
By: **Senators Astle and Dorman**
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Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Service Contracts Act**

3 FOR the purpose of prohibiting the sale of a service contract in the State unless the
4 service contract holder is provided with a receipt or written notice of the
5 purchase of the contract and with a copy of the contract within a reasonable
6 period; requiring a service contract provider to register with the Insurance
7 Commissioner, file copies of contracts, and pay a certain registration fee and
8 certain processing fees; requiring that a service contract provider insure all
9 service contracts, provide certain security to the Commissioner, or maintain a
10 certain net worth or stockholders' equity and provide certain securities filings or
11 audited financial statements to the Commissioner; providing for the form and
12 amount of the security provided; authorizing the Commissioner to examine and
13 review security provided in the form of a reserve account; requiring the provider
14 to guarantee certain obligations and make certain annual filings under certain
15 circumstances; prohibiting the Commissioner from requiring security other than
16 that required under this Act; allowing a service contract holder to void and
17 return a contract within a certain time and under certain circumstances;
18 requiring that a provider pay or credit a refund, within a certain period, for a
19 contract voided; providing for the application of premium taxes and certain
20 other provisions of law; requiring that service contracts meet certain
21 requirements and contain certain provisions; requiring that a provider have a
22 certain training program for certain employees; prohibiting a service contract
23 provider from using certain terminology in its name and providing certain
24 exceptions to the naming limitation; requiring a service contract provider to
25 keep certain records for a certain period; allowing a service contract provider to
26 appoint or designate another person to administer service contracts and be
27 responsible for compliance with the provisions of this Act; requiring that
28 reimbursement policies issued to cover service contracts meet certain
29 requirements; providing certain limitations on the termination of a
30 reimbursement policy issued to a service contract provider; allowing an insurer
31 to seek certain subrogation or indemnification; authorizing the Commissioner to
32 conduct examinations of certain accounts, books, and records of service contract
33 providers and certain insurers, adopt certain regulations, and take certain
34 actions to enforce this Act; providing for certain hearing procedures and
35 penalties; providing for the purpose and application of this Act; defining certain

1 terms; providing for certain exceptions to the application of this Act; providing
2 for the severability of this Act; providing for the nonadmission in court of any
3 compliance with this Act prior to the effective date of this Act; and generally
4 relating to the regulation of service contracts and service contract providers.

5 BY adding to

6 Article - Commercial Law
7 Section 21-101 through 21-113, inclusive, to be under the new title "Title 21.
8 Service Contracts"
9 Annotated Code of Maryland
10 (1990 Replacement Volume and 1999 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article - Commercial Law**

14 **TITLE 21.**

15 **SERVICE CONTRACTS.**

16 21-101.

17 (A) THE PURPOSE OF THIS TITLE IS TO CREATE A LEGAL FRAMEWORK WITHIN
18 WHICH SERVICE CONTRACTS MAY BE SOLD IN THE STATE.

19 (B) THE FOLLOWING CONTRACTS AND AGREEMENTS ARE EXEMPT FROM THE
20 APPLICATION OF THIS TITLE:

21 (1) WARRANTIES;

22 (2) MAINTENANCE AGREEMENTS;

23 (3) SERVICE CONTRACTS OFFERED BY PUBLIC UTILITIES ON THEIR
24 TRANSMISSION DEVICES, TO THE EXTENT THAT THEY ARE REGULATED BY THE
25 MARYLAND PUBLIC SERVICE COMMISSION;

26 (4) SERVICE CONTRACTS SOLD OR OFFERED FOR SALE TO PERSONS
27 OTHER THAN CONSUMERS;

28 (5) SERVICE CONTRACTS ON TANGIBLE PROPERTY THAT HAS A
29 PURCHASE PRICE NOT EXCEEDING \$350, EXCLUSIVE OF SALES TAX; AND

30 (6) MECHANICAL REPAIR CONTRACTS REGULATED UNDER § 15-311.2 OF
31 THE TRANSPORTATION ARTICLE.

32 (C) THE AGREEMENTS REFERRED TO IN SUBSECTION (B) OF THIS SECTION DO
33 NOT HAVE TO COMPLY WITH ANY PROVISION OF THE INSURANCE ARTICLE OF THE
34 CODE TO BE EXEMPT FROM THE APPLICATION OF THIS TITLE.

1 21-102.

2 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

3 (B) "ADMINISTRATOR" MEANS A PERSON WHO IS RESPONSIBLE FOR:

4 (1) THE ADMINISTRATION OF A SERVICE CONTRACT OR SERVICE
5 CONTRACT PLAN; AND

6 (2) ANY FILINGS REQUIRED UNDER THIS TITLE.

7 (C) "COMMISSIONER" MEANS THE MARYLAND INSURANCE COMMISSIONER.

8 (D) "CONSUMER" MEANS AN INDIVIDUAL WHO BUYS, OTHER THAN FOR
9 PURPOSES OF RESALE, TANGIBLE PERSONAL PROPERTY THAT IS:

10 (1) DISTRIBUTED IN COMMERCE;

11 (2) NORMALLY USED FOR PERSONAL, FAMILY, OR HOUSEHOLD
12 PURPOSES; AND

13 (3) NOT USED FOR BUSINESS OR RESEARCH PURPOSES.

14 (E) "MAINTENANCE AGREEMENT" MEANS A CONTRACT OF LIMITED
15 DURATION THAT PROVIDES FOR SCHEDULED MAINTENANCE ONLY.

16 (F) "NONORIGINAL MANUFACTURER'S PARTS" MEANS REPLACEMENT PARTS,
17 COMMONLY REFERRED TO AS "AFTER-MARKET PARTS", NOT MADE FOR OR BY THE
18 ORIGINAL MANUFACTURER OF THE MANUFACTURED PROPERTY.

19 (G) "PERSON" MEANS:

20 (1) AN INDIVIDUAL;

21 (2) A PARTNERSHIP;

22 (3) A CORPORATION;

23 (4) AN INCORPORATED OR UNINCORPORATED ASSOCIATION;

24 (5) A JOINT STOCK COMPANY;

25 (6) A RECIPROCAL, SYNDICATE, OR SIMILAR ENTITY; OR

26 (7) ANY COMBINATION OF THE PREVIOUSLY LISTED ENTITIES ACTING
27 IN CONCERT.

28 (H) "PREMIUM" MEANS THE CONSIDERATION PAID TO AN INSURER FOR A
29 REIMBURSEMENT INSURANCE POLICY.

1 (I) "PROVIDER" MEANS A PERSON WHO IS CONTRACTUALLY OBLIGATED TO
2 THE SERVICE CONTRACT HOLDER UNDER THE TERMS OF A SERVICE CONTRACT.

3 (J) "PROVIDER FEE" MEANS THE CONSIDERATION PAID FOR A SERVICE
4 CONTRACT.

5 (K) "REIMBURSEMENT INSURANCE POLICY" MEANS A POLICY OF INSURANCE
6 ISSUED TO A PROVIDER TO:

7 (1) PROVIDE REIMBURSEMENT TO THE PROVIDER UNDER THE TERMS
8 OF THE INSURED SERVICE CONTRACTS ISSUED OR SOLD BY THE PROVIDER; OR

9 (2) IN THE EVENT OF THE PROVIDER'S NONPERFORMANCE, PAY ON
10 BEHALF OF THE PROVIDER ALL COVERED CONTRACTUAL OBLIGATIONS INCURRED
11 BY THE PROVIDER UNDER THE TERMS OF THE INSURED SERVICE CONTRACTS
12 ISSUED OR SOLD BY THE PROVIDER.

13 (L) (1) "SERVICE CONTRACT" MEANS A CONTRACT OR AGREEMENT FOR A
14 SEPARATELY STATED CONSIDERATION FOR A SPECIFIC DURATION TO:

15 (I) PERFORM THE REPAIR, REPLACEMENT, OR MAINTENANCE OF
16 PROPERTY NEEDED BECAUSE OF AN OPERATIONAL OR STRUCTURAL FAILURE
17 ATTRIBUTABLE TO A DEFECT IN MATERIALS, WORKMANSHIP, OR NORMAL WEAR AND
18 TEAR; OR

19 (II) WITH OR WITHOUT ADDITIONAL PROVISIONS REQUIRING THE
20 INCIDENTAL PAYMENT OF INDEMNITY UNDER LIMITED CIRCUMSTANCES,
21 INDEMNIFY FOR REPAIR, REPLACEMENT, OR MAINTENANCE NEEDED BECAUSE OF
22 AN OPERATIONAL OR STRUCTURAL FAILURE ATTRIBUTABLE TO A DEFECT IN
23 MATERIALS, WORKMANSHIP, OR NORMAL WEAR AND TEAR.

24 (2) "SERVICE CONTRACT" INCLUDES A CONTRACT FOR:

25 (I) TOWING, RENTAL, AND EMERGENCY ROAD SERVICES; AND

26 (II) THE REPAIR, REPLACEMENT, OR MAINTENANCE OF PROPERTY
27 FOR DAMAGE RESULTING FROM POWER SURGES AND ACCIDENTAL DAMAGE FROM
28 HANDLING.

29 (M) "SERVICE CONTRACT HOLDER" OR "CONTRACT HOLDER" MEANS A PERSON
30 WHO IS THE PURCHASER OR HOLDER OF A SERVICE CONTRACT.

31 (N) "WARRANTY" MEANS A WARRANTY MADE SOLELY BY THE
32 MANUFACTURER, IMPORTER, OR SELLER OF PROPERTY OR SERVICES THAT:

33 (1) IS:

34 (I) MADE WITHOUT CONSIDERATION;

35 (II) NOT NEGOTIATED OR SEPARATED FROM THE SALE OF THE
36 PRODUCT; AND

1 (III) INCIDENTAL TO THE SALE OF THE PRODUCT; AND

2 (2) GUARANTEES INDEMNITY FOR DEFECTIVE PARTS, MECHANICAL OR
3 ELECTRICAL BREAKDOWN, LABOR, OR OTHER REMEDIAL MEASURES, INCLUDING
4 THE REPAIR OR REPLACEMENT OF THE PROPERTY OR THE PROVISION OF REPEATED
5 SERVICES.

6 21-103.

7 (A) A SERVICE CONTRACT MAY NOT BE ISSUED, SOLD, OR OFFERED FOR SALE
8 IN THIS STATE UNLESS THE PROVIDER HAS PROVIDED TO THE SERVICE CONTRACT
9 HOLDER:

10 (1) A RECEIPT FOR, OR OTHER WRITTEN EVIDENCE OF, THE PURCHASE
11 OF THE SERVICE CONTRACT; AND

12 (2) A COPY OF THE SERVICE CONTRACT WITHIN A REASONABLE PERIOD
13 OF TIME AFTER THE DATE OF PURCHASE.

14 (B) A PROVIDER OF SERVICE CONTRACTS SOLD IN THIS STATE SHALL:

15 (1) REGISTER WITH THE COMMISSIONER ON A FORM PRESCRIBED BY
16 THE COMMISSIONER; AND

17 (2) PAY TO THE COMMISSIONER A REGISTRATION FEE OF \$300.

18 (C) (1) A REGISTERED PROVIDER MUST FILE EACH TYPE OF SERVICE
19 CONTRACT THAT IT INTENDS TO MARKET TO CONSUMERS OF THIS STATE WITH THE
20 COMMISSIONER.

21 (2) A PROVIDER SHALL INCLUDE A PROCESSING FEE OF \$125 WITH EACH
22 SERVICE CONTRACT FILED UNDER THIS SUBSECTION.

23 (D) (1) IN ORDER TO ENSURE THE FAITHFUL PERFORMANCE OF A
24 PROVIDER'S OBLIGATIONS TO ITS CONTRACT HOLDERS, EACH PROVIDER SHALL:

25 (I) INSURE ALL SERVICE CONTRACTS UNDER A REIMBURSEMENT
26 INSURANCE POLICY ISSUED BY AN INSURER AUTHORIZED TO TRANSACT INSURANCE
27 IN THIS STATE OR ISSUED PURSUANT TO § 21-104 OF THIS TITLE;

28 (II) 1. MAINTAIN A FUNDED RESERVE ACCOUNT FOR ITS
29 OBLIGATIONS UNDER ITS CONTRACTS ISSUED AND OUTSTANDING IN THIS STATE;
30 AND

31 2. PLACE IN TRUST WITH THE COMMISSIONER A FINANCIAL
32 SECURITY DEPOSIT WITH A VALUE OF NOT LESS THAN THE LESSER OF:

33 A. 5% OF THE GROSS CONSIDERATION RECEIVED, MINUS
34 CLAIMS PAID, ON THE SALE OF THE SERVICE CONTRACT FOR ALL CURRENT AND
35 VALID CONTRACTS; OR

1 B. \$25,000; OR

2 (III) 1. MAINTAIN, OR ITS PARENT COMPANY MAINTAIN, A NET
3 WORTH OR STOCKHOLDERS' EQUITY OF \$100 MILLION; AND

4 2. ON REQUEST BY THE COMMISSIONER, PROVIDE THE
5 COMMISSIONER WITH:

6 A. A COPY OF THE PROVIDER'S OR THE PROVIDER'S PARENT
7 COMPANY'S MOST RECENT FORM 10-K OR FORM 20-F FILED WITH THE SECURITIES
8 AND EXCHANGE COMMISSION WITHIN THE LAST CALENDAR YEAR; OR

9 B. IF THE COMPANY DOES NOT FILE WITH THE SECURITIES
10 AND EXCHANGE COMMISSION, A COPY OF THE COMPANY'S AUDITED FINANCIAL
11 STATEMENTS WHICH SHOW A NET WORTH OF THE PROVIDER OR ITS PARENT
12 COMPANY OF AT LEAST \$100 MILLION.

13 (2) (I) A RESERVE ACCOUNT MAINTAINED UNDER PARAGRAPH (1)(II)1
14 OF THIS SUBSECTION MAY NOT CONTAIN LESS THAN 40% OF THE GROSS
15 CONSIDERATION RECEIVED, LESS CLAIMS PAID, FOR THE SALE OF ALL CURRENT
16 AND VALID SERVICE CONTRACTS.

17 (II) A RESERVE ACCOUNT SHALL BE SUBJECT TO EXAMINATION
18 AND REVIEW BY THE COMMISSIONER.

19 (3) A FINANCIAL SECURITY DEPOSIT PLACED IN TRUST UNDER
20 PARAGRAPH (1)(II)2 OF THIS SUBSECTION SHALL CONSIST OF ONE OF THE
21 FOLLOWING:

22 (I) A SURETY BOND ISSUED BY AN AUTHORIZED SURETY;

23 (II) SECURITIES OF THE TYPE ELIGIBLE FOR DEPOSIT BY
24 AUTHORIZED INSURERS IN THIS STATE;

25 (III) CASH;

26 (IV) A LETTER OF CREDIT ISSUED BY A QUALIFIED FINANCIAL
27 INSTITUTION; OR

28 (V) ANOTHER FORM OF SECURITY PRESCRIBED BY REGULATIONS
29 ISSUED BY THE COMMISSIONER.

30 (4) IF THE PROVIDER'S PARENT COMPANY'S FORM 10-K, FORM 20-F, OR
31 AUDITED FINANCIAL STATEMENTS ARE FILED UNDER PARAGRAPH (1)(III)2 OF THIS
32 SUBSECTION TO MEET THE PROVIDER'S FINANCIAL STABILITY REQUIREMENT, THE
33 PARENT COMPANY SHALL AGREE TO GUARANTEE THE OBLIGATIONS OF THE
34 PROVIDER RELATING TO SERVICE CONTRACTS SOLD BY THE PROVIDER IN THIS
35 STATE.

1 (E) A SERVICE CONTRACT PROVIDER THAT MAINTAINS RESERVES AND A
2 DEPOSIT UNDER SUBSECTION (D)(1)(II) OF THIS SECTION SHALL ANNUALLY FILE
3 WITH THE COMMISSIONER A FINANCIAL STATEMENT ON A FORM ADOPTED BY THE
4 COMMISSIONER WHICH DEMONSTRATES THAT THE PROVIDER MEETS THE RESERVE
5 REQUIREMENTS ESTABLISHED UNDER THIS SECTION.

6 (F) THE COMMISSIONER MAY NOT REQUIRE ANY FINANCIAL SECURITY
7 REQUIREMENTS OF A SERVICE CONTRACT PROVIDER OTHER THAN THE
8 REQUIREMENTS SPECIFIED UNDER SUBSECTION (D) OF THIS SECTION.

9 21-104.

10 (A) EACH SERVICE CONTRACT SHALL REQUIRE THE PROVIDER TO PERMIT
11 THE SERVICE CONTRACT HOLDER TO RETURN THE SERVICE CONTRACT:

12 (1) ON OR BEFORE 20 DAYS AFTER THE DATE THAT THE SERVICE
13 CONTRACT WAS MAILED TO THE SERVICE CONTRACT HOLDER;

14 (2) IF THE SERVICE CONTRACT IS DELIVERED TO THE SERVICE
15 CONTRACT HOLDER AT THE TIME OF SALE, ON OR BEFORE 10 DAYS AFTER DELIVERY;
16 OR

17 (3) WITHIN A LONGER TIME PERIOD PERMITTED UNDER THE SERVICE
18 CONTRACT.

19 (B) ON RETURN OF A SERVICE CONTRACT TO THE PROVIDER WITHIN THE
20 APPLICABLE TIME PERIOD AND IF A CLAIM HAS NOT BEEN MADE UNDER THE
21 SERVICE CONTRACT PRIOR TO ITS RETURN TO THE PROVIDER, THE SERVICE
22 CONTRACT IS VOID AND THE PROVIDER SHALL REFUND TO THE SERVICE CONTRACT
23 HOLDER, OR CREDIT TO THE ACCOUNT OF THE SERVICE CONTRACT HOLDER, THE
24 FULL PURCHASE PRICE OF THE SERVICE CONTRACT.

25 (C) THE RIGHT TO VOID A SERVICE CONTRACT PROVIDED UNDER THIS
26 SECTION:

27 (1) IS NOT TRANSFERABLE;

28 (2) APPLIES ONLY TO THE ORIGINAL SERVICE CONTRACT PURCHASER;
29 AND

30 (3) APPLIES ONLY IF A CLAIM HAS NOT BEEN MADE PRIOR TO THE
31 RETURN OF THE CONTRACT TO THE PROVIDER.

32 (D) (1) WITHIN 45 DAYS AFTER THE RETURN OF A SERVICE CONTRACT TO A
33 SERVICE CONTRACT PROVIDER, THE PROVIDER SHALL PAY OR CREDIT A REFUND TO
34 THE FORMER SERVICE CONTRACT HOLDER.

35 (2) A SERVICE CONTRACT PROVIDER THAT DOES NOT PAY OR CREDIT
36 THE REFUND WITHIN 45 DAYS SHALL ADD A 10% PENALTY FOR EACH MONTH THAT
37 THE REFUND IS NOT PAID OR CREDITED.

1 21-105.

2 (A) A SERVICE CONTRACT MARKETED, SOLD, OFFERED FOR SALE, ISSUED,
3 MADE, PROPOSED TO BE MADE, OR ADMINISTERED IN THIS STATE SHALL:

4 (1) BE WRITTEN, PRINTED, OR TYPED IN CLEAR UNDERSTANDABLE
5 LANGUAGE THAT IS EASY TO READ; AND

6 (2) DISCLOSE THE APPLICABLE REQUIREMENTS SET FORTH IN THIS
7 SECTION.

8 (B) A SERVICE CONTRACT INSURED UNDER A REIMBURSEMENT INSURANCE
9 POLICY UNDER § 21-111 OF THIS TITLE SHALL:

10 (1) STATE THE NAME AND ADDRESS OF THE INSURER; AND

11 (2) CONTAIN A STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM:

12 "OBLIGATIONS OF THE PROVIDER UNDER THIS SERVICE CONTRACT ARE
13 INSURED UNDER A SERVICE CONTRACT REIMBURSEMENT INSURANCE POLICY."

14 (C) A SERVICE CONTRACT NOT INSURED UNDER A REIMBURSEMENT
15 INSURANCE POLICY UNDER § 21-111 OF THIS TITLE SHALL CONTAIN A STATEMENT IN
16 SUBSTANTIALLY THE FOLLOWING FORM:

17 "OBLIGATIONS OF THE PROVIDER UNDER THIS SERVICE CONTRACT ARE
18 BACKED BY THE FULL FAITH AND CREDIT OF THE PROVIDER."

19 (D) (1) A SERVICE CONTRACT SHALL:

20 (I) STATE THE NAME AND ADDRESS OF THE SERVICE CONTRACT
21 PROVIDER; AND

22 (II) IDENTIFY:

23 1. ANY ADMINISTRATOR, IF DIFFERENT FROM THE SERVICE
24 CONTRACT PROVIDER;

25 2. THE SERVICE CONTRACT SELLER; AND

26 3. IF THE NAME OF THE SERVICE CONTRACT HOLDER HAS
27 BEEN FURNISHED BY THE SERVICE CONTRACT HOLDER TO THE PROVIDER, THE
28 SERVICE CONTRACT HOLDER.

29 (2) THE IDENTITIES OF THE PARTIES ARE NOT REQUIRED TO BE
30 PREPRINTED ON THE SERVICE CONTRACT AND MAY BE ADDED TO THE SERVICE
31 CONTRACT AT THE TIME OF SALE.

32 (E) (1) A SERVICE CONTRACT SHALL STATE THE TOTAL PURCHASE PRICE
33 AND THE TERMS UNDER WHICH THE SERVICE CONTRACT IS SOLD.

1 (2) THE PURCHASE PRICE IS NOT REQUIRED TO BE PREPRINTED ON THE
2 SERVICE CONTRACT AND MAY BE NEGOTIATED AT THE TIME OF SALE WITH THE
3 SERVICE CONTRACT HOLDER.

4 (F) A SERVICE CONTRACT SHALL STATE THE EXISTENCE OF ANY APPLICABLE
5 DEDUCTIBLE AMOUNT.

6 (G) A SERVICE CONTRACT SHALL SPECIFY THE MERCHANDISE AND SERVICES
7 TO BE PROVIDED UNDER THE CONTRACT AND ANY LIMITATIONS, EXCEPTIONS, OR
8 EXCLUSIONS.

9 (H) A SERVICE CONTRACT COVERING AN AUTOMOBILE SHALL STATE
10 WHETHER THE USE OF NONORIGINAL MANUFACTURER'S PARTS IS ALLOWED.

11 (I) A SERVICE CONTRACT SHALL STATE ANY APPLICABLE RESTRICTIONS
12 GOVERNING THE TRANSFERABILITY OF THE SERVICE CONTRACT.

13 (J) (1) A SERVICE CONTRACT SHALL STATE THE TERMS, RESTRICTIONS, OR
14 CONDITIONS GOVERNING CANCELLATION OF THE SERVICE CONTRACT PRIOR TO THE
15 TERMINATION OR EXPIRATION DATE OF THE SERVICE CONTRACT BY EITHER THE
16 PROVIDER OR THE SERVICE CONTRACT HOLDER.

17 (2) (I) EXCEPT AS PROVIDED UNDER SUBPARAGRAPH (II) OF THIS
18 PARAGRAPH, AT LEAST 5 DAYS BEFORE CANCELING A SERVICE CONTRACT, THE
19 PROVIDER OF A SERVICE CONTRACT SHALL MAIL A WRITTEN NOTICE TO THE
20 CONTRACT HOLDER AT THE LAST KNOWN ADDRESS OF THE SERVICE CONTRACT
21 HOLDER CONTAINED IN THE RECORDS OF THE PROVIDER.

22 (II) PRIOR NOTICE IS NOT REQUIRED IF THE REASON FOR
23 CANCELLATION IS:

24 1. NONPAYMENT BY THE SERVICE CONTRACT HOLDER OF
25 THE PROVIDER FEE;

26 2. A MATERIAL MISREPRESENTATION BY THE SERVICE
27 CONTRACT HOLDER TO THE PROVIDER; OR

28 3. A SUBSTANTIAL BREACH OF DUTIES BY THE SERVICE
29 CONTRACT HOLDER RELATING TO THE COVERED PRODUCT OR ITS USE.

30 (3) A CANCELLATION NOTICE SHALL STATE THE EFFECTIVE DATE OF
31 THE CANCELLATION AND THE REASON FOR THE CANCELLATION.

32 (K) A SERVICE CONTRACT SHALL SET FORTH ALL OF THE OBLIGATIONS AND
33 DUTIES OF THE SERVICE CONTRACT HOLDER, INCLUDING THE DUTY TO PROTECT
34 AGAINST ANY FURTHER DAMAGE AND ANY REQUIREMENT TO FOLLOW THE OWNER'S
35 MANUAL.

1 (L) A SERVICE CONTRACT SHALL STATE WHETHER OR NOT THE SERVICE
2 CONTRACT PROVIDES FOR OR EXCLUDES CONSEQUENTIAL DAMAGES OR
3 PREEXISTING CONDITIONS.

4 21-106.

5 A SERVICE CONTRACT PROVIDER SHALL HAVE A TRAINING PROGRAM FOR
6 SERVICE CONTRACT DEALERS, RETAILERS, OR OTHER SALES REPRESENTATIVES
7 THAT IS DESIGNED TO ENSURE THAT DEALERS, RETAILERS, AND SALES
8 REPRESENTATIVES PROVIDE INFORMATION THAT IS ACCURATE TO POTENTIAL
9 SERVICE CONTRACT HOLDERS CONCERNING COVERAGE UNDER THE PROVIDER'S
10 SERVICE CONTRACTS.

11 21-107.

12 (A) (1) A SERVICE CONTRACT PROVIDER MAY NOT USE IN ITS NAME:

13 (I) THE WORDS "INSURANCE", "CASUALTY", "SURETY", "MUTUAL",
14 OR ANY OTHER WORDS DESCRIPTIVE OF THE INSURANCE, CASUALTY, OR SURETY
15 BUSINESS; OR

16 (II) A NAME DECEPTIVELY SIMILAR TO THE NAME OR DESCRIPTION
17 OF ANY INSURANCE OR SURETY CORPORATION, OR TO THE NAME OF ANY OTHER
18 PROVIDER.

19 (2) THE WORD "GUARANTY" OR A SIMILAR WORD MAY BE USED BY A
20 PROVIDER.

21 (B) THIS SECTION DOES NOT APPLY TO A SERVICE CONTRACT PROVIDER THAT
22 USED IN ITS NAME ANY OF THE LANGUAGE PROHIBITED UNDER SUBSECTION (A) OF
23 THIS SECTION PRIOR TO OCTOBER 1, 2000. HOWEVER, A SERVICE CONTRACT
24 PROVIDER USING THE PROHIBITED LANGUAGE IN ITS NAME SHALL INCLUDE IN ITS
25 SERVICE CONTRACTS A STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM:

26 "THIS AGREEMENT IS NOT AN INSURANCE CONTRACT."

27 (C) IN ITS SERVICE CONTRACTS OR LITERATURE, A SERVICE CONTRACT
28 PROVIDER OR ITS REPRESENTATIVE MAY NOT:

29 (1) MAKE, PERMIT, OR CAUSE TO BE MADE ANY FALSE OR MISLEADING
30 STATEMENT; OR

31 (2) DELIBERATELY OMIT ANY MATERIAL STATEMENT THE OMISSION OF
32 WHICH IS CONSIDERED MISLEADING.

33 (D) A BANK, SAVINGS AND LOAN ASSOCIATION, LENDING INSTITUTION,
34 MANUFACTURER OR SELLER OF A PRODUCT, OR ANY OTHER PERSON MAY NOT
35 REQUIRE THE PURCHASE OF A SERVICE CONTRACT AS A CONDITION OF:

36 (1) A LOAN; OR

1 (2) THE SALE OF ANY PROPERTY.

2 21-108.

3 (A) (1) A SERVICE CONTRACT PROVIDER SHALL KEEP ACCURATE
4 ACCOUNTS, BOOKS, AND RECORDS CONCERNING TRANSACTIONS REGULATED
5 UNDER THIS TITLE.

6 (2) THE PROVIDER'S ACCOUNTS, BOOKS, AND RECORDS SHALL INCLUDE:

7 (I) A COPY OF EACH TYPE OF SERVICE CONTRACT SOLD;

8 (II) THE NAME AND ADDRESS OF EACH SERVICE CONTRACT
9 HOLDER WHOSE NAME AND ADDRESS HAVE BEEN FURNISHED BY THE SERVICE
10 CONTRACT HOLDER TO THE PROVIDER;

11 (III) A LIST OF THE LOCATIONS WHERE SERVICE CONTRACTS ARE
12 MARKETED, SOLD, OR OFFERED FOR SALE; AND

13 (IV) WRITTEN CLAIMS FILES WHICH CONTAIN AT LEAST THE DATES
14 AND DESCRIPTION OF CLAIMS RELATED TO THE PROVIDER'S SERVICE CONTRACTS.

15 (3) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
16 SERVICE CONTRACT PROVIDER SHALL RETAIN ALL RECORDS REQUIRED TO BE
17 MAINTAINED UNDER THIS SUBSECTION FOR AT LEAST 1 YEAR AFTER THE PERIOD OF
18 COVERAGE UNDER THE CONTRACT HAS EXPIRED.

19 (B) (1) THE RECORDS REQUIRED UNDER THIS SECTION MAY BE
20 MAINTAINED ON A COMPUTER DISK OR USING ANY OTHER RECORD KEEPING
21 TECHNOLOGY.

22 (2) IF THE RECORDS ARE MAINTAINED OTHER THAN IN HARD COPY, THE
23 RECORDS SHALL BE MAINTAINED IN A FORM THAT CAN BE DUPLICATED TO LEGIBLE
24 HARD COPY AT THE REQUEST OF THE COMMISSIONER.

25 (C) A SERVICE CONTRACT PROVIDER THAT DISCONTINUES BUSINESS IN THIS
26 STATE SHALL MAINTAIN ITS RECORDS UNTIL THE PROVIDER FURNISHES THE
27 COMMISSIONER WITH SATISFACTORY PROOF THAT IT HAS DISCHARGED ALL
28 OBLIGATIONS TO CONTRACT HOLDERS LOCATED IN THIS STATE.

29 21-109.

30 A PROVIDER MAY APPOINT AN ADMINISTRATOR OR OTHER DESIGNEE TO BE
31 RESPONSIBLE FOR THE ADMINISTRATION OF SERVICE CONTRACTS AND
32 COMPLIANCE WITH THIS TITLE.

33 21-110.

34 (A) EXCEPT FOR THE REGISTRATION REQUIREMENTS OF § 21-103(B) OF THIS
35 TITLE, PROVIDERS AND RELATED SERVICE CONTRACT SELLERS OR
36 ADMINISTRATORS, AND OTHER PERSONS MARKETING, SELLING, OR OFFERING TO

1 SELL SERVICE CONTRACTS ARE EXEMPT FROM ANY LICENSING REQUIREMENTS OF
2 THIS STATE.

3 (B) THE MARKETING, SALE, OFFERING FOR SALE, ISSUANCE, MAKING,
4 PROPOSING TO MAKE, AND ADMINISTRATION OF SERVICE CONTRACTS BY
5 PROVIDERS AND RELATED SERVICE CONTRACT SELLERS, ADMINISTRATORS, AND
6 OTHER PERSONS SHALL BE EXEMPT FROM ALL PROVISIONS OF THE INSURANCE
7 ARTICLE OF THE CODE NOT OTHERWISE INCORPORATED UNDER THIS TITLE.

8 (C) PROVIDER FEES COLLECTED ON SERVICE CONTRACTS MAY NOT BE
9 SUBJECT TO PREMIUM TAXES.

10 21-111.

11 (A) A REIMBURSEMENT INSURANCE POLICY INSURING SERVICE CONTRACTS
12 ISSUED, SOLD, OR OFFERED FOR SALE IN THIS STATE SHALL STATE THAT THE
13 INSURER THAT ISSUED THE REIMBURSEMENT INSURANCE POLICY SHALL:

14 (1) REIMBURSE OR PAY ON BEHALF OF THE SERVICE CONTRACT
15 PROVIDER ANY COVERED SUMS THAT THE PROVIDER IS LEGALLY OBLIGATED TO
16 PAY; OR

17 (2) IF THE SERVICE CONTRACT PROVIDER FAILS TO PERFORM UNDER
18 THE CONTRACT, PROVIDE THE SERVICE THAT THE PROVIDER IS LEGALLY
19 OBLIGATED TO PERFORM, ACCORDING TO THE PROVIDER'S CONTRACTUAL
20 OBLIGATIONS UNDER THE SERVICE CONTRACTS ISSUED OR SOLD BY THE PROVIDER.

21 (B) IF THE COVERED SERVICE IS NOT PROVIDED BY THE SERVICE CONTRACT
22 PROVIDER WITHIN 60 DAYS OF PROOF OF LOSS BY THE SERVICE CONTRACT HOLDER,
23 THE CONTRACT HOLDER MAY APPLY DIRECTLY TO THE REIMBURSEMENT
24 INSURANCE COMPANY.

25 (C) (1) AN INSURER THAT ISSUES A REIMBURSEMENT INSURANCE POLICY
26 MAY NOT TERMINATE THE POLICY UNTIL A NOTICE OF TERMINATION THAT
27 COMPLIES WITH § 27-601(C) OF THE INSURANCE ARTICLE HAS BEEN MAILED OR
28 DELIVERED TO THE COMMISSIONER.

29 (2) AN INSURER'S TERMINATION OF A REIMBURSEMENT INSURANCE
30 POLICY MAY NOT REDUCE THE INSURER'S RESPONSIBILITY FOR SERVICE
31 CONTRACTS ISSUED BY SERVICE CONTRACT PROVIDERS UNDER THE POLICY PRIOR
32 TO THE DATE OF THE TERMINATION OF THE POLICY.

33 (D) AN INSURER THAT ISSUES A REIMBURSEMENT INSURANCE POLICY TO A
34 SERVICE CONTRACT PROVIDER IS DEEMED TO HAVE RECEIVED THE PREMIUMS FOR
35 THAT POLICY ON THE DATE THAT A CONSUMER FOR A SERVICE CONTRACT ISSUED
36 BY THE INSURED PROVIDER PAYS THE PROVIDER FEES.

37 (E) THIS TITLE DOES NOT PREVENT OR LIMIT THE RIGHT OF AN INSURER
38 WHICH ISSUES A REIMBURSEMENT INSURANCE POLICY TO SEEK INDEMNIFICATION
39 OR SUBROGATION AGAINST A SERVICE CONTRACT PROVIDER IF THE INSURER PAYS

1 OR IS OBLIGATED TO PAY TO A SERVICE CONTRACT HOLDER AN AMOUNT THAT THE
2 PROVIDER WAS OBLIGATED TO PAY UNDER THE PROVISIONS OF THE SERVICE
3 CONTRACT.

4 (F) PREMIUMS FOR REIMBURSEMENT INSURANCE POLICIES SHALL BE
5 SUBJECT TO APPLICABLE TAXES.

6 21-112.

7 (A) (1) THE COMMISSIONER MAY CONDUCT EXAMINATIONS OF PROVIDERS,
8 ADMINISTRATORS, INSURERS, OR OTHER PERSONS REGULATED UNDER THIS TITLE
9 TO ENFORCE THE PROVISIONS OF THIS TITLE AND TO PROTECT SERVICE CONTRACT
10 HOLDERS IN THIS STATE.

11 (2) ON REQUEST OF THE COMMISSIONER, A SERVICE CONTRACT
12 PROVIDER SHALL MAKE AVAILABLE TO THE COMMISSIONER ALL ACCOUNTS, BOOKS,
13 AND RECORDS CONCERNING THE SERVICE CONTRACT SOLD BY THE PROVIDER
14 WHICH ARE NECESSARY TO ENABLE THE COMMISSIONER TO REASONABLY
15 DETERMINE COMPLIANCE OR NONCOMPLIANCE WITH THIS TITLE.

16 (B) (1) THE COMMISSIONER MAY TAKE ANY ACTIONS TO ENFORCE THE
17 PROVISIONS OF THIS TITLE AND THE COMMISSIONER'S REGULATIONS OR ORDERS
18 UNDER THIS TITLE THAT ARE NECESSARY AND APPROPRIATE TO PROTECT SERVICE
19 CONTRACT HOLDERS IN THIS STATE.

20 (2) IF A PROVIDER HAS VIOLATED THIS TITLE OR THE COMMISSIONER'S
21 REGULATIONS OR ORDERS UNDER THIS TITLE, THE COMMISSIONER MAY ISSUE AN
22 ORDER:

23 (I) DIRECTING THE PROVIDER TO CEASE AND DESIST FROM
24 COMMITTING VIOLATIONS OF THIS TITLE OR THE COMMISSIONER'S REGULATIONS
25 OR ORDERS;

26 (II) PROHIBITING A SERVICE CONTRACT PROVIDER FROM SELLING
27 OR OFFERING FOR SALE SERVICE CONTRACTS IN VIOLATION OF THIS TITLE; OR

28 (III) IMPOSING A CIVIL PENALTY ON THE SERVICE CONTRACT
29 PROVIDER.

30 (C) (1) A PERSON AGGRIEVED BY AN ORDER ISSUED UNDER SUBSECTION (B)
31 OF THIS SECTION MAY REQUEST A HEARING BEFORE THE COMMISSIONER.

32 (2) A REQUEST FOR A HEARING SHALL BE FILED WITH THE
33 COMMISSIONER ON OR BEFORE 20 DAYS AFTER THE DATE THAT THE
34 COMMISSIONER'S ORDER IS EFFECTIVE.

35 (3) IF A HEARING ON AN ORDER IS REQUESTED, THE ORDER SHALL BE
36 SUSPENDED FROM THE ORIGINAL EFFECTIVE DATE OF THE ORDER UNTIL
37 COMPLETION OF THE HEARING AND THE ISSUANCE OF FINAL DECISION BY THE
38 COMMISSIONER.

1 (4) THE PROVISIONS OF § 2-215 OF THE INSURANCE ARTICLE SHALL
2 APPLY TO A HEARING REQUESTED UNDER THIS SUBSECTION.

3 (5) AT THE HEARING, THE BURDEN SHALL BE ON THE COMMISSIONER
4 TO SHOW WHY THE ORDER ISSUED BY THE COMMISSIONER IS JUSTIFIED.

5 (D) (1) THE COMMISSIONER MAY BRING AN ACTION IN A COURT OF
6 COMPETENT JURISDICTION FOR AN INJUNCTION OR OTHER APPROPRIATE RELIEF
7 TO REMEDY A THREATENED OR EXISTING VIOLATION OF THIS TITLE OR OF AN
8 ORDER ISSUED OR REGULATION ADOPTED BY THE COMMISSIONER UNDER THIS
9 TITLE.

10 (2) AN ACTION FILED BY THE COMMISSIONER UNDER THIS SUBSECTION
11 ALSO MAY SEEK RESTITUTION ON BEHALF OF PERSONS AGGRIEVED BY A VIOLATION
12 OF THIS TITLE OR OF AN ORDER ISSUED OR REGULATION ADOPTED BY THE
13 COMMISSIONER UNDER THIS TITLE.

14 (E) (1) A PERSON WHO IS CONVICTED OF VIOLATING THIS TITLE OR AN
15 ORDER ISSUED OR REGULATION ADOPTED BY THE COMMISSIONER UNDER THIS
16 TITLE IS SUBJECT TO:

17 (I) A FINE NOT EXCEEDING \$5,000 FOR EACH VIOLATION; AND

18 (II) TOTAL FINES NOT EXCEEDING \$50,000 FOR ALL VIOLATIONS OF
19 A SIMILAR NATURE.

20 (2) FOR PURPOSES OF THIS SUBSECTION, A VIOLATION IS OF A SIMILAR
21 NATURE IF THE VIOLATION CONSISTS OF THE SAME OR A SIMILAR COURSE OF
22 CONDUCT, ACTION, OR PRACTICE, IRRESPECTIVE OF THE NUMBER OF TIMES THAT
23 THE ACT, CONDUCT, OR PRACTICE OCCURRED.

24 21-113.

25 THE COMMISSIONER MAY ADOPT REASONABLE REGULATIONS AS NECESSARY
26 TO IMPLEMENT THE PROVISIONS OF THIS TITLE, INCLUDING REGULATIONS THAT
27 DEFINE AND PROHIBIT UNFAIR CLAIMS SETTLEMENT PRACTICES.

28 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
29 Act or the application thereof to any person or circumstance is held invalid for any
30 reason in a court of competent jurisdiction, the invalidity does not affect other
31 provisions or any other application of this Act which can be given effect without the
32 invalid provision or application, and for this purpose the provisions of this Act are
33 declared severable.

34 SECTION 3. AND BE IT FURTHER ENACTED, That a service contract or the
35 renewal of a service contract entered into prior to October 1, 2000, is not required to
36 be in compliance with this Act. While a service contract provider or other person may
37 implement the requirements of this Act prior to October 1, 2000, the failure of a
38 service contract provider or other person to comply with this Act or otherwise to
39 administer a service contract plan in the manner required by this Act prior to October

1 1, 2000, is not admissible in any court, arbitration, or alternative dispute resolution
2 proceeding and may not be otherwise used to prove that the action of any person or
3 that the service contract was unlawful or otherwise improper.

4 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2000.