event the provider terminates the service contract.

35 (ii) Prior notice is not required if the reason for
36 cancellation is nonpayment of the provider fee, a material misrepresentation

1 by the service contract holder to the provider, or a substantial breach of
2 duties by the service contract holder relating to the covered product or its
3 use.

4 (C) The notice shall state the effective date of the
5 cancellation and the reason for the cancellation.

6 (D) A pro rata refund of the unearned portion of the
7 provider fee, less the amount or value of any claims paid, shall accompany
8 the notice unless cancellation is for nonpayment;

9 (6)(A) Require every provider to permit the service contract
10 holder to return the contract within no less than twenty (20) days of the
11 date of mailing of the service contract or no less than ten (10) days if the
12 service contract is delivered at the time of sale or within a longer time
13 period permitted under the service contract.

14 (B) If no claim has been made under the service contract,
15 the service contract is void and the provider shall refund to the service
16 contract holder the full purchase price of the service contract.

17 (C) A ten percent (10%) penalty per month shall be added
18 to a refund that is not paid within forty-five (45) days of return of the
19 service contract to the provider.

20 (D) The applicable free-look time period on service
21 contracts shall only apply to the original service contract purchaser and
22 only if no claim has been made prior to its return to the provider;

23 (7) Set forth all of the obligations and duties of the service
24 contract holder, such as the duty to protect against any further damage and
25 the requirement for certain service and maintenance; and

26 (8) Clearly state whether or not the service contract provides
27 for or excludes consequential damages or preexisting conditions.

28
29 4-112-107. Prohibited acts.

30 (a)(1) A provider shall not use a name:

31 (A) With the words insurance, casualty, surety, mutual, or
32 any other words descriptive of the insurance, casualty, or surety business;
33 or

34 (B) Deceptively similar to the name or description of any
35 insurance or surety corporation or any other provider.

36 (2)(A) This subsection shall not apply to a company that was

1 using any of the prohibited language in its name prior to the effective date
2 of this chapter.

3 (B) However, a company using the prohibited language in
4 its name shall conspicuously disclose in its service contracts that the
5 service contract is not an insurance contract.

6 (b) A provider or its representative shall not in its service
7 contracts or literature make or permit or cause to be made any false or
8 misleading statement or deliberately omit any material statement that would
9 be considered misleading if omitted in connection with the sale, offer to
10 sell, or advertisement of a service contract.

11 (c) A person, including without limitation, bank, savings and loan
12 association, lending institution, manufacturer, or seller of any product,
13 shall not require the purchase of a service contract as a condition of a loan
14 or a condition for the sale of any property.

15
16 4-112-108. Recordkeeping requirements.

17 (a)(1) A provider shall keep accurate accounts, books, and records
18 concerning transactions regulated under this chapter.

19 (2) A provider's accounts, books, and records shall include:

20 (A) A copy of each type of service contract issued;

21 (B) The name and address of each service contract holder
22 to the extent that the name and address have been furnished by the service
23 contract holder;

24 (C) A list of the provider locations where service
25 contracts are marketed, sold, or offered for sale; and

26 (D) Claims files containing at a minimum the dates,
27 amounts, and description of all receipts, claims, and expenditures related to
28 the service contracts.

29 (3) Except as provided in subsection (b) of this section, a
30 provider shall retain all records pertaining to each service contract holder
31 for at least three (3) years after the specified period of coverage has
32 expired.

33 (4)(A) A provider may keep all records required under this
34 chapter on a computer disk or other similar technology.

35 (B) If a provider maintains records in other than hard
36 copy, records shall be accessible from a computer terminal available to the

1 Insurance Commissioner and be capable of duplication to legible hard copy.

2 (b) A provider discontinuing business in this state shall maintain its
3 records until it furnishes the commissioner satisfactory proof that it has
4 discharged all obligations to service contract holders in this state.

5 (c) A provider shall make all accounts, books, and records concerning
6 transactions regulated under this chapter or other pertinent laws available
7 to the commissioner upon request.

8 (d) The books and records requirement of this section may be delegated
9 by the provider to its administrator or other designee, but such delegation
10 shall not relieve the provider of its obligations to have the books and
11 records maintained and produced upon the commissioner's request.

12
13 4-112-109. Cancellation of reimbursement insurance policy.

14 (a) An insurer that issued a reimbursement insurance policy shall not
15 terminate the policy until at least sixty (60) days' notice of termination
16 has been mailed or delivered to the Insurance Commissioner and in accordance
17 with any other applicable law.

18 (b) The termination of a reimbursement insurance policy shall not
19 reduce the insurer's responsibility for service contracts issued by providers
20 prior to the date of the termination.

21
22 4-112-110. Obligation of reimbursement insurance policy insurers.

23 (a)(1) Providers are considered to be the agent of the insurer that
24 issued a reimbursement insurance policy for the purpose of obligating an
25 insurer for the acts of its agents, including the collection of moneys not
26 forwarded.

27 (2) If a provider is acting as an administrator and enlists
28 other providers, the provider acting as the administrator shall notify the
29 insurer of the existence and identities of the other providers.

30 (b) This chapter shall not prevent or limit the right of an insurer
31 that issued a reimbursement insurance policy to seek indemnification or
32 subrogation against a provider if the insurer pays or is obligated to pay a
33 service contract holder sums that the provider was obligated to pay pursuant
34 to the provisions of the service contract or under a contractual agreement.

35
36 4-112-111. Enforcement provisions.

1 (a) The Insurance Commissioner may conduct investigations or
2 examinations of providers, administrators, insurers, or other persons to
3 enforce the provisions of this chapter and protect service contract holders
4 in this state.

5 (b)(1) The commissioner may take any action that is necessary or
6 appropriate to enforce the provisions of this chapter and the commissioner's
7 rules and orders to protect service contract holders in this state.

8 (2) The commissioner may order a provider to cease and desist
9 from committing violations of this chapter or the commissioner's rules or
10 orders, may issue an order prohibiting a provider from selling or offering a
11 service contract for sale, or may issue an order imposing a civil penalty, or
12 any combination of these, if the provider has violated this chapter or the
13 commissioners rules or orders.

14 (3)(A) A person aggrieved by an order issued under this
15 subsection may request a hearing before the commissioner by filing a request
16 with the commissioner within twenty (20) days of the commissioner's order.

17 (B) Pending the hearing and the decision by the
18 commissioner, the commissioner shall suspend the effective date of the order.

19 (C)(i) At the hearing, the burden shall be on the
20 commissioner to show why the order is justified.

21 (ii) The provisions of § 23-61-301 et seq. shall
22 apply to a hearing requested under this subsection.

23 (4)(A) The commissioner may bring an action in the Pulaski
24 County Circuit Court for an injunction or other appropriate relief for
25 threatened or existing violations of this chapter or of the commissioner's
26 rules or orders.

27 (B) An action filed under this subdivision (b)(3)(A) of
28 this section may also seek restitution on behalf of persons aggrieved by a
29 violation of this chapter or a rule or an order of the commissioner.

30 (5)(A) A person in violation of this chapter or a rule or an
31 order of the commissioner may be assessed a civil penalty not to exceed five
32 hundred dollars (\$500) per violation and no more than ten thousand dollars
33 (\$10,000) in the aggregate for all violations of a similar nature.

34 (B) For purposes of this subdivision (b)(5), violations
35 shall be of a similar nature if the violation consists of the same or similar
36 course of conduct, action, or practice, irrespective of the number of times

1 the act, conduct, or practice that is determined to be a violation of this
2 chapter has occurred.

3 (c) The authority of the commissioner under this section is in
4 addition to other authorities of the commissioner.

5
6 4-112-112. Rules.

7 The Insurance Commissioner may promulgate rules necessary to effectuate
8 this chapter.

9
10 4-112-113. Effective date – Exception.

11 This chapter shall become effective and apply to all service contracts
12 issued on or after October 1, 2007. However, a provider engaged in the
13 service contract business in this state on or before the effective date of
14 this chapter that submits an application for registration as a provider under
15 this chapter within thirty (30) days after the Insurance Commissioner makes
16 the application available may continue to engage in business as a provider in
17 this state until final agency action is taken by the commissioner regarding
18 the registration application and all rights to administrative judicial review
19 have been exhausted or have expired.

20
21 /s/ Maloch

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23 APPROVED: 3/28/2007
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