

1
2 State of Arkansas
3 94th General Assembly
4 Regular Session, 2023

A Bill

HOUSE BILL 1770

5
6 By: Representative G. Hodges

7 Filed with: House Committee on Insurance and Commerce
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9
10 AN ACT TO REPEAL THE SERVICE CONTRACTS ACT; TO
11 TRANSFER THE DUTIES OF REGULATION OF SERVICE
12 CONTRACTS TO THE INSURANCE COMMISSIONER; TO ESTABLISH
13 THE ARKANSAS SERVICE CONTRACTS ACT; TO REQUIRE THE
14 INSURANCE COMMISSIONER TO REVIEW AND APPROVE SERVICE
15 CONTRACTS OFFERED IN THIS STATE; TO REGULATE SERVICE
16 CONTRACTS; AND FOR OTHER PURPOSES.

Subtitle

17
18
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20 TO REPEAL THE SERVICE CONTRACTS ACT; TO
21 TRANSFER THE DUTIES OF REGULATION OF
22 SERVICE CONTRACTS TO THE INSURANCE
23 COMMISSIONER; TO ESTABLISH THE ARKANSAS
24 SERVICE CONTRACTS ACT; AND TO REGULATE
25 SERVICE CONTRACTS.

26
27
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29
30 SECTION 1. Arkansas Code Title 4, Chapter 114, is repealed.

31 ~~CHAPTER 114 — SERVICE CONTRACTS ACT~~

32
33 ~~4-114-101. Title.~~

34 ~~This chapter shall be known and may be cited as the “Service Contracts~~
35 ~~Act”.~~

~~4-114-102. Scope and purpose.~~

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

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

~~(2) Add significant consumer protections; and~~

~~(3) Eliminate unnecessary administration.~~

~~(b) A service contract under § 4-114-103 is not insurance and is not subject to the Arkansas Insurance Code.~~

~~(c) This chapter does not apply to:~~

~~(1) Warranties;~~

~~(2) Maintenance agreements;~~

~~(3) Commercial transactions;~~

~~(4) A person or entity or the affiliate of a person or entity licensed or certificated by the Arkansas Public Service Commission or the Federal Communications Commission with respect to warranties, service contracts, or maintenance agreements covering wiring, transmission devices, equipment, or services offered or provided by the person, entity, or affiliate to its customers;~~

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

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

~~(7) Mechanical breakdown insurance.~~

~~(d) Manufacturer's service contracts on the manufacturer's products are subject only to §§ 4-114-106(a), 4-114-106(d)-(g), 4-114-107, and 4-114-111.~~

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

~~4-114-103. Definitions.~~

~~As used in this chapter:~~

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

1 ~~(2) “Consumer” means an individual who buys other than for~~
2 ~~purposes of resale any tangible personal property that is distributed in~~
3 ~~commerce and that is normally used for personal, family, or household~~
4 ~~purposes and not for business or resale purposes;~~

5 ~~(3) “Maintenance agreement” means a contract of limited duration~~
6 ~~that provides for scheduled maintenance only;~~

7 ~~(4) “Manufacturer” means a person that:~~

8 ~~(A) Manufactures or produces property and sells the~~
9 ~~property under its own name or label;~~

10 ~~(B) Is a wholly owned subsidiary of the person that~~
11 ~~manufactures or produces that property;~~

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

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

16 ~~(E) Manufactures or produces the property, and the~~
17 ~~property is sold under the trade name or label of another person; or~~

18 ~~(F) Does not manufacture or produce the property but~~
19 ~~licenses the use of its trade name or label under a written contract with~~
20 ~~another person that sells the property under the licensor’s trade name or~~
21 ~~label;~~

22 ~~(5) “Mechanical breakdown insurance” means a policy, a contract,~~
23 ~~or an agreement issued by an authorized insurer that provides for the repair,~~
24 ~~replacement, or maintenance of property or indemnification for repair,~~
25 ~~replacement, or service for the operations or structural failure of the~~
26 ~~property due to a defect in materials or workmanship or to normal wear and~~
27 ~~tear;~~

28 ~~(6) “Nonoriginal manufacturer’s parts” means replacement parts~~
29 ~~not made for or by the original manufacturer of the property, commonly~~
30 ~~referred to as “after market parts”;~~

31 ~~(7) “Person” means an individual, a partnership, a corporation,~~
32 ~~an incorporated or unincorporated association, a joint stock company, a~~
33 ~~reciprocal, a syndicate, or any similar entity or combination of entities~~
34 ~~acting in concert;~~

35 ~~(8) “Premium” means the consideration paid to an insurer for a~~
36 ~~reimbursement insurance policy;~~

1 ~~(9) “Provider” means a person that is contractually obligated to~~
2 ~~the service contract holder under the terms of the service contract;~~

3 ~~(10) “Provider fee” means the consideration paid for a service~~
4 ~~contract;~~

5 ~~(11) “Reimbursement insurance policy” means a policy of insurance~~
6 ~~issued to a provider to either:~~

7 ~~(A) Provide reimbursement to the provider under the terms~~
8 ~~of the insured service contracts issued or sold by the provider; or~~

9 ~~(B) In the event of the provider’s nonperformance, to pay~~
10 ~~on behalf of the provider all covered contractual obligations incurred by the~~
11 ~~provider under the terms of the insured service contracts issued or sold by~~
12 ~~the provider;~~

13 ~~(12)(A) “Service contract” means a contract or an~~
14 ~~agreement for a separately stated consideration and for a specific duration~~
15 ~~to perform the service, repair, replacement, or maintenance of property or~~
16 ~~indemnification for service, repair, replacement, or maintenance for the~~
17 ~~operational or structural failure of property due to a defect in materials,~~
18 ~~workmanship, or normal wear and tear, with or without additional provision~~
19 ~~for incidental payment of indemnity under limited circumstances, including~~
20 ~~without limitation unavailability of parts, obsolescence, food spoilage,~~
21 ~~rental, or shipping.~~

22 ~~(B) “Service contract” does not include mechanical~~
23 ~~breakdown insurance or maintenance agreements.~~

24 ~~(C) A service contract may provide for the repair,~~
25 ~~replacement, or maintenance of property for damage resulting from power~~
26 ~~surges or accidental damage from handling.~~

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

29 ~~(13) “Service contract holder” means a person that is the~~
30 ~~purchaser or holder of a service contract; and~~

31 ~~(14) “Warranty” means a warranty made solely by the~~
32 ~~manufacturer, importer, or seller of property or services without charge~~
33 ~~that:~~

34 ~~(A) Is not negotiated or separated from the sale of the~~
35 ~~product;~~

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

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

4
5 ~~4-114-104. Requirements for doing business.~~

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

9 ~~(b) Service contracts shall not be issued, sold, or offered for sale~~
10 ~~in this state unless the provider or its designee has:~~

11 ~~(1) Provided a receipt or other written evidence of the purchase~~
12 ~~of the service contract to the contract holder;~~

13 ~~(2) Provided a copy of the service contract to the service~~
14 ~~contract holder within a reasonable period of time from the date of purchase;~~
15 ~~and~~

16 ~~(3) Complied with this chapter.~~

17 ~~(c)(1) Each provider of service contracts sold in this state shall~~
18 ~~file a registration with the Insurance Commissioner consisting of its name,~~
19 ~~full corporate address, telephone number and contact person, evidence of~~
20 ~~compliance with subsection (d) of this section, a designation of a person in~~
21 ~~this state for service of process, and any other information required to be~~
22 ~~submitted by rule of the Insurance Commissioner.~~

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

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

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

31 ~~(1) Insure all service contracts under a reimbursement insurance~~
32 ~~policy issued by an insurer licensed, registered, or authorized to transact~~
33 ~~insurance in this state or a surplus lines insurer that is authorized under §~~
34 ~~23-65-310 and maintains statutory capital and surplus of at least fifteen~~
35 ~~million dollars (\$15,000,000) at all times while the reimbursement insurance~~
36 ~~policy is in force;~~

1 ~~(2) Do both of the following:~~

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

4 ~~(ii) The reserves shall not be less than forty~~
5 ~~percent (40%) of gross consideration received less claims paid on the sale of~~
6 ~~all unexpired service contracts.~~

7 ~~(iii) The reserve account shall be subject to~~
8 ~~examination and review by the commissioner; and~~

9 ~~(B) Place in trust with the commissioner a financial~~
10 ~~security deposit having a value of not less than five percent (5%) of the~~
11 ~~gross consideration received less claims paid on the sale of all unexpired~~
12 ~~service contracts, but not less than twenty-five thousand dollars (\$25,000),~~
13 ~~consisting of a surety bond issued by an authorized surety; or~~

14 ~~(3)(A) Maintain a net worth of one hundred million dollars~~
15 ~~(\$100,000,000) on its own or together with its parent company if the parent~~
16 ~~company executes a parental guarantee in a form acceptable to the~~
17 ~~commissioner.~~

18 ~~(B) Upon request, the provider shall provide the~~
19 ~~commissioner with a copy of the provider's financial statements or, if the~~
20 ~~provider's financial statements are consolidated with those of its parent~~
21 ~~company, the provider's parent company's most recent Form 10-K or Form 20-F~~
22 ~~filed with the United States Securities and Exchange Commission within the~~
23 ~~last calendar year, or if the company does not file with the United States~~
24 ~~Securities and Exchange Commission, a copy of the company's audited financial~~
25 ~~statements, which shows an independent net worth of the provider or its~~
26 ~~parent company of at least one hundred million dollars (\$100,000,000).~~

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

32 ~~(e) Except for the requirements specified in subsection (d) of this~~
33 ~~section, no other financial security requirements shall be required by the~~
34 ~~commissioner for a provider.~~

35 ~~(f)(1) Provider fees collected on service contracts shall not be~~
36 ~~subject to premium taxes.~~

1 ~~(2) Premiums for reimbursement insurance policies shall be~~
2 ~~subject to applicable taxes.~~

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

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

9
10 ~~4-114-105. Required disclosures — Reimbursement insurance policy.~~

11 ~~(a) Reimbursement insurance policies insuring service contracts~~
12 ~~issued, sold, or offered for sale in this state shall state that the insurer~~
13 ~~that issued the reimbursement insurance policy shall:~~

14 ~~(1) Reimburse or pay on behalf of the provider any covered sums~~
15 ~~the provider is legally obligated to pay; or~~

16 ~~(2) In the event of the provider's nonperformance, shall provide~~
17 ~~the service that the provider is legally obligated to perform according to~~
18 ~~the provider's contractual obligations under the service contracts issued or~~
19 ~~sold by the provider.~~

20 ~~(b) In the event covered service is not provided by the provider~~
21 ~~within sixty (60) days of proof of loss by the service contract holder, the~~
22 ~~service contract holder is entitled to apply directly to the reimbursement~~
23 ~~insurance company.~~

24
25 ~~4-114-106. Required disclosure — Service contracts.~~

26 ~~(a) A service contract issued, sold, or offered for sale in this state~~
27 ~~shall:~~

28 ~~(1) Be written in clear, understandable language that is easy to~~
29 ~~read; and~~

30 ~~(2) Conspicuously disclose the applicable requirements of this~~
31 ~~section.~~

32 ~~(b)(1) A service contract insured under a reimbursement insurance~~
33 ~~policy under § 4-114-104(d)(1) shall contain the name and address of the~~
34 ~~insurer and a statement in substantially the following form: "Obligations of~~
35 ~~the provider under this service contract are guaranteed under a service~~
36 ~~contract reimbursement insurance policy. If the provider fails to pay or~~

1 ~~provide service on a claim within sixty (60) days after proof of loss has~~
2 ~~been filed, the service contract holder is entitled to make a claim directly~~
3 ~~against the insurance company.”~~

4 ~~(2) A claim against the provider may include a claim for return~~
5 ~~of the unearned provider fee.~~

6 ~~(c)(1) A service contract not insured under a reimbursement insurance~~
7 ~~policy under § 4-114-104(d)(1) shall conspicuously state the name and address~~
8 ~~of the provider and contain a statement in substantially the following form:~~
9 ~~“Obligations of the provider under this service contract are backed only by~~
10 ~~the full faith and credit of the provider (issuer) and are not guaranteed~~
11 ~~under a service contract reimbursement insurance policy.”~~

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

14 ~~(d) A service contract shall identify the administrator, the provider~~
15 ~~obligated to perform the service under the contract, the service contract~~
16 ~~seller, and the service contract holder to the extent that the name and~~
17 ~~address of the service contract holder have been furnished by the service~~
18 ~~contract holder.~~

19 ~~(e)(1) A service contract or a service contract holder’s receipt shall~~
20 ~~state the total purchase price and the terms under which the service contract~~
21 ~~is sold.~~

22 ~~(2) The purchase price is not required to be preprinted on the~~
23 ~~service contract and may be negotiated at the time of sale with the service~~
24 ~~contract holder.~~

25 ~~(f) If prior approval of repair work is required, a service contract~~
26 ~~shall state the procedure for obtaining prior approval and for making a~~
27 ~~claim, including a toll free telephone number for claim service and a~~
28 ~~procedure for obtaining emergency repairs performed outside of normal~~
29 ~~business hours.~~

30 ~~(g) A service contract shall:~~

31 ~~(1) Disclose the deductible amount;~~

32 ~~(2) Specify the merchandise and services to be provided and any~~
33 ~~limitations, exceptions, or exclusions;~~

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

1 ~~(B) Conditions stated shall comply with applicable state~~
2 ~~and federal laws;~~

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

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

7 ~~(B)(i) The provider of the service contract shall mail a~~
8 ~~written notice to the contract holder within fifteen (15) days of the date of~~
9 ~~termination in the event the provider terminates the service contract.~~

10 ~~(ii) Prior notice is not required if the reason for~~
11 ~~cancellation is nonpayment of the provider fee, a material misrepresentation~~
12 ~~by the service contract holder to the provider, or a substantial breach of~~
13 ~~duties by the service contract holder relating to the covered product or its~~
14 ~~use.~~

15 ~~(C) The notice shall state the effective date of the~~
16 ~~cancellation and the reason for the cancellation.~~

17 ~~(D) A pro rata refund of the unearned portion of the~~
18 ~~provider fee less the amount or value of any claims paid shall accompany the~~
19 ~~notice unless cancellation is for nonpayment;~~

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

25 ~~(B) If no claim has been made under the service contract,~~
26 ~~the service contract is void and the provider shall refund to the service~~
27 ~~contract holder the full purchase price of the service contract.~~

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

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

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

1 ~~(8) Clearly state whether or not the service contract provides~~
2 ~~for or excludes consequential damages or preexisting conditions.~~

3
4 ~~4-114-107. Prohibited acts.~~

5 ~~(a)(1) A provider shall not use a name:~~

6 ~~(A) With the words “insurance”, “casualty”, “surety”,~~
7 ~~“mutual”, or any other words descriptive of the insurance, casualty, or~~
8 ~~surety business; or~~

9 ~~(B) Deceptively similar to the name or description of any~~
10 ~~insurance or surety corporation or any other provider.~~

11 ~~(2)(A) This subsection shall not apply to a company that was~~
12 ~~using any of the prohibited language in its name prior to October 1, 2007.~~

13 ~~(B) However, a company using the prohibited language in~~
14 ~~its name shall conspicuously disclose in its service contracts that the~~
15 ~~service contract is not an insurance contract.~~

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

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

25
26 ~~4-114-108. Recordkeeping requirements.~~

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

29 ~~(2) A provider’s accounts, books, and records shall include:~~

30 ~~(A) A copy of each type of service contract issued;~~

31 ~~(B) The name and address of each service contract holder~~
32 ~~to the extent that the name and address have been furnished by the service~~
33 ~~contract holder;~~

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

1 ~~(D) Claims files containing at a minimum the dates,~~
2 ~~amounts, and description of all receipts, claims, and expenditures related to~~
3 ~~the service contracts.~~

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

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

10 ~~(B) If a provider maintains records in other than hard~~
11 ~~copy, records shall be accessible from a computer terminal available to the~~
12 ~~Insurance Commissioner and be capable of duplication to legible hard copy.~~

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

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

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

23
24 ~~4-114-109. Cancellation of reimbursement insurance policy.~~

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

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

32
33 ~~4-114-110. Obligation of reimbursement insurance policy insurers.~~

34 ~~(a)(1) A provider is considered to be the agent of the insurer that~~
35 ~~issued a reimbursement insurance policy for the purpose of obligating an~~

1 ~~insurer for the acts of its agents, including the collection of moneys not~~
2 ~~forwarded.~~

3 ~~(2) If a provider is acting as an administrator and enlists~~
4 ~~other providers, the provider acting as the administrator shall notify the~~
5 ~~insurer of the existence and identities of the other providers.~~

6 ~~(b) This chapter shall not prevent or limit the right of an insurer~~
7 ~~that issued a reimbursement insurance policy to seek indemnification or~~
8 ~~subrogation against a provider if the insurer pays or is obligated to pay a~~
9 ~~service contract holder sums that the provider was obligated to pay pursuant~~
10 ~~to the provisions of the service contract or under a contractual agreement.~~

11
12 ~~4-114-111. Enforcement provisions.~~

13 ~~(a) The Insurance Commissioner may conduct investigations or~~
14 ~~examinations of providers, administrators, insurers, or other persons to~~
15 ~~enforce the provisions of this chapter and protect service contract holders~~
16 ~~in this state.~~

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

20 ~~(2) The commissioner may order a provider to cease and desist~~
21 ~~from committing violations of this chapter or the commissioner's rules or~~
22 ~~orders, may issue an order prohibiting a provider from selling or offering a~~
23 ~~service contract for sale, or may issue an order imposing a civil penalty, or~~
24 ~~any combination of these, if the provider has violated this chapter or the~~
25 ~~commissioner's rules or orders.~~

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

29 ~~(B) Pending the hearing and the decision by the~~
30 ~~commissioner, the commissioner shall suspend the effective date of the order.~~

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

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

35 ~~(4)(A) The commissioner may bring an action in the Pulaski~~
36 ~~County Circuit Court for an injunction or other appropriate relief for~~

1 ~~threatened or existing violations of this chapter or of the commissioner's~~
2 ~~rules or orders.~~

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

6 ~~(5)(A) A person in violation of this chapter or a rule or an~~
7 ~~order of the commissioner may be assessed a civil penalty not to exceed five~~
8 ~~hundred dollars (\$500) per violation and no more than ten thousand dollars~~
9 ~~(\$10,000) in the aggregate for all violations of a similar nature.~~

10 ~~(B) For purposes of this subdivision (b)(5), violations~~
11 ~~shall be of a similar nature if the violation consists of the same or similar~~
12 ~~course of conduct, action, or practice, irrespective of the number of times~~
13 ~~the act, conduct, or practice that is determined to be a violation of this~~
14 ~~chapter has occurred.~~

15 ~~(e) The authority of the commissioner under this section is in~~
16 ~~addition to other authorities of the commissioner.~~

17
18 ~~4-114-112. Rules.~~

19 ~~The Insurance Commissioner may promulgate rules necessary to effectuate~~
20 ~~this chapter.~~

21
22 SECTION 2. Arkansas Code Title 23, Chapter 66, is amended to add an
23 additional subchapter to read as follows:

24 Subchapter 8 – Arkansas Service Contracts Act

25
26 23-66-801. Title.

27 This subchapter shall be known and may be cited as the "Arkansas
28 Service Contracts Act".

29
30 23-66-802. Scope and purpose.

31 (a) The purpose of this subchapter is to:

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

34 (2) Add significant consumer protections; and

35 (3) Eliminate unnecessary administration.

1 (b) A service contract under § 23-66-803 is not insurance but is
2 subject to regulation by the Insurance Commissioner.

3 (c) This subchapter does not apply to:

4 (1) Warranties;

5 (2) Maintenance agreements;

6 (3) Commercial transactions;

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

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

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

17 (7) Mechanical breakdown insurance.

18 (d) Manufacturer's service contracts on the manufacturer's products
19 are subject only to § 23-66-806(a), § 23-66-806(d)-(g), § 23-66-807, and §
20 23-66-811.

21
22 23-66-803. Definitions.

23 As used in this subchapter:

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

26 (2) "Consumer" means an individual who buys, other than for
27 purposes of resale, any tangible personal property that is:

28 (A) Distributed in commerce; and

29 (B) Normally used for personal, family, or household
30 purposes and not for business or resale purposes;

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

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

34 (A) Manufactures or produces property and sells the
35 property under the manufacturer's 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 the manufacturer's trade name label;

7 (E) Manufactures or produces the property, and the
8 property 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 manufacturer's trade name or label under a written
11 contract with another person that sells the property under the licensor's
12 trade name or 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 aftermarket or
20 replacement parts not made for or by the original manufacturer of the
21 property;

22 (7) "Person" means:

23 (A) An individual;

24 (B) A partnership;

25 (C) A corporation;

26 (D) An incorporated or unincorporated association;

27 (E) A joint stock company;

28 (F) A reciprocal;

29 (G) A syndicate; or

30 (H) Any similar entity or combination of entities acting
31 in concert;

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

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

1 (10) "Provider fee" means the consideration paid for a service
2 contract;

3 (11) "Reimbursement insurance policy" means a policy of
4 insurance issued to a provider to either:

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

7 (B) In the event of the provider's nonperformance, to pay
8 on behalf of the provider all covered contractual obligations incurred by the
9 provider under the terms of the insured service contracts issued or sold by
10 the provider;

11 (12)(A) "Service contract" means a contract or an
12 agreement:

13 (i) For a separately stated consideration;

14 (ii) For a specific duration to perform the service,
15 repair, replacement, or maintenance of property or indemnification for
16 service, repair, replacement, or maintenance for the operational or
17 structural failure of property due to a defect in materials, workmanship, or
18 normal wear and tear; and

19 (iii) With or without additional provision for
20 incidental payment of indemnity under limited circumstances, including
21 without limitation unavailability of parts, obsolescence, food spoilage,
22 rental, or shipping.

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

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

28 (D) A service contract is not insurance;

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

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

34 (A) Is not negotiated or separated from the sale of the
35 product;

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

1 (C) Guarantees indemnity for defective parts, mechanical
2 breakdown, or electrical breakdown and labor or other remedial measures,
3 including the repair or replacement of the property or repetition of
4 services.

5
6 23-66-804. Requirements for doing business.

7 (a) A provider may appoint an administrator or other designee to be
8 responsible for the administration of service contracts and compliance with
9 this subchapter.

10 (b) A service contract shall not be issued, sold, or offered for sale
11 in this state unless the provider or the provider's designee has:

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

14 (2) Provided a copy of the service contract to the service
15 contract holder within a reasonable period of time from the date of purchase;

16 (3) Established a business location in this state and submitted
17 to the Insurance Commissioner for review and approval the name and contact
18 information for a representative of the provider or the provider's designee
19 who is located in this state;

20 (4) Obtained approval from the commissioner of the business
21 location and any service contract offered in this state; and

22 (5) Complied with this subchapter.

23 (c)(1) A provider of service contracts sold in this state shall file a
24 registration with the commissioner.

25 (2) The registration required under subdivision (c)(1) of this
26 section shall include:

27 (A) The name of the provider;

28 (B) The full corporate address of the provider;

29 (C) Telephone number and contact person of the provider at
30 the corporate office;

31 (D) The physical address and mailing address of the
32 business location in this state;

33 (E) The contact information of a representative of the
34 provider who resides and operates in this state, including without limitation
35 the telephone number and electronic mail;

1 (F) Evidence of compliance with subsection (d) of this
2 section;

3 (G) A designation of a person in this state for service of
4 process; and

5 (H) Any other information required to be submitted by rule
6 of the commissioner.

7 (2) A provider shall pay to the commissioner a fee in the amount
8 of two hundred dollars (\$200) upon initial registration and annually
9 thereafter.

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

12 (d) In order to assure the faithful performance of a provider's
13 obligations to the provider's service contract holders, the provider that is
14 contractually obligated to provide service under a service contract shall:

15 (1) Insure all service contracts under a reimbursement insurance
16 policy issued by an insurer licensed, registered, or authorized to transact
17 insurance in this state or a surplus lines insurer that is authorized under §
18 23-65-310 and maintains statutory capital and surplus of at least fifteen
19 million dollars (\$15,000,000) at all times while the reimbursement insurance
20 policy is in force;

21 (2) Do both of the following:

22 (A)(i) Maintain a funded reserve account for the
23 provider's obligations under the provider's service contracts issued and
24 outstanding in this state.

25 (ii) The reserves shall not be less than forty
26 percent (40%) of gross consideration received less claims paid on the sale of
27 all unexpired service contracts.

28 (iii) The reserve account is subject to examination
29 and review by the commissioner; and

30 (B) Place in trust with the commissioner a financial
31 security deposit having a value of not less than five percent (5%) of the
32 gross consideration received less claims paid on the sale of all unexpired
33 service contracts, but not less than twenty-five thousand dollars (\$25,000),
34 consisting of a surety bond issued by an authorized surety; or

35 (3)(A) Maintain a net worth of one hundred million dollars
36 (\$100,000,000) on its own or together with the provider's parent company if

1 the parent company executes a parental guarantee in a form acceptable to the
2 commissioner.

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

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

17 (e) Except for the requirements under subsection (d) of this section,
18 no other financial security requirements shall be required by the
19 commissioner for a provider.

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

22 (2) Premiums for reimbursement insurance policies shall be
23 subject to applicable taxes.

24 (g) Except for the registration requirements under subsection (c) of
25 this section, persons marketing, selling, or offering to sell service
26 contracts for providers that comply with this subchapter are exempt from this
27 state's licensing requirements.

28 (h) The commissioner may examine the books and records of a provider
29 as necessary to ensure compliance with this subchapter.

30
31 23-66-805. Required disclosures – Reimbursement insurance policy.

32 (a) A reimbursement insurance policy insuring service contracts
33 issued, sold, or offered for sale in this state shall state that the insurer
34 that issued the reimbursement insurance policy shall:

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

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

5 (b) If covered service is not provided by the provider within sixty
6 (60) days of proof of loss by the service contract holder, the service
7 contract holder is entitled to apply directly to the reimbursement insurance
8 company.

9
10 23-66-806. Required disclosure – Service contracts.

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

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

15 (2) Conspicuously disclose the applicable requirements of this
16 section.

17 (b)(1) A service contract insured under a reimbursement insurance
18 policy under § 23-66-804(d)(1) shall contain the name and address of the
19 insurer and a statement in substantially the following form:
20 "Obligations of the provider under this service contract are guaranteed under
21 a service contract reimbursement insurance policy. If the provider fails to
22 pay or provide service on a claim within sixty (60) days after proof of loss
23 has been filed, the service contract holder is entitled to make a claim
24 directly against the insurance company."

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

27 (c)(1) A service contract not insured under a reimbursement insurance
28 policy under § 23-66-804(d)(1) shall conspicuously state the name and address
29 of the provider and contain a statement in substantially the following form:
30 "Obligations of the provider under this service contract are backed only by
31 the full faith and credit of the provider (issuer) and are not guaranteed
32 under a service contract reimbursement insurance policy."

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

35 (d) A service contract shall identify the administrator, the provider
36 obligated to perform the service under the contract, the service contract

1 seller, and the service contract holder to the extent that the name and
2 address of the service contract holder have been furnished by the service
3 contract holder.

4 (e)(1) A service contract or a service contract holder's receipt shall
5 state the total purchase price and the terms under which the service contract
6 is sold.

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

10 (f) If prior approval of repair work is required, a service contract
11 shall state the procedure for obtaining prior approval and for making a
12 claim, including a toll-free telephone number for claim service and a
13 procedure for obtaining emergency repairs performed outside of normal
14 business hours.

15 (g) A service contract shall:

16 (1) Disclose the deductible amount;

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

19 (3)(A) State the conditions upon which the use of the
20 nonoriginal manufacturer's parts or substitute service may be allowed.

21 (B) Conditions stated shall comply with applicable state
22 and federal laws;

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

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

27 (B)(i) The provider of the service contract shall mail a
28 written notice to the service contract holder within fifteen (15) days of the
29 date of termination if the provider terminates the service contract.

30 (ii) Prior notice is not required if the reason for
31 cancellation is nonpayment of the provider fee, a material misrepresentation
32 by the service contract holder to the provider, or a substantial breach of
33 duties by the service contract holder relating to the covered product or its
34 use.

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

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

4 (6)(A) Contain a provision under which every provider is
5 required to permit the service contract holder to return the contract within
6 no less than twenty (20) days of the date of mailing of the service contract
7 or no less than ten (10) days if the service contract is delivered at the
8 time of sale or within a longer time period permitted under the service
9 contract.

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

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

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

19 (7) State all of the obligations and duties of the service
20 contract holder, including the duty to protect against any further damage and
21 the requirement for certain service and maintenance; and

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

24
25 23-66-807. Prohibited acts.

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

27 (A) With the words "insurance", "casualty", "surety",
28 "mutual", or any other words descriptive of the insurance, casualty, or
29 surety business; or

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

32 (2)(A) This subsection does not apply to a company that was
33 using any of the prohibited language in its name before October 1, 2007.

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

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

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

10
11 23-66-808. Recordkeeping requirements.

12 (a)(1) A provider shall keep accurate accounts, books, and records
13 concerning transactions regulated under this subchapter.

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

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

16 (B) The name and address of each service contract holder,
17 to the extent that the name and address have been furnished by the service
18 contract holder;

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

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

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

28 (4)(A) A provider may keep all records required under this
29 subchapter on a computer disk or other similar technology.

30 (B) If a provider maintains records in other than hard
31 copy, records shall be accessible from a computer terminal available to the
32 Insurance Commissioner and be capable of duplication to legible hard copy.

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

1 (c) A provider shall make all accounts, books, and records concerning
2 transactions regulated under this subchapter or other pertinent laws
3 available to the commissioner upon request.

4 (d) The books and records requirement under this section may be
5 delegated by the provider to its administrator or other designee, but the
6 delegation shall not relieve the provider of its obligations to have the
7 books and records maintained and produced upon the commissioner's request.

8
9 23-66-809. Cancellation of reimbursement insurance policy.

10 (a) An insurer that issued a reimbursement insurance policy shall not
11 terminate the policy until at least sixty (60) days' notice of termination
12 has been mailed or delivered to the Insurance Commissioner and according to
13 any applicable law.

14 (b) The termination of a reimbursement insurance policy shall not
15 reduce the insurer's responsibility for service contracts issued by providers
16 before the date of the termination.

17
18 23-66-810. Obligation of reimbursement insurance policy insurers.

19 (a)(1) A provider is considered to be the agent of the insurer that
20 issued a reimbursement insurance policy for the purpose of obligating an
21 insurer for the acts of its agents, including without limitation the
22 collection of moneys not forwarded.

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

26 (b) This subchapter does not prevent or limit the right of an insurer
27 that issued a reimbursement insurance policy to seek indemnification or
28 subrogation against a provider if the insurer pays or is obligated to pay a
29 service contract holder sums that the provider was obligated to pay pursuant
30 to the service contract or under a contractual agreement.

31
32 23-66-811. Enforcement.

33 (a) The Insurance Commissioner shall enforce this subchapter.

34 (b) The commissioner may:

35 (1) Examine or audit the books and records of a provider
36 offering service contracts in this state;

1 (2) Conduct investigations of providers, administrators,
2 insurers, or other persons to:

3 (A) Enforce this subchapter;

4 (B) Protect service contract holders in this state; and

5 (C) Determine if the provider is in compliance with this
6 subchapter.

7 (c)(1) The commissioner may take any action that is necessary or
8 appropriate to enforce this subchapter and the commissioner's rules and
9 orders to protect service contract holders in this state.

10 (2) The commissioner may:

11 (A) Order a provider to cease and desist from committing
12 violations of this subchapter or the commissioner's rules or orders;

13 (B) Issue an order prohibiting a provider from selling or
14 offering a service contract for sale;

15 (C) Issue an order imposing a civil penalty; or

16 (D) Issue an order to impose any combination of the
17 actions described under subdivision (c)(2)(A)-(C) of this section, if the
18 provider has violated this subchapter or the commissioner's rules or orders.

19 (d)(1) After notice and opportunity for hearing, the commissioner may
20 impose a penalty of up to five hundred dollars (\$500) per violation against a
21 provider if the commissioner finds that the provider has violated this
22 subchapter.

23 (2)(A) The penalty under subdivision (d)(1) of this section
24 shall be no more than ten thousand dollars (\$10,000) in the aggregate for all
25 violations of a similar nature.

26 (B) For purposes of this subdivision (d)(2), violations
27 shall be of a similar nature if the violation consists of the same or similar
28 course of conduct, action, or practice, irrespective of the number of times
29 the act, conduct, or practice that is determined to be a violation of this
30 subchapter has occurred.

31 (e)(1) A person aggrieved by an order issued under this section may
32 request a hearing before the commissioner by filing a request with the
33 commissioner within twenty (20) days of the commissioner's order.

34 (2) Pending the hearing and the decision by the commissioner,
35 the commissioner shall suspend the effective date of the order.

1 (3)(A) At the hearing, the burden shall be on the commissioner
2 to show why the order is justified.

3 (B) Section 23-61-301 et seq. shall apply to a hearing
4 requested under this subsection.

5 (4)(A) The commissioner may bring an action in the Pulaski
6 County Circuit Court for an injunction or other appropriate relief for
7 threatened or existing violations of this subchapter or of the commissioner's
8 rules or orders.

9 (B) An action filed under subdivision (e)(3)(A) of this
10 section may also seek restitution on behalf of persons aggrieved by a
11 violation of this subchapter or a rule or an order of the commissioner.

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

14
15 23-66-812. Rules.

16 The Insurance Commissioner may promulgate rules necessary to implement
17 and administer this subchapter.

18
19
20 Referred requested by the Arkansas House of Representatives

21 Prepared by: ANS/SJA
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