

1 State of Arkansas

2 80th General Assembly

3 Regular Session, 1995

4 By: Representative M. Wilson

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7

# A Bill

HOUSE BILL

1718

## For An Act To Be Entitled

8 "AN ACT TO REQUIRE THE INSURANCE COMMISSIONER TO REGULATE  
9 SERVICE CONTRACTS ON APPLIANCES AND *ELECTRONIC DEVICES*; TO  
10 EXCLUDE FROM THIS ACT THE PROVISIONS OF ACT 805 OF 1993  
11 WHEREIN THE COMMISSIONER REGISTERS MOTOR VEHICLE SERVICE  
12 CONTRACTS; TO EXCLUDE, FROM THE COMMISSIONER'S  
13 JURISDICTION OVER SERVICE CONTRACTS, PRODUCTS COVERED BY  
14 WARRANTIES AND EXTENDED WARRANTIES OF PRODUCT  
15 MANUFACTURERS, IMPORTERS, DISTRIBUTORS AND DEALERS; TO  
16 EXCLUDE FROM HIS REGULATION MAINTENANCE OR REPAIR  
17 CONTRACTS OF PRODUCT REPAIR SHOPS, DAMAGE PROTECTION FOR  
18 VIDEO TAPE RENTALS, CONTRACTS UNDER FIFTY DOLLARS (\$50);  
19 AND FOR OTHER PURPOSES."

20

21

## Subtitle

22

"TO ADOPT AN ACT ON SERVICE CONTRACTS."

23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25

26 SECTION 1. Scope and Purposes.

27 (A) The purposes of this Act are to:

28 (1) Create a legal framework within which service contracts may  
29 be sold in this state;

30 (2) Encourage innovation in the marketing and development of  
31 more economical and effective means of providing services under service  
32 contracts, while placing the risk of innovation on the providers rather than  
33 on consumers; and

34 (3) Permit and encourage fair and effective competition among  
35 different systems of providing and paying for these services.

1 (B) This Act shall not apply to:

2 (1) *Manufacturer's warranties* or extended warranties for new or  
3 used products;

4 (2) Maintenance agreements on new or used products;

5 (3) Damage waiver or service contracts on *video tape or audio*  
6 *tape rentals*;

7 (4) Motor vehicle service contracts regulated under Ark. Code  
8 Ann. §§4-90-501, et seq.;

9 (5) Mechanical breakdown insurance;

10 (6) Service contracts whose annual *retail* purchase price is less  
11 than fifty dollars (\$50), or contracts on products whose *retail* purchase  
12 price is less than fifty dollars (\$50), or contracts on products whose rental  
13 price is fifty dollars (\$50) or less per rental.

14

15 SECTION 2. Definitions.

16 As used in this Act:

17 (A) "Administrator" means the person who is responsible for the  
18 administration of the service contracts or the service contracts plan and who  
19 is responsible for any filings required by the Act.

20 (B) "Commissioner" means the Arkansas Insurance Commissioner.

21 (C) "Maintenance agreement" means a contract of limited duration that  
22 provides for scheduled maintenance only.

23 (D) "Manufacturer" means a person that:

24 (1) Manufactures or produces the property and sells the property  
25 under its own name or label;

26 (2) Is a wholly owned subsidiary of the person who manufactures  
27 or produces the property;

28 (3) Is a corporation which owns 100 percent of the person who  
29 manufactures or produces the property;

30 (4) Does not manufacture or produce the property, but the  
31 property is sold under its trade name label;

32 (5) Manufactures or produces the property and the property is  
33 sold under the trade name or label of another person;

34 (6) Does not manufacture or produce the property but, pursuant  
35 to a written contract, licenses the use of its trade name or label to another

1 person that sells the property under the licensor's trade name or label; or  
2 (7) Is authorized by the person that manufactures or produces  
3 the property or is authorized importer to sell the property or distribute the  
4 property for resale.

5 (E) "Mechanical breakdown insurance" means a policy, contract or  
6 agreement issued or issued for delivery in this State by an authorized  
7 insurer that provides for the repair, replacement or maintenance of property  
8 or indemnification for repair, replacement or service, for the operational or  
9 structural failure of the property due to a defect in materials, workmanship  
10 or normal wear and tear.

11 (F) "Non-original manufacturer's (non-OEM) parts" means replacement  
12 parts not made for or by the original manufacturer of the property, commonly  
13 referred to as "after market parts", as referenced in Ark. Code Ann.  
14 §§4-90-301, et seq.

15 (G) "Person" means an individual, partnership, corporation,  
16 incorporated or unincorporated association, joint stock company, reciprocal,  
17 syndicate, or any similar entity or combination of entities acting in  
18 concert.

19 (H) "Premium" means the consideration paid to an insurer for a  
20 reimbursement insurance policy, and as defined in Ark. Code Ann.  
21 §23-79-101(2).

22 (I) "Provider" means a person who issues, makes, provides, sells or  
23 offers to sell a service contract, or who is contractually obligated to  
24 provide service under a service contract such as sellers, administrators and  
25 other intermediaries.

26 (J) "Provider fee" means the consideration paid for a service contract  
27 in excess of the premium.

28 (K) "Reimbursement insurance policy" means a policy of insurance  
29 providing reimbursement coverage for all obligations and liabilities under  
30 the terms of the service contract issued by the provider. "All obligations  
31 and liabilities" of a service contract include items such as the return of  
32 the unearned provider fee in the event of the provider's unwillingness or  
33 inability to reimburse the unearned provider fee in the event of termination  
34 of a service contract.

35 (L) "Service contract" means a contract or agreement for a separately

1 stated consideration to perform or for a specific duration the repair,  
2 replacement or maintenance of property or indemnification for repair,  
3 replacement, or maintenance, for the operational or structural failure due to  
4 a defect in materials, workmanship or normal wear and tear, with or without  
5 additional provision for incidental payment of indemnity under limited  
6 circumstances, including, but not limited to, towing, rental and emergency  
7 road service, but does not include mechanical breakdown insurance or  
8 maintenance agreements.

9 (M) "Service contract holder" or "contract holder" means a person who  
10 is the purchaser or holder of a service contract.

11 (N) "Warranty" means a warranty made solely by the manufacturer,  
12 importer, distributor, or seller of property or services, that is not  
13 negotiated or separated from the sale of the product and is incidental to the  
14 sale of the product, that guarantees indemnity for defective parts,  
15 mechanical or electrical breakdown, labor or other remedial measures, such as  
16 repair or replacement of the property or repetition of services.

17

18 SECTION 3. Requirements for Doing Business.

19 (A) Service contracts shall not be issued, sold or offered for sale in  
20 this State unless the administrator or its designee has complied with this  
21 Act.

22 (B) All administrators of service contracts issued, sold or covering  
23 property located in this State shall file a registration with the  
24 Commissioner on a form, at a fee and at a frequency prescribed by the  
25 Commissioner in his companion rule and regulation to this Act.

26 (C) Service contracts shall be insured under a reimbursement insurance  
27 policy issued by an authorized insurer.

28 (D) Filing Requirements:

29 (1) A copy of the service contract to be issued in this State  
30 shall be filed by the administrator with the Commissioner no less than thirty  
31 (30) days prior to the issuance, sale, offering for sale or use of the  
32 service contract.

33 (2) Each modification of the terms of a service contract shall  
34 be filed thirty (30) days prior to its use in this State. If a filing is not  
35 accompanied by a filing fee as required under this Act, or Ark. Code Ann.

1 §§23-61-701, et seq., or the Commissioner's companion rule and regulation to  
2 this Act, the filing shall be rejected.

3 (3) The administrator shall file proof of a reimbursement  
4 insurance policy issued by an authorized insurer with the Commissioner.

5 (4) Providers complying with this Act are not required to comply  
6 with Ark. Code Ann. §§23-67-201, et seq.

7 (5) The Commissioner shall make a reasonable rule and regulation  
8 concerning the procedure for the filing, submission, approval, disapproval,  
9 or withdrawal of approval of service contracts subject to this Act necessary  
10 for the administration of this Act. This provision shall not abridge any  
11 other authority granted to the Commissioner by Arkansas law; or with the  
12 Commissioner's authority over motor vehicle service contracts under Ark. Code  
13 Ann. §§4-90-501, et seq.

14 (E) Premium Taxes:

15 (1) Provider fees collected on service contracts shall not be  
16 subject to premium taxes under Ark. Code Ann. §§26-57-601, et seq., or other  
17 premium tax provisions in Arkansas law.

18 (2) Premiums for reimbursement insurance policies shall be  
19 subject to premium taxes as provided under Ark. Code Ann. §§26-57-601, et  
20 seq.

21 (F) Except for the registration requirement in Section 3 (B) of this  
22 Act, persons marketing, selling or offering to sell service contracts for  
23 providers that comply with this Act are exempt from this state's licensing  
24 requirements under Ark. Code Ann. §§23-64-101, et seq.

25 (G) Providers complying with this Act are not required to comply with  
26 other provisions of the Arkansas Insurance Code, Ark. Code Ann. §§23-60-101,  
27 et seq., except as specifically provided in this Act.

28

29 SECTION 4. Required Disclosures - Reimbursement Insurance Policy.

30 Reimbursement insurance policies insuring service contracts issued or  
31 issued for delivery, sold, or solicited or offered for sale in this State  
32 shall conspicuously state that, upon failure of the provider to perform under  
33 the contract, such as failure to return the unearned provider fee, the  
34 insurer which issued the policy shall either pay on behalf of the provider  
35 any sums the provider is legally obligated to pay or shall provide the

1 service which the provider is legally obligated to perform according to the  
2 provider's contractual obligations under the service contracts issued or sold  
3 by the provider in this State.

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5 SECTION 5. Required Disclosures - Service Contracts.

6 Service contracts issued, sold or offered for sale in this State shall  
7 meet the following requirements:

8 (A) Service contracts shall be written in clear, understandable  
9 language and the entire contract shall be printed or typed in easy to read  
10 type, size and style.

11 (1) Each provider shall test the readability of its contracts by  
12 use of the Flesch Readability Formula, as utilized in the Commissioner's Rule  
13 and Regulation 29, "Personal Lines Property and Casualty Language  
14 Simplifications", as required by Ark. Code Ann. §§23-80-301, et seq.;

15 (2) A service contract shall have a total readability score of  
16 forty (40) or more on the Flesch scale; and

17 (3) Service contracts within the scope of this Act shall be  
18 filed with the Commissioner, accompanied by a certification setting forth the  
19 Flesch score and certifying compliance with the requirements set forth in  
20 this section, on forms prescribed by the Commissioner in his companion rule  
21 and regulation to this Act.

22 (B) Service contracts shall contain a statement in substantially the  
23 following form: "Obligations of the provider under this service contract are  
24 guaranteed under a service contract reimbursement insurance policy issued by  
25 an insurer licensed to do business in this State. If the provider fails to  
26 pay or provide service on a claim within sixty (60) days after proof of loss  
27 has been filed, the contract holder is entitled to make a claim directly  
28 against the insurance company."

29 A claim against the provider shall also include a claim for return of  
30 the unearned provider fee. The service contract shall also conspicuously  
31 state the name and address and a toll-free claims service telephone number of  
32 the authorized insurer.

33 (C) Service contracts shall identify any administrator, the provider  
34 obligated to perform the service under the contract, the service contract  
35 seller, and the service contract holder to the extent that the name and

1 address of the service contract holder has been furnished by the service  
2 contract holder.

3 (D) Service contracts shall conspicuously state the total purchase  
4 price and the terms under which the purchase price is paid.

5 (E) If prior approval of repair work is a requirement, the service  
6 contracts shall conspicuously state the procedure for obtaining prior  
7 approval and for making a claim, including a toll-free telephone number for  
8 claim service, and a procedure for obtaining reimbursement for emergency  
9 repairs performed outside of normal business hours, or while the service  
10 contract holder is traveling away from the customary location where the  
11 vehicle is garaged for business, governmental or personal reasons.

12 (F) Service contracts shall conspicuously state the existence of any  
13 deductible amount.

14 (G) Service contracts shall specify the merchandise, services to be  
15 provided, and any limitations, exceptions or exclusions.

16 (H) Service contracts shall state the conditions upon which the use of  
17 non-OEM parts, or substitute service, may be allowed. Conditions stated  
18 shall comply with applicable state and federal laws.

19 (I) Service contracts shall state any terms, restrictions or  
20 conditions governing the transferability of the service contract.

21 (J) Service contracts shall state the terms, restrictions or  
22 conditions governing termination of the service contract by either the  
23 service contract holder or provider. The provider of the service contract  
24 shall not cancel the service contract unless a written notice has been  
25 received by the contract holder and by each applicable provider, including,  
26 if applicable the seller of the property and any administrator. The notice  
27 shall fix the date of cancellation at a date no earlier than fifteen (15)  
28 days after date of mailing to the contract holder. The post office  
29 department receipt of certified or registered mailing shall be deemed proof  
30 of receipt of mailing.

31 (K) If a service contract holder returns a service contract within  
32 twenty (20) days of its purchase or within a longer time period permitted  
33 under the contract, the contract shall be void from the beginning and the  
34 parties shall be in the same position as if no contract had been issued. The  
35 service contract shall disclose that the insurer is responsible for both the

1 prorated unearned premiums and provider's fee.

2 (L) Service contracts shall require every provider to permit the  
3 service contract holder to return the contract within no more than twenty  
4 (20) days of its purchase if no claim has been made under the contract, and  
5 that the provider shall refund to the contract holder the full purchase price  
6 of the contract. A ten percent (10%) penalty shall be added to any refund  
7 that is not paid within thirty (30) days of return of the contract to the  
8 provider.

9 (M) Service contracts shall contain a statement in substantially the  
10 following form: "Coverage afforded under this service contract is not  
11 guaranteed under the Arkansas Property and Casualty Insurance Guaranty Act,  
12 Ark. Code Ann. §§23-90-101, et seq."

13 (N) Service contracts shall clearly set forth the conditions on which  
14 substitution of services may be allowed.

15 (O) Service contracts shall set forth all of the obligations and  
16 duties of the service contract holder, such as the duty to protect against  
17 any further damage and the requirement for certain service and maintenance.

18 (P) Service contracts shall clearly state whether or not the service  
19 contract provides for or excludes consequential damages. If consequential  
20 damages are excluded, the service contract shall clearly state in a prominent  
21 place the definition of consequential damages.

22 (Q) Service contracts shall clearly state specific items excluded from  
23 coverage because there is a preexisting condition. Denial of coverage  
24 because of a preexisting condition shall only apply to those items listed.

25

26 **SECTION 6. Prohibited Acts.**

27 (A) Except as provided in Section 5 (B) above, a provider shall not  
28 use in its name, contracts or literature:

29 (1) The words "insurance", "casualty", "guaranty", "surety",  
30 "mutual" or any other words descriptive of the insurance, casualty, guaranty  
31 or surety business; or

32 (2) A name deceptively similar to the name or description of any  
33 insurance company or surety insurer, or any provider; or

34 (3) Any statements or acts which would constitute a violation of  
35 Ark. Code Ann. §§23-66-201, et seq., and 23-66-301, et seq., and other

1 applicable Arkansas laws.

2 (B) A provider or its representative shall not make, permit or cause  
3 to be made any false or misleading statement, or deliberately omit any  
4 material statement that would be considered misleading if omitted, in  
5 connection with the sale, solicitation or offer to sell, or advertisement of  
6 a service contract.

7 (C) A person, such as a bank, savings and loan association, lending  
8 institution, manufacturer, or seller of any product, shall not require the  
9 purchase of a service contract as a condition of a loan or financing  
10 agreement for the sale of any property.

11

12 SECTION 7. Recordkeeping Requirements.

13 (A) Books and Records:

14 (1) An administrator shall keep accurate accounts, books and  
15 records concerning transactions regulated under this Act.

16 (2) An administrator's accounts, books, and records shall  
17 include:

18 (a) Copies of all service contracts issued;

19 (b) The name and address of each service contract holder  
20 to the extent that the name and address have been furnished by the service  
21 contract holder.

22 (c) A list of the providers and persons marketing, selling  
23 or offering to sell service contracts; and

24 (d) Claims files which shall contain at least the dates,  
25 amounts and description of all receipts, claims and expenditures related to  
26 the service contracts.

27 (3) Except as provided in Section 7(B), an administrator shall  
28 retain all records pertaining to each service contract holder for at least  
29 three (3) years after the specified period of coverage has expired.

30 (4) An administrator may keep all records required under this  
31 Act on a computer disk or other similar technology. If an administrator  
32 maintains records in other than hard copy, records shall be accessible from a  
33 computer terminal available to the Commissioner and be capable of duplication  
34 to legible hard copy.

35 (B) An administrator discontinuing business in this State shall

1 maintain its records until it furnishes the Commissioner satisfactory proof  
2 that it has discharged all obligations to contract holders in this State.

3 (C) An administrator shall make all accounts, books and records  
4 concerning transactions regulated under this Act or other pertinent laws  
5 available to the Commissioner for the purpose of examination as provided in  
6 Ark. Code Ann. §23-61-103(c) and §§23-61-201, et seq.

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8 SECTION 8. Termination of Reimbursement Insurance Policy.

9 A licensed insurer which issued a reimbursement insurance policy shall  
10 not terminate the policy until a notice of termination has been mailed or  
11 delivered to the Insurance Commissioner. A licensed insurer which issued a  
12 reimbursement insurance policy shall not terminate the policy until a notice  
13 of termination in accordance with Ark. Code Ann. §23-66-206 (11) has been  
14 mailed or delivered to the named insured and lienholders and loss payees  
15 under the policy; or a notice has been mailed or delivered as other  
16 applicable Arkansas laws and/or that policy's provisions require. The  
17 termination of a reimbursement insurance policy shall not reduce the issuer's  
18 responsibility for service contracts issued by providers prior to the date of  
19 termination.

20

21 SECTION 9. Obligation of Reimbursement Insurance Policy Insurers.

22 (A) Providers are considered to be the agent of the insurer which  
23 issued the reimbursement insurance policy for purposes of this Act. In cases  
24 where a provider is acting as an administrator and enlists other providers,  
25 the provider acting as the administrator shall notify the insurer of the  
26 existence and identities of the other providers.

27 (B) This Act shall not prevent or limit the right of an insurer which  
28 issued a reimbursement insurance policy to seek indemnification or  
29 subrogation against a provider if the issuer pays or is obligated to pay the  
30 service contract holder sums that the provider was obligated to pay pursuant  
31 to the provisions of the service contract or under a contractual agreement.

32

33 SECTION 10. Enforcement Provisions.

34 (A) The Commissioner may conduct investigations or examinations of  
35 providers, administrators, insurers or other persons to enforce the

1 provisions of this Act and protect service contract holders in this State.  
2 The examination shall be conducted in accordance with Arkansas law on  
3 examination of insurers, Ark. Code Ann. §§23-61-201, et seq.

4 (B) The Commissioner may take action which is necessary or appropriate  
5 to enforce the provisions of this Act and the Commissioner's companion  
6 regulations and orders, and to protect service contract holders in this  
7 State.

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

14 (a) A person aggrieved by an order issued under this  
15 paragraph may request a hearing before the Commissioner. The hearing request  
16 shall be filed with the Commissioner within thirty (30) days of the date the  
17 Commissioner's order is effective;

18 (b) The provisions of Ark. Code Ann. §§23-61-303, et seq.  
19 shall apply to a hearing requested under this section.

20 (2) The Commissioner may bring an action in Pulaski County  
21 Circuit Court for an injunction or other appropriate relief to enjoin  
22 threatened or existing violations of this Act or of the Commissioner's orders  
23 or regulations. An action filed under this section may also seek restitution  
24 on behalf of persons aggrieved by a violation of this Act or orders or  
25 regulations of the Commissioner.

26 (3) A person in violation of this Act or orders or regulations  
27 of the Commissioner may be assessed by him an administrative fine, penalty or  
28 forfeiture not to exceed the amounts contained in the Trade Practices Act  
29 applicable to insurers and other persons under Ark. Code Ann. §§23-66-201, et  
30 seq.

31 (C) The authority of the Commissioner under this section is in  
32 addition to other authority of the Commissioner under Arkansas law.

33

34 SECTION 11. Regulations.

35 (A) The Commissioner may make regulations necessary to effectuate this

1 Act.

2 (B) The Commissioner may by companion rule and regulation exempt  
3 certain providers or providers for a specific class of service contracts that  
4 are not otherwise exempt under Sections 1 (B), (C) or (D) from any provision  
5 of this Act. The Commissioner may include in the regulations substitute  
6 requirements on a finding that a particular provision of this Act is not  
7 necessary for the protection of the public or that the substitute requirement  
8 is reasonably certain to provide equivalent protection to the public.

9

10 SECTION 12. All provisions of this act of a general and permanent  
11 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
12 Code Revision Commission shall incorporate the same in the Code.

13

14 SECTION 13. If any provision of this act or the application thereof to  
15 any person or circumstance is held invalid, such invalidity shall not affect  
16 other provisions or applications of the act which can be given effect without  
17 the invalid provision or application, and to this end the provisions of this  
18 act are declared to be severable.

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20 SECTION 14. All laws and parts of laws in conflict with this act are  
21 hereby repealed.

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*/s/Rep. M. Wilson*

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