

HB5 INTRODUCED



1 HB5
2 84UXGFF-1
3 By Representative McCampbell
4 RFD: Commerce and Small Business
5 First Read: 13-Jan-26
6 PFD: 25-Jun-25



SYNOPSIS:

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

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

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

This bill would further provide for entities that are exempt from certain service contract regulations.

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

A BILL
TO BE ENTITLED
AN ACT



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Relating to service contracts; to amend Sections 8-32-1, 8-32-2, 8-32-3, and 8-32-5, Code of Alabama 1975, to further provide for entities exempt from certain service contract regulations; to require certain disclosure when advertising contracts; to further 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 8-32-1, 8-32-2, 8-32-3, and 8-32-5, Code of Alabama 1975, are amended to read as follows:

"§8-32-1

(a) The purpose of this chapter is to create a framework to regulate service contracts sold to consumers in this state.

(b) The following are exempt from Sections 8-32-2 to 8-32-12, inclusive, ~~of this chapter~~:

(1) Warranties.

(2) Maintenance agreements.

(3) Warranties, service contracts, or maintenance agreements offered by electric, gas, water, or telephone utilities or mobile telecommunications service providers on their transmission devices.

(4) Service contracts sold or offered for sale in commercial transactions.

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

(6) Service contracts sold at the point of sale, or



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within 60 days ~~of~~ after the original purchase date of the property, which cover tangible property where the tangible property for which the service contract is sold, has a purchase price of two hundred ~~and~~ fifty dollars (\$250) or less, exclusive of sales tax.

(c) Manufacturer's service contracts on the manufacturer's products and service contracts sold or offered for sale by Alabama electric cooperatives, and their subsidiaries and affiliates ~~including~~ including without limitation, affiliates managed or controlled by electric cooperatives, are required to comply only with Section 8-32-3(a), Section 8-32-3(g), Section 8-32-5(a), Section 8-32-5(d) to (n), inclusive, Section 8-32-6, Section 8-32-10(a), and Section 8-32-10(c) to (f), inclusive, as applicable, ~~of this chapter.~~

(d) The types of agreements referred to in subsections (b) and (c) are not insurance for any purpose including, without limitation, compliance with the Alabama Insurance Code."

"§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~~ An individual who buys,



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85 primarily for personal, family, or household purposes, and not
86 for resale, any tangible personal property normally used for
87 personal, family, or household purposes and not for commercial
88 or research purposes.

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

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

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

95 b. A subsidiary of the person who manufactures or
96 produces the property.

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

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

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

111 (7) NON-ORIGINAL MANUFACTURER'S PARTS. Replacement
112 parts not made for or by the original manufacturer of the



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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.

(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 of the covered property or component thereof.

~~(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~~



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141 nonperformance by the provider.

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

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

148 ~~(13)~~ (16) ROAD HAZARD. A hazard that is encountered
149 while driving a motor vehicle, including, but not limited to,
150 potholes, rocks, wood debris, metal parts, glass, plastic,
151 curbs, or composite scraps.

152 ~~(14)~~ (17) SERVICE CONTRACT. A contract or agreement for
153 a separately stated consideration for a specific duration to
154 perform the repair, replacement, or maintenance of property or
155 indemnification for repair, replacement, or maintenance, for
156 the operational or structural failure due to a defect in
157 materials or workmanship, or normal wear and tear, with or
158 without additional provision for incidental payment or
159 indemnity under limited circumstances, for related expenses,
160 including, but not limited to, towing, rental, and emergency
161 road service. Service contracts may provide for the repair,
162 replacement, or maintenance of property for damage resulting
163 from power surges and accidental damage from handling.

164 ~~"Service contract"~~ The term does not include warranties,
165 mechanical breakdown insurance, or maintenance agreements. A
166 service contract is not insurance for any purpose, including,
167 but not limited to, compliance with the Alabama Insurance
168 Code, other than for the purpose of a service contract



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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.

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



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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 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



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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 this chapter.

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

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

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

(2) Do both of the following:

a. Maintain a funded reserve account for its



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

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

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

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

~~(iii)~~3. Cash.

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

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

(3) Do both of the following:

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

b. Upon request, provide the commissioner with a copy of the financial statement of the provider included in its most recent annual report on Form 10-K or Form 20-F filed with



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the Securities and Exchange Commission (SEC) within the last calendar year, or if the provider does not file with the SEC, a copy of the audited financial statements of the provider, which shows a net worth of the provider of at least one hundred million dollars (\$100,000,000). A consolidated Form 10-K, Form 20-F, or audited financial statements shall meet the requirements of this chapter for the provider if it shows a net worth or stockholders' equity of the provider of at least one hundred million dollars (\$100,000,000) and there shall be no requirement of a parent company guarantee, reimbursement insurance, or other form of financial stability requirement. However, if the Form 10-K, Form 20-F, or audited financial statements of the parent company of the provider are 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.



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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 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



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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 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)~~



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

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

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

375 (c) Service contracts not insured under a reimbursement
376 insurance policy pursuant to ~~subdivision (1) of subsection (f)~~
377 ~~of~~ Section ~~8-32-3~~ 8-32-3(f)(1) shall contain a statement in
378 substantially the following form:

379 "Obligations of the provider under this service
380 contract are backed by the full faith and credit of the
381 provider."

382 (d) Service contracts shall state the name and address
383 of the provider, and shall identify any administrator, the
384 service contract seller, and the service contract holder to
385 the extent that the name and address of the service contract
386 holder has been furnished by the service contract holder.
387 ~~Neither the name of the service contract seller nor other~~
388 ~~provisions are~~ The information described in this subsection is
389 not required to be preprinted on the service contract and may
390 be added to the service contract at the time of sale.

391 (e) Service contracts shall state the purchase price of



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the service contract, the term of the service contract, and any applicable renewal provisions. ~~Neither the purchase price nor any other provisions are~~ The information described in this subsection is not required to be ~~pre-printed~~ preprinted on the service contract and may be negotiated at the time of sale with the service contract holder.

(f) If the provider will reimburse the contract holder for repair work performed by third parties and if prior approval of repair work is required: (i) the service contract shall state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service; and (ii) if the service contract provides services essential to public health, safety, or welfare, the service contract shall either provide for 24-hour telephone assistance 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.



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(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 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



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448 contract holder shall take to receive the repair, replacement,
449 or refund of operationally or structurally failing covered
450 property."

451 Section 2. This act shall become effective on January
452 1, 2027.

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