

HB466 INTRODUCED



1 HB466
2 CXX1GJJ-1
3 By Representative McCampbell
4 RFD: Commerce and Small Business
5 First Read: 20-Mar-25



4 SYNOPSIS:

5 Generally, pursuant to the terms of a service
6 contract, a provider agrees to repair, replace, or
7 provide a refund for covered property that is
8 operationally or functionally failing.

9 This bill would require that when advertising a
10 service contract, the advertisement must disclose any
11 right to refund a contract holder in an amount less
12 than the provider's cost to repair or replace covered
13 property.

14 This bill would further provide for the
15 limitations, exceptions, and exclusions of service
16 contracts that must be disclosed.

17 This bill would also make nonsubstantive,
18 technical revisions to update the existing code
19 language to current style.

22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 Relating to service contracts; to amend Sections
27 8-32-2, 8-32-3, and 8-32-5, Code of Alabama 1975, to require
28 certain disclosure when advertising contracts; to further



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provide for the limitations, exceptions, and exclusions of contracts that must be disclosed; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 8-32-2, 8-32-3, and 8-32-5, Code of Alabama 1975, are amended to read as follows:

"§8-32-2

As used in this chapter, the following terms ~~shall~~ have the following meanings:

(1) ADMINISTRATOR. The person designated by a provider to be responsible for the administration of service contracts or the service contracts plan or to make the filings required by this chapter.

(2) COMMISSIONER. The Commissioner of Insurance of this state.

(3) CONSUMER. A natural person who buys, primarily for personal, family, or household purposes, and not for resale, any tangible personal property normally used for personal, family, or household purposes and not for commercial or research purposes.

(4) MAINTENANCE AGREEMENT. A contract of limited duration that provides for scheduled maintenance only.

(5) MANUFACTURER. A person that is one of the following:

a. A manufacturer or producer of property that sells the property under its own name or label.

b. A subsidiary of the person who manufactures or



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produces the property.

c. A corporation~~which~~ that owns at least 80 percent of the person~~who~~ that manufactures or produces the property.

d. A person~~who~~ that manufactures or produces the property even though the property is sold under the trade name or label of another person.

(6) MECHANICAL BREAKDOWN INSURANCE. For purposes of this chapter, a policy, contract, or agreement issued by an authorized insurance company directly to a consumer or other owner of property that provides for, among other coverages, the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational or structural failure of the property due to a defect in materials or workmanship or due to normal wear and tear.

(7) NON-ORIGINAL MANUFACTURER'S PARTS. Replacement parts not made for or by the original manufacturer of the property, commonly referred to as "after market parts."

(8) PERSON. An individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any other entity, or combination of persons acting in concert.

(9) PREMIUM. The consideration paid to an insurer for a reimbursement insurance policy.

(10) PROVIDER. A person who administers, makes, provides, sells, or offers to sell a service contract, who is contractually obligated to provide service under a service contract.



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(11) PROVIDER FEE. The total purchase price paid for a service contract. In cases where a reimbursement insurance policy is issued to a provider, the "provider fee" is the total purchase price paid for a service contract net of the premium.

(12) REFUND. To refund the price of covered property or a component thereof, less reasonable depreciation, if:

a. The replacement or repair of the property is not commercially practicable; or

b. The contract holder agrees to accept a refund in place of the replacement or repair.

~~(12)~~ (13) REIMBURSEMENT INSURANCE POLICY. A policy of insurance issued to a provider pursuant to which the insurer agrees, for the benefit of the service contract holders, to discharge the obligations of the provider under the terms of the service contracts in the event of ~~non-performance~~ nonperformance by the provider.

(14) REPAIR. The restoration of operationally or functionally failing covered property to sound or good condition.

(15) REPLACE. The replacement of property or a component thereof with a new and identical or equivalent product or component.

~~(13)~~ (16) ROAD HAZARD. A hazard that is encountered while driving a motor vehicle, including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

~~(14)~~ (17) SERVICE CONTRACT. A contract or agreement for



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a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials or workmanship, or normal wear and tear, with or without additional provision for incidental payment or indemnity under limited circumstances, for related expenses, including, but not limited to, towing, rental, and emergency road service. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling.

~~"Service contract"~~ The term does not include warranties, mechanical breakdown insurance, or maintenance agreements. A service contract is not insurance for any purpose, including, but not limited to, compliance with the Alabama Insurance Code, other than for the purpose of a service contract holder's claim against a service contract provider for failure to comply with the ~~provisions of the~~ service contract if so provided by other law. Service contract services include, but are not limited to, the following:

a. The repair or replacement of tires or wheels, or both, on a motor vehicle damaged as a result of coming into contact with a road hazard.

b. The removal of dents, dings, or creases on a motor vehicle that may be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting.



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c. The repair of chips or cracks in or the replacement of a motor vehicle windshield as a result of damage caused by a road hazard that is primary to the coverage offered by the motor vehicle owner's motor vehicle insurance policy.

d. The replacement of a motor vehicle key or key-fob if the key or key-fob becomes inoperable, lost, or stolen.

e. Other services ~~which~~ that may be approved by the commissioner, if not inconsistent with this chapter.

~~(15)~~ (18) SERVICE CONTRACT HOLDER or CONTRACT HOLDER. A person who is the purchaser or holder of a service contract.

~~(16)~~ (19) WARRANTY. A warranty made by the manufacturer, importer, distributor, or seller of property or services without consideration stated separately from the price of the property or services sold, that is not negotiated separate from the sale of the product and is incidental to the sale of the product, that guarantees repair or replacement, or indemnity for repair or replacement, for defective parts, mechanical or electrical breakdown, labor or other remedial measures, such as repair or replacement of the property or repetition of services."

"§8-32-3

(a) Either the provider or its designee shall provide both of the following to a contract holder:

(1) ~~Provide a~~ A receipt for, or other written evidence of, the purchase of the service contract ~~to the contract holder~~.

(2) ~~Provide a~~ A copy of the service contract ~~to the service contract holder~~ within a reasonable period of time



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from the date of purchase.

(b) A provider may, ~~but is not required to,~~ appoint an administrator or other designee to be responsible for any or all of the administration of service contracts and compliance with this chapter.

(c) Each provider of service contracts sold in this state shall file a registration with the commissioner on a form prescribed by the commissioner. Each provider shall pay to the commissioner a fee in the amount of two hundred dollars (\$200) annually. All fees collected shall be paid into a special revolving fund to be set up by the State Treasurer referred to as the "Service Contract Revolving Fund." The Service Contract Revolving Fund shall be used in the supervision and examination of providers and otherwise in the administration of this chapter; provided, however, that nothing in this section shall be construed to mean that all of the expenses of supervision and examination of providers and in the administration of this chapter incurred by the State Insurance Department shall come from the Service Contract Revolving Fund.

(d) All funds now or hereafter deposited in the State Treasury to the credit of the Service Contract Revolving Fund ~~shall~~ may not be expended for any purpose whatsoever unless the same shall have been allotted and budgeted in accordance with ~~the provisions of~~ Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and only in the amounts and for the purposes provided by the Legislature in the general appropriation bill, other appropriations bills, or



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197 this chapter.

198 (e) There is hereby appropriated for the fiscal year
199 ending September 30, 1998, from the Service Contract Revolving
200 Fund to the State Department of Insurance those amounts as
201 deemed necessary to carry out the provisions of this chapter
202 as determined by the Commissioner of Insurance.

203 (f) In order to assure the faithful performance of a
204 provider's obligations to its service contract holders, each
205 provider shall be responsible for complying with the
206 requirements of one of the following subdivisions:

207 (1) Insure all service contracts under a reimbursement
208 insurance policy issued by an insurer authorized to transact
209 insurance in this state or issued pursuant to Chapter 10,
210 Title 27.

211 (2) Do both of the following:

212 a. Maintain a funded reserve account for its
213 obligations under its service contracts sold and outstanding
214 in this state. The reserves shall be based on the loss
215 experience of the provider as certified by an actuary or, at
216 the election of the provider, the reserves shall be 30 percent
217 of the aggregate provider fees for all service contracts sold
218 and then in force. The reserve account shall be subject to
219 examination and review by the commissioner.

220 b. Place in trust with the commissioner a financial
221 security deposit, having a value of not less than five percent
222 of the aggregate provider fees, less claims paid, for all
223 service contracts sold and then in force, but not less than
224 twenty-five thousand dollars (\$25,000) consisting of one of



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225 the following:

226 ~~(i)~~1. A surety bond issued by an authorized surety.

227 ~~(ii)~~2. Securities of the type eligible for deposit by
228 authorized insurers in this state.

229 ~~(iii)~~3. Cash.

230 ~~(iv)~~4. A letter of credit issued by a qualified
231 financial institution.

232 ~~(v)~~5. Another form of security prescribed by
233 regulations issued by the commissioner.

234 (3) Do both of the following:

235 a. Maintain a net worth or stockholders' equity of one
236 hundred million dollars (\$100,000,000).

237 b. Upon request, provide the commissioner with a copy
238 of the financial statement of the provider included in its
239 most recent annual report on Form 10-K or Form 20-F filed with
240 the Securities and Exchange Commission (SEC) within the last
241 calendar year, or if the provider does not file with the SEC,
242 a copy of the audited financial statements of the provider,
243 which shows a net worth of the provider of at least one
244 hundred million dollars (\$100,000,000). A consolidated Form
245 10-K, Form 20-F, or audited financial statements shall meet
246 the requirements of this chapter for the provider if it shows
247 a net worth or stockholders' equity of the provider of at
248 least one hundred million dollars (\$100,000,000) and there
249 shall be no requirement of a parent company guarantee,
250 reimbursement insurance, or other form of financial stability
251 requirement. However, if the Form 10-K, Form 20-F, or audited
252 financial statements of the parent company of the provider are



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filed to meet the provider's financial stability requirement because the provider's net worth or stockholders' equity of the provider is not at least one hundred million dollars (\$100,000,000), or because the net worth or stockholders' equity is not determinable from the consolidated Form 10-K, Form 20-F, or audited financial statements of the parent company, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state.

(g) Service contracts shall require the provider to permit the service contract holder to return the service contract within no less than 20 days of the date the service contract was mailed to the service contract holder or within no less than 10 days of delivery if the service contract is delivered to the service contract holder at the time of sale. Upon return of the service contract to the provider within the applicable time period, if no claim has been made under the service contract prior to its return to the provider, the service contract is void and the provider shall refund to the service contract holder the full purchase price of the service contract including any premium paid for any applicable reimbursement insurance policy. Any refund due a service contract holder may be credited to any outstanding balance of the account of the service contract holder, and the excess, if any, shall be refunded to the service contract holder. The right to void the service contract provided in this subsection ~~(g)~~ is not transferable and shall apply only to the original service contract purchaser, and only if no claim has been made



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prior to its return to the provider. A 10 percent penalty per month shall be added to a refund that is not paid or credited within 45 days after return of the service contract to the provider.

(h) In the event the original service contract holder makes a written demand for cancellation of a service contract pursuant to the terms of the service contract, the provider shall refund to the service contract holder the unearned portion of the full purchase price of the service contract including the unearned portion of any premium paid for any applicable reimbursement insurance policy. Any refund due a service contract holder may be credited to any outstanding balance of the account of the service contract holder, and the excess, if any, shall be refunded to the service contract holder. If the original contract purchaser or a contract holder elects cancellation, the provider may retain an administrative fee of up to twenty-five dollars (\$25) for issuance of the service contract if ~~such~~ the fee is provided for in the service contract; however, this amount may not be deducted in the event the service contract is terminated pursuant to the provisions of subsection (g).

(i)(1) Provider fees are not subject to premium taxes.

(2) Premiums for reimbursement insurance policies are subject to applicable taxes.

(j) Except for the registration requirement in subsection (c), providers, administrators, and other persons marketing, selling, or offering to sell service contracts for providers are exempt from any licensing requirements of this



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state.

(k) Providers are not required to comply with any provision of Title 27.

(1) A provider shall disclose in an advertisement for a service contract, in boldface print larger than the body of the advertisement, any right of the provider to refund a contract holder in an amount less than the provider's cost for repair or replacement of covered property."

"§8-32-5

(a) Service contracts sold or offered for sale in this state, in their entirety, shall be written, printed, or typed in eight point type size, or larger, ~~and shall comply with the requirements set forth in this section, as applicable.~~

(b) (1) Service contracts insured under a reimbursement insurance policy pursuant to ~~subdivision (1) of subsection (f) of Section 8-32-3~~ 8-32-3(f)(1) shall contain a statement in substantially the following form:

"Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy."

(2) If the provider fails to pay or to provide service on a claim within 60 days after proof of loss has been filed, the service contract holder ~~is entitled to~~ may make a claim directly against the reimbursement insurance company. The service contract shall state the name and address of the reimbursement insurance company.

(c) Service contracts not insured under a reimbursement insurance policy pursuant to ~~subdivision (1) of subsection (f)~~



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337 ~~of~~ Section ~~8-32-3~~ 8-32-3(f)(1) shall contain a statement in
338 substantially the following form:

339 "Obligations of the provider under this service
340 contract are backed by the full faith and credit of the
341 provider."

342 (d) Service contracts shall state the name and address
343 of the provider, and shall identify any administrator, the
344 service contract seller, and the service contract holder to
345 the extent that the name and address of the service contract
346 holder has been furnished by the service contract holder.

347 ~~Neither the name of the service contract seller nor other~~
348 ~~provisions are~~ The information described in this subsection is
349 not required to be preprinted on the service contract and may
350 be added to the service contract at the time of sale.

351 (e) Service contracts shall state the purchase price of
352 the service contract, the term of the service contract, and
353 any applicable renewal provisions. ~~Neither the purchase price~~
354 ~~nor any other provisions are~~ The information described in this
355 subsection is not required to be ~~pre-printed~~ preprinted on the
356 service contract and may be negotiated at the time of sale
357 with the service contract holder.

358 (f) If the provider will reimburse the contract holder
359 for repair work performed by third parties and if prior
360 approval of repair work is required, 7: (i) the service contract
361 shall state the procedure for obtaining prior approval and for
362 making a claim, including a toll-free telephone number for
363 claim service; and (ii) if the service contract provides
364 services essential to public health, safety, or welfare, the



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service contract shall either provide for 24-hour telephone assistance⁷ or state the procedure for obtaining emergency repairs performed outside of normal business hours.

(g) Service contracts shall state the existence of any deductible amount.

(h) Service contracts shall describe the property upon which the services are to be provided, the services to be provided, and, in boldface print larger than the body of the contract, any limitations, exceptions, or exclusions to the services to be provided, including both of the following:

(1) Any limit on the repair, replacement, or refund of covered property.

(2) Any right of the provider to refund a contract holder in an amount less than the provider's cost for repair or replacement of the property.

(i) Service contracts shall state whether the use of non-original manufacturer's parts is allowed.

(j) Service contracts shall state any restrictions governing the transferability of the service contract.

(k) Service contracts shall state the terms, restrictions, or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the provider or by the service contract holder. The provider of the service contract shall mail a written notice to the service contract holder at the last known address of the service contract holder contained in the records of the provider at least five days prior to cancellation by the provider. Prior notice is not



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required if the reason for cancellation is nonpayment of the provider fee or a material misrepresentation by the service contract holder to the provider relating to the covered property or its use. The notice shall state the effective date of the cancellation and the reason for the cancellation.

(l) Service contracts shall set forth the obligations and duties of the service contract holder relating to the property covered by the service contract.

(m) Service contracts shall state whether or not the service contract provides for or excludes consequential damages or preexisting conditions, to the extent applicable.

(n) Service contracts may contain other provisions as determined by the provider.

(o) Service contracts shall provide, in boldface print larger than the body of the contract, the procedures that a contract holder shall take to receive the repair, replacement, or refund of operationally or structurally failing covered property."

Section 2. This act shall become effective on October 1, 2025.