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HOUSE BILL 14-1199

BY REPRESENTATIVE(S) Williams, Szabo, Becker, Exum, Hulinghorst, Kraft-Tharp, May, Tyler, Young; also SENATOR(S) Jahn and Balmer, Newell.

CONCERNING CHANGES TO THE REGULATION OF CONSUMER GOODS SERVICE CONTRACTS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 10-4-1501, **amend** (6) (b) (I) as follows:

10-4-1501. Definitions. As used in this part 15, unless the context otherwise requires:

(6) (b) "Portable electronics insurance" does not include:

(I) ~~A service contract or extended warranty that provides coverage limited to the repair, replacement, or maintenance of property for the operational or structural failure of property due to a defect in materials, workmanship, accidental damage from handling, power surges, or normal wear and tear~~ GOVERNED BY PART 16 OF THIS ARTICLE;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. In Colorado Revised Statutes, **add** part 16 to article 4 of title 10 as follows:

PART 16
CONSUMER GOODS SERVICE CONTRACTS

10-4-1601. Definitions. AS USED IN THIS PART 16, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADMINISTRATOR" MEANS THE PERSON WHO IS RESPONSIBLE FOR THE ADMINISTRATION OF ANY SERVICE CONTRACTS ISSUED BY A PROVIDER OR WHO IS RESPONSIBLE FOR ANY SUBMISSION REQUIRED BY THIS PART 16 ON BEHALF OF A PROVIDER.

(2) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE.

(3) "CONSUMER" MEANS A NATURAL PERSON WHO BUYS, OTHER THAN FOR PURPOSES OF RESALE, ANY TANGIBLE PERSONAL PROPERTY THAT IS DISTRIBUTED IN COMMERCE AND THAT IS NORMALLY USED FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES AND NOT FOR BUSINESS OR RESEARCH PURPOSES.

(4) "CONSUMER PRODUCT" MEANS ANY TANGIBLE PERSONAL PROPERTY THAT IS DISTRIBUTED IN COMMERCE AND IS NORMALLY USED FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, INCLUDING ANY TANGIBLE PERSONAL PROPERTY INTENDED TO BE ATTACHED TO OR INSTALLED IN ANY REAL PROPERTY WITHOUT REGARD TO WHETHER IT IS SO ATTACHED OR INSTALLED.

(5) "MAINTENANCE AGREEMENT" MEANS A CONTRACT OF LIMITED DURATION THAT PROVIDES FOR SCHEDULED MAINTENANCE ONLY AND DOES NOT INCLUDE REPAIR OR REPLACEMENT.

(6) "NONORIGINAL MANUFACTURER'S PARTS" MEANS REPLACEMENT PARTS NOT MADE FOR OR BY THE ORIGINAL MANUFACTURER OF THE PROPERTY.

(7) "PERSON" HAS THE SAME MEANING AS SET FORTH IN SECTION 2-4-401, C.R.S.

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

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

(10) "PROVIDER FEE" MEANS THE CONSIDERATION PAID FOR A SERVICE CONTRACT.

(11) "REIMBURSEMENT INSURANCE COMPANY" MEANS AN INSURER THAT ISSUES ANY REIMBURSEMENT INSURANCE POLICY.

(12) "REIMBURSEMENT INSURANCE POLICY" MEANS A POLICY OF INSURANCE ISSUED TO A PROVIDER TO EITHER PROVIDE REIMBURSEMENT TO THE PROVIDER UNDER THE TERMS OF THE INSURED SERVICE CONTRACTS ISSUED OR SOLD BY THE PROVIDER OR, IN THE EVENT OF THE PROVIDER'S NONPERFORMANCE, TO PAY ON BEHALF OF THE PROVIDER ALL COVERED CONTRACTUAL OBLIGATIONS INCURRED BY THE PROVIDER UNDER THE TERMS OF THE INSURED SERVICE CONTRACTS ISSUED OR SOLD BY THE PROVIDER.

(13) "RELATED SERVICE CONTRACT SELLER" MEANS ANY EMPLOYEE OF THE PROVIDER WHO IS RESPONSIBLE FOR MARKETING, SELLING, OR OFFERING TO SELL SERVICE CONTRACTS ON THE PROVIDER'S BEHALF.

(14) "SERVICE CONTRACT" MEANS A CONTRACT OR AGREEMENT OF A SPECIFIC DURATION, FOR A SEPARATELY STATED CONSIDERATION, TO PERFORM THE REPAIR, REPLACEMENT, OR MAINTENANCE OF A CONSUMER PRODUCT OR INDEMNIFY THE CONSUMER FOR THE REPAIR, REPLACEMENT, OR MAINTENANCE OF A CONSUMER PRODUCT FOR THE OPERATIONAL OR STRUCTURAL FAILURE OF THE CONSUMER PRODUCT DUE TO A DEFECT IN MATERIALS, WORKMANSHIP, ACCIDENTAL DAMAGE FROM HANDLING, OR NORMAL WEAR AND TEAR, WITH OR WITHOUT ADDITIONAL PROVISIONS FOR INCIDENTAL PAYMENT OF INDEMNITY UNDER LIMITED CIRCUMSTANCES. SERVICE CONTRACTS MAY PROVIDE FOR THE REPAIR, REPLACEMENT, OR MAINTENANCE OF A CONSUMER PRODUCT FOR DAMAGE RESULTING FROM POWER SURGES OR INTERRUPTION. SERVICE CONTRACTS ARE NOT INSURANCE IN THIS STATE OR OTHERWISE REGULATED UNDER THIS TITLE.

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

(16) "WARRANTY" MEANS A WARRANTY THAT IS MADE SOLELY BY THE MANUFACTURER, IMPORTER, OR SELLER OF TANGIBLE PERSONAL PROPERTY OR SERVICES WITHOUT CONSIDERATION, THAT IS NOT NEGOTIATED OR SEPARATED FROM THE SALE OF THE PROPERTY AND IS INCIDENTAL TO THE SALE OF THE PRODUCT, AND THAT GUARANTEES EITHER:

(a) INDEMNITY FOR DEFECTIVE PARTS OR FOR DAMAGE RESULTING FROM A MECHANICAL OR ELECTRICAL BREAKDOWN, INCLUDING LABOR; OR

(b) OTHER REMEDIAL MEASURES, SUCH AS REPAIR OR REPLACEMENT OF THE PROPERTY OR REPETITION OF SERVICES.

10-4-1602. Exemptions. (1) THE FOLLOWING ITEMS ARE EXEMPT FROM THIS PART 16:

(a) WARRANTIES;

(b) MAINTENANCE AGREEMENTS;

(c) SERVICE CONTRACTS OFFERED BY PUBLIC UTILITIES ON THEIR TRANSMISSION DEVICES TO THE EXTENT THEY ARE REGULATED BY THE PUBLIC UTILITIES COMMISSION;

(d) SERVICE CONTRACTS SOLD OR OFFERED FOR SALE TO PERSONS OTHER THAN CONSUMERS;

(e) SERVICE CONTRACTS ON TANGIBLE PROPERTY WHERE THE TANGIBLE PROPERTY FOR WHICH THE SERVICE CONTRACT IS SOLD HAS A PURCHASE PRICE OF ONE HUNDRED DOLLARS OR LESS, EXCLUSIVE OF SALES TAX;

(f) PREOWNED HOME WARRANTY SERVICE CONTRACTS GOVERNED BY PART 6 OF ARTICLE 61 OF TITLE 12, C.R.S.; AND

(g) MOTOR VEHICLE SERVICE CONTRACTS GOVERNED BY ARTICLE 11 OF TITLE 42, C.R.S.

10-4-1603. Requirements for sale of consumer goods service contracts - definitions. (1) A PROVIDER MAY APPOINT AN ADMINISTRATOR OR OTHER DESIGNEE TO BE RESPONSIBLE FOR ANY OR ALL OF THE ADMINISTRATION OF SERVICE CONTRACTS ISSUED BY THE PROVIDER AND FOR COMPLIANCE WITH THIS PART 16.

(2) A PROVIDER SHALL NOT ISSUE, SELL, OR OFFER FOR SALE A SERVICE CONTRACT UNLESS THE PROVIDER HAS:

(a) PROVIDED A RECEIPT FOR, OR OTHER WRITTEN EVIDENCE OF, THE PURCHASE OF THE SERVICE CONTRACT TO THE CONTRACT HOLDER; AND

(b) PROVIDED A COPY OF THE SERVICE CONTRACT TO THE SERVICE CONTRACT HOLDER BEFORE OR WITHIN A REASONABLE PERIOD OF TIME AFTER THE DATE OF PURCHASE.

(3) UPON A CONSUMER'S REQUEST, A PROVIDER SHALL PROVIDE THE CONSUMER WITH A COMPLETE SAMPLE COPY OF THE SERVICE CONTRACT TERMS AND CONDITIONS OR DIRECT THE CONSUMER TO A WEB SITE CONTAINING A COMPLETE SAMPLE OF THE TERMS AND CONDITIONS OF THE SERVICE CONTRACT.

(4) (a) A PROVIDER SHALL ASSURE FAITHFUL PERFORMANCE TO ITS SERVICE CONTRACT HOLDERS BY COMPLYING WITH ONE OR MORE OF THE FOLLOWING:

(I) INSURING ALL SERVICE CONTRACTS UNDER A REIMBURSEMENT INSURANCE POLICY ISSUED BY A LICENSED INSURER; OR

(II) MAINTAINING, OR TOGETHER WITH ITS PARENT COMPANY MAINTAINING, A NET WORTH OR STOCKHOLDERS' EQUITY OF AT LEAST ONE HUNDRED MILLION DOLLARS.

(b) FOR THE PURPOSES OF SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (4), A PROVIDER SHALL:

(I) UPON THE COMMISSIONER'S REQUEST, PROVIDE A COPY OF THE PROVIDER'S OR PROVIDER'S PARENT COMPANY'S MOST RECENT FORM 10-K OR FORM 20-F FILED WITH THE FEDERAL SECURITIES AND EXCHANGE COMMISSION; OR

(II) IF THE COMPANY DOES NOT FILE WITH THE FEDERAL SECURITIES AND EXCHANGE COMMISSION, PROVIDE, UPON THE COMMISSIONER'S REQUEST, A COPY OF THE COMPANY'S AUDITED FINANCIAL STATEMENTS SHOWING A NET WORTH OF THE PROVIDER OR ITS PARENT COMPANY OF AT LEAST ONE HUNDRED MILLION DOLLARS; OR

(III) IF THE PROVIDER'S PARENT COMPANY'S FORM 10-K, FORM 20-F, OR FINANCIAL STATEMENTS ARE FILED TO MEET THE REQUIREMENTS OF THIS SUBSECTION (4), AGREE TO GUARANTEE THE OBLIGATIONS OF THE PROVIDER RELATING TO SERVICE CONTRACTS SOLD BY THE PROVIDER IN THIS STATE.

(c) EXCEPT FOR THE REQUIREMENTS SET FORTH IN THIS SUBSECTION (4), THE COMMISSIONER SHALL REQUIRE NO OTHER FINANCIAL SECURITY REQUIREMENTS FOR SERVICE CONTRACT PROVIDERS.

(5) (a) A PROVIDER MUST PERMIT THE SERVICE CONTRACT HOLDER TO VOID THE SERVICE CONTRACT BY RETURNING IT WITHIN TWENTY DAYS AFTER THE DATE THE SERVICE CONTRACT IS MAILED TO THE SERVICE CONTRACT HOLDER OR WITHIN TEN DAYS AFTER DELIVERY IF THE SERVICE CONTRACT IS DELIVERED TO THE SERVICE CONTRACT HOLDER AT THE TIME OF SALE. THE SERVICE CONTRACT IS VOID WHEN THE SERVICE CONTRACT HOLDER RETURNS THE SERVICE CONTRACT TO THE PROVIDER, AND THE PROVIDER SHALL REFUND TO THE SERVICE CONTRACT HOLDER, OR CREDIT THE ACCOUNT OF THE CONTRACT HOLDER, THE FULL PURCHASE PRICE OF THE SERVICE CONTRACT.

(b) A SERVICE CONTRACT MAY ESTABLISH A RETURN PERIOD GREATER THAN TWENTY DAYS.

(c) THE RIGHT TO VOID THE SERVICE CONTRACT IS NOT TRANSFERABLE AND APPLIES ONLY TO THE ORIGINAL SERVICE CONTRACT PURCHASER.

(d) THE RIGHT TO VOID THE SERVICE CONTRACT DOES NOT APPLY IF A CLAIM HAS BEEN MADE PRIOR TO THE RETURN OF THE SERVICE CONTRACT TO THE PROVIDER.

(e) IF A REFUND OF A SERVICE CONTRACT PROVIDER FEE IS NOT PAID OR CREDITED WITHIN FORTY-FIVE DAYS AFTER THE RETURN OF THE SERVICE CONTRACT UNDER THIS SUBSECTION (5), THEN A TEN PERCENT PENALTY PER

MONTH SHALL BE ADDED TO THE REFUND.

(6) (a) AFTER THE TIME SPECIFIED IN SUBSECTION (5) OF THIS SECTION, OR IF A CLAIM HAS BEEN MADE WITHIN THAT TIME, A SERVICE CONTRACT HOLDER MAY CANCEL THE SERVICE CONTRACT. UPON CANCELLATION, THE PROVIDER SHALL REFUND TO THE CONTRACT HOLDER ONE HUNDRED PERCENT OF THE UNEARNED PRO RATA PROVIDER FEE, LESS ANY CLAIMS MADE.

(b) A PROVIDER MAY CHARGE A REASONABLE ADMINISTRATIVE FEE, NOT TO EXCEED TEN PERCENT OF THE GROSS PROVIDER FEE PAID BY THE SERVICE CONTRACT HOLDER.

(7) (a) THE PROVIDER MAY CANCEL A SERVICE CONTRACT UPON MAILING, AT LEAST FIVE DAYS PRIOR TO THE DATE OF CANCELLATION, A WRITTEN NOTICE TO THE SERVICE CONTRACT HOLDER AT THE CONTRACT HOLDER'S LAST-KNOWN ADDRESS CONTAINED IN THE PROVIDER'S RECORDS. THE NOTICE MUST STATE THE EFFECTIVE DATE OF THE CANCELLATION AND THE REASON FOR THE CANCELLATION.

(b) PRIOR NOTICE IS NOT REQUIRED IF THE REASON FOR CANCELLATION IS NONPAYMENT OF THE PROVIDER FEE, A MATERIAL MISREPRESENTATION BY THE SERVICE CONTRACT HOLDER TO THE PROVIDER, OR A SUBSTANTIAL BREACH BY THE SERVICE CONTRACT HOLDER RELATING TO THE COVERED PRODUCT OR ITS USE.

(c) IF THE PROVIDER CANCELS A SERVICE CONTRACT FOR A REASON OTHER THAN NONPAYMENT OF THE PROVIDER FEE, THE PROVIDER SHALL REFUND TO THE SERVICE CONTRACT HOLDER ONE HUNDRED PERCENT OF THE UNEARNED PRO RATA PROVIDER FEE, LESS ANY CLAIMS PAID.

(8) (a) PROVIDER FEES COLLECTED ON SERVICE CONTRACTS ARE NOT SUBJECT TO PREMIUM TAXES.

(b) PREMIUMS FOR REIMBURSEMENT INSURANCE POLICIES ARE SUBJECT TO APPLICABLE TAXES.

(9) (a) PROVIDERS, RELATED SERVICE CONTRACT SELLERS, AND ADMINISTRATORS ARE EXEMPT FROM ANY LICENSING REQUIREMENTS OF THIS STATE SET FORTH IN THIS TITLE.

(b) (I) EACH PROVIDER OF SERVICE CONTRACTS SOLD IN COLORADO SHALL REGISTER WITH THE COMMISSIONER. THE REGISTRATION MUST CONTAIN THE PROVIDER'S NAME, FULL CORPORATE ADDRESS, TELEPHONE NUMBER, AND THE NAME OF AN INDIVIDUAL CONTACT PERSON. IN ADDITION, THE PROVIDER SHALL DESIGNATE AN AGENT FOR SERVICE OF PROCESS IN COLORADO. THE PROVIDER SHALL GIVE THE COMMISSIONER WRITTEN NOTICE OF ANY CHANGE IN THIS INFORMATION WITHIN THIRTY DAYS AFTER THE CHANGE.

(II) UPON INITIAL REGISTRATION, AND ANNUALLY THEREAFTER, EACH PROVIDER THAT REGISTERS PURSUANT TO THIS PARAGRAPH (b) SHALL PAY TO THE COMMISSIONER A FEE, SET BY THE COMMISSIONER, IN AN AMOUNT SUFFICIENT TO DEFRAY THE COMMISSIONER'S DIRECT AND INDIRECT COSTS OF ADMINISTERING THIS PART 16 AND SUBJECT TO PERIODIC ADJUSTMENT IN ACCORDANCE WITH SECTION 24-75-402, C.R.S.

(10) WITH THE EXCEPTION OF THE REQUIREMENTS SET FORTH IN THIS PART 16, THE MARKETING, SALE, OFFERING FOR SALE, ISSUANCE, MAKING, PROPOSING TO MAKE, AND ADMINISTRATION OF SERVICE CONTRACTS BY PROVIDERS, RELATED SERVICE CONTRACT SELLERS, AND ADMINISTRATORS ARE EXEMPT FROM THE REQUIREMENTS OF THIS TITLE.

10-4-1604. Obligations of reimbursement insurance companies.

(1) INSURERS ISSUING REIMBURSEMENT INSURANCE POLICIES TO PROVIDERS ARE DEEMED TO HAVE RECEIVED THE PREMIUMS FOR THIS INSURANCE UPON THE PAYMENT OF PROVIDER FEES BY CONSUMERS FOR SERVICE CONTRACTS ISSUED BY THE INSURED PROVIDERS.

(2) IF THE PROVIDER DOES NOT PROVIDE COVERED SERVICE WITHIN SIXTY DAYS AFTER PROOF OF LOSS BY THE SERVICE CONTRACT HOLDER, THE CONTRACT HOLDER MAY APPLY DIRECTLY TO THE REIMBURSEMENT INSURANCE COMPANY.

(3) THIS PART 16 DOES NOT PREVENT OR LIMIT THE RIGHT OF A REIMBURSEMENT INSURANCE COMPANY THAT ISSUED A REIMBURSEMENT INSURANCE POLICY TO SEEK INDEMNIFICATION OR SUBROGATION AGAINST A PROVIDER IF THE REIMBURSEMENT INSURANCE COMPANY PAYS OR IS OBLIGATED TO PAY THE SERVICE CONTRACT HOLDER SUMS THAT THE PROVIDER WAS OBLIGATED TO PAY PURSUANT TO THE PROVISIONS OF THE SERVICE CONTRACT.

(4) AN INSURER THAT ISSUED A REIMBURSEMENT INSURANCE POLICY TO A PROVIDER SHALL NOT TERMINATE THE POLICY UNTIL A NOTICE OF TERMINATION HAS BEEN MAILED OR DELIVERED TO THE INSURED PROVIDER AS REQUIRED BY APPLICABLE LAW WITH A COPY OF THE NOTICE PROVIDED TO THE COMMISSIONER. THE TERMINATION OF A REIMBURSEMENT INSURANCE POLICY DOES NOT REDUCE THE ISSUER'S RESPONSIBILITY FOR SERVICE CONTRACTS ISSUED BY PROVIDERS PRIOR TO THE DATE OF THE TERMINATION.

10-4-1605. Required disclosures - reimbursement insurance policy. (1) REIMBURSEMENT INSURANCE POLICIES INSURING SERVICE CONTRACTS ISSUED, SOLD, OR OFFERED FOR SALE MUST STATE THAT THE REIMBURSEMENT INSURANCE COMPANY SHALL EITHER:

(a) REIMBURSE OR PAY ON BEHALF OF THE PROVIDER ANY COVERED SUMS THE PROVIDER IS OBLIGATED TO PAY UNDER THE SERVICE CONTRACT; OR

(b) IN THE EVENT OF THE PROVIDER'S NONPERFORMANCE, PROVIDE THE SERVICE THAT THE PROVIDER MUST PERFORM ACCORDING TO THE TERMS AND CONDITIONS OF THE SERVICE CONTRACT.

10-4-1606. Required disclosures - service contracts. (1) SERVICE CONTRACTS MARKETED, SOLD, OFFERED FOR SALE, ISSUED, MADE, PROPOSED TO BE MADE, OR ADMINISTERED IN THIS STATE MUST BE WRITTEN, PRINTED, OR TYPED IN CLEAR, UNDERSTANDABLE LANGUAGE THAT IS EASY TO READ.

(2) SERVICE CONTRACTS INSURED UNDER A REIMBURSEMENT INSURANCE POLICY MUST CONTAIN A STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM: "OBLIGATIONS OF THE PROVIDER UNDER THIS SERVICE CONTRACT ARE INSURED UNDER A SERVICE CONTRACT REIMBURSEMENT INSURANCE POLICY." THE SERVICE CONTRACT MUST ALSO STATE THE NAME AND ADDRESS OF THE REIMBURSEMENT INSURANCE COMPANY AND DISCLOSE TO THE CONSUMER THAT IF THE SERVICE CONTRACT PROVIDER DOES NOT PROVIDE A COVERED SERVICE WITHIN SIXTY DAYS AFTER PROOF OF LOSS BY THE SERVICE CONTRACT HOLDER, THE CONTRACT HOLDER MAY APPLY DIRECTLY TO THE REIMBURSEMENT INSURANCE COMPANY.

(3) SERVICE CONTRACTS NOT INSURED UNDER A REIMBURSEMENT

INSURANCE POLICY MUST CONTAIN A STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM: "OBLIGATIONS OF THE PROVIDER UNDER THIS SERVICE CONTRACT ARE BACKED BY THE FULL FAITH AND CREDIT OF THE PROVIDER."

(4) (a) SERVICE CONTRACTS MUST IDENTIFY THE FOLLOWING:

(I) THE NAME AND ADDRESS OF THE PROVIDER;

(II) THE IDENTITY OF ANY ADMINISTRATOR, IF DIFFERENT FROM THE PROVIDER;

(III) THE SERVICE CONTRACT SELLER; AND

(IV) THE SERVICE CONTRACT HOLDER TO THE EXTENT THAT THE NAME OF THE SERVICE CONTRACT HOLDER HAS BEEN FURNISHED BY THE SERVICE CONTRACT HOLDER.

(b) THE IDENTITIES OF THE PARTIES IN THIS SUBSECTION (4) ARE NOT REQUIRED TO BE PREPRINTED ON THE SERVICE CONTRACT AND MAY BE ADDED TO THE SERVICE CONTRACT AT THE TIME OF SALE.

(5) SERVICE CONTRACTS MUST STATE THE TOTAL PURCHASE PRICE AND THE TERMS UNDER WHICH THE SERVICE CONTRACT IS SOLD. THE PURCHASE PRICE IS NOT REQUIRED TO BE PREPRINTED ON THE SERVICE CONTRACT AND MAY BE NEGOTIATED AT THE TIME OF SALE WITH THE SERVICE CONTRACT HOLDER.

(6) IN ADDITION TO THE OTHER REQUIREMENTS OF THIS SECTION, A SERVICE CONTRACT MUST:

(a) IDENTIFY THE CONSUMER GOODS COVERED BY THE CONTRACT;

(b) STATE THE EXISTENCE OF ANY DEDUCTIBLE AMOUNT, IF APPLICABLE;

(c) SPECIFY THE MERCHANDISE AND SERVICES TO BE PROVIDED AND ANY LIMITATIONS, EXCEPTIONS, OR EXCLUSIONS;

(d) STATE WHETHER THE USE OF A NONORIGINAL MANUFACTURER'S PART IS ALLOWED;

(e) STATE ANY RESTRICTIONS GOVERNING THE TRANSFERABILITY OF THE SERVICE CONTRACT, IF APPLICABLE;

(f) STATE THE TERMS, RESTRICTIONS, OR CONDITIONS GOVERNING CANCELLATION OF THE SERVICE CONTRACT, EITHER BY THE PROVIDER OR THE SERVICE CONTRACT HOLDER, PRIOR TO THE TERMINATION OR EXPIRATION DATE OF THE SERVICE CONTRACT;

(g) SET FORTH ALL OF THE OBLIGATIONS AND DUTIES OF THE SERVICE CONTRACT HOLDER, SUCH AS THE DUTY TO PROTECT AGAINST ANY FURTHER DAMAGE AND ANY REQUIREMENT TO FOLLOW THE OWNER'S MANUAL; AND

(h) STATE WHETHER OR NOT THE SERVICE CONTRACT PROVIDES FOR OR EXCLUDES CONSEQUENTIAL DAMAGES OR PREEXISTING CONDITIONS, IF APPLICABLE.

10-4-1607. Prohibited acts. (1) (a) A PROVIDER SHALL NOT USE IN ITS NAME:

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

(II) A NAME DECEPTIVELY SIMILAR TO THE NAME OR DESCRIPTION OF ANY INSURANCE OR SURETY CORPORATION, OR TO THE NAME OF ANY OTHER PROVIDER. THE WORD "GUARANTY" OR SIMILAR WORD MAY BE USED BY A PROVIDER.

(b) (I) THIS SECTION DOES NOT APPLY TO A PROVIDER THAT WAS USING ANY OF THE PROHIBITED LANGUAGE IN ITS NAME PRIOR TO THE EFFECTIVE DATE OF THIS PART 16.

(II) A PROVIDER USING THE PROHIBITED LANGUAGE IN ITS NAME SHALL INCLUDE IN ITS SERVICE CONTRACTS A STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM: "THIS AGREEMENT IS NOT AN INSURANCE CONTRACT."

(2) A PROVIDER OR ITS REPRESENTATIVE SHALL NOT IN ITS SERVICE CONTRACTS OR LITERATURE MAKE, PERMIT, OR CAUSE TO BE MADE ANY

FALSE OR MISLEADING STATEMENT, OR DELIBERATELY OMIT ANY MATERIAL STATEMENT THAT WOULD BE CONSIDERED MISLEADING IF OMITTED.

(3) A MANUFACTURER OR SELLER OF ANY PRODUCT SHALL NOT REQUIRE THE PURCHASE OF A SERVICE CONTRACT AS A CONDITION FOR THE SALE OF ANY PROPERTY.

(4) NOTHING IN THIS SECTION LIMITS OR PROHIBITS A PERSON FROM PURSUING ANY CLAIM, CAUSE OF ACTION, OR RIGHT AVAILABLE UNDER COLORADO LAW.

10-4-1608. Required record-keeping. (1) A PROVIDER SHALL KEEP ACCURATE ACCOUNTS, BOOKS, AND RECORDS CONCERNING TRANSACTIONS REGULATED UNDER THIS PART 16.

(2) A PROVIDER'S ACCOUNTS, BOOKS, AND RECORDS MUST INCLUDE:

(a) COPIES OF EACH TYPE OF SERVICE CONTRACT SOLD;

(b) THE NAME AND ADDRESS OF EACH SERVICE CONTRACT HOLDER TO THE EXTENT THAT THE NAME AND ADDRESS HAVE BEEN FURNISHED BY THE SERVICE CONTRACT HOLDER;

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

(d) WRITTEN CLAIMS FILES CONTAINING AT LEAST THE DATES AND DESCRIPTIONS OF ALL CLAIMS RELATED TO THE SERVICE CONTRACTS.

(3) EXCEPT AS SET FORTH IN SUBSECTION (5) OF THIS SECTION, A PROVIDER SHALL RETAIN ALL RECORDS REQUIRED UNDER THIS SECTION FOR AT LEAST ONE YEAR AFTER THE SPECIFIED PERIOD OF COVERAGE HAS EXPIRED.

(4) THE RECORDS REQUIRED UNDER THIS SECTION MAY BE, BUT ARE NOT REQUIRED TO BE, MAINTAINED IN ELECTRONIC FORM OR OTHER RECORD-KEEPING TECHNOLOGY. IF THE RECORDS ARE MAINTAINED IN OTHER THAN HARD COPY, THE RECORDS MUST BE CAPABLE OF DUPLICATION TO LEGIBLE HARD COPY AT THE REQUEST OF THE COMMISSIONER.

(5) A PROVIDER DISCONTINUING BUSINESS IN THIS STATE SHALL MAINTAIN ITS RECORDS UNTIL IT HAS DISCHARGED ALL OBLIGATIONS TO CONTRACT HOLDERS IN THIS STATE.

10-4-1609. Enforcement provisions - rules. (1) (a) THE COMMISSIONER MAY CONDUCT MARKET EXAMINATIONS OR FINANCIAL EXAMINATIONS OF PROVIDERS UNDER SECTIONS 10-1-201 TO 10-1-205 TO ENFORCE THIS PART 16.

(b) UPON THE COMMISSIONER'S REQUEST, THE PROVIDER SHALL MAKE AVAILABLE TO THE COMMISSIONER ALL ACCOUNTS, BOOKS, AND RECORDS CONCERNING SERVICE CONTRACTS SOLD BY THE PROVIDER THAT ARE NECESSARY TO ENABLE THE COMMISSIONER TO REASONABLY DETERMINE THE PROVIDER'S COMPLIANCE OR NONCOMPLIANCE WITH THIS PART 16 AND THE COMMISSIONER'S RULES ADOPTED IN FURTHERANCE OF THIS PART 16.

(2) THE PROVIDER EXAMINED IN ANY FINANCIAL OR MARKET CONDUCT EXAMINATION SHALL BEAR THE COST OF THE EXAMINATION IN ACCORDANCE WITH SECTION 10-1-205 (4).

(3) (a) IF A PROVIDER VIOLATES THIS PART 16, THE COMMISSIONER MAY TAKE THE FOLLOWING DISCIPLINARY ACTIONS:

(I) ISSUE AN ORDER DIRECTING THE PROVIDER TO CEASE AND DESIST FROM COMMITTING VIOLATIONS OF THIS PART 16;

(II) ISSUE AN ORDER PROHIBITING A SERVICE CONTRACT PROVIDER FROM SELLING OR OFFERING FOR SALE SERVICE CONTRACTS IN VIOLATION OF THIS PART 16;

(III) ISSUE AN ORDER IMPOSING A CIVIL PENALTY ON THE PROVIDER;
OR

(IV) ANY COMBINATION OF THE ACTIONS SET FORTH IN SUBPARAGRAPHS (I) TO (III) OF THIS PARAGRAPH (a).

(b) ANY CIVIL PENALTY ASSESSED BY THE COMMISSIONER IS LIMITED TO NOT MORE THAN FIVE HUNDRED DOLLARS PER VIOLATION AND NOT MORE THAN TEN THOUSAND DOLLARS IN THE AGGREGATE FOR ALL VIOLATIONS OF

A SIMILAR NATURE. FOR PURPOSES OF THIS PARAGRAPH (b), VIOLATIONS ARE OF A SIMILAR NATURE IF THE VIOLATIONS CONSIST OF THE SAME OR SIMILAR COURSE OF CONDUCT, ACTION, OR PRACTICE, REGARDLESS OF THE NUMBER OF TIMES THE NONCOMPLIANT ACT, CONDUCT, OR PRACTICE OCCURRED.

(c) A PERSON AGGRIEVED BY ANY ACTION TAKEN OR PENALTY ASSESSED UNDER THIS SUBSECTION (3) MAY REQUEST A REVIEW IN ACCORDANCE WITH SECTION 10-1-205 (4).

(4)(a) THE COMMISSIONER MAY BRING AN ACTION IN ANY COURT OF COMPETENT JURISDICTION FOR AN INJUNCTION OR OTHER APPROPRIATE RELIEF TO ADDRESS THREATENED OR EXISTING VIOLATIONS OF THIS PART 16.

(b) AN ACTION FILED UNDER THIS SUBSECTION (4) MAY ALSO SEEK RESTITUTION ON BEHALF OF PERSONS AGGRIEVED BY A VIOLATION OF THIS PART 16 OR ORDERS OR RULES OF THE COMMISSIONER.

(5) THE COMMISSIONER MAY PROMULGATE RULES TO IMPLEMENT THE PROVISIONS OF THIS PART 16.

SECTION 3. In Colorado Revised Statutes, 42-11-101, **amend** (2) as follows:

42-11-101. Definitions. As used in this article, unless the context otherwise requires:

(2) "Motor vehicle" means any vehicle subject to registration under section 42-1-102 (58) OR ANY POWERSPORTS VEHICLE AS DEFINED IN SECTION 12-6-502 (10), C.R.S.

SECTION 4. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of insurance cash fund created in section 10-1-103 (3), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2014, the sum of \$13,560 and 0.2 FTE, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) \$9,917 and 0.2 FTE to the division of insurance for personal

services; and

(b) \$3,643 to the executive director's office and administrative services for the purchase of legal services.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2014, the sum of \$3,643, or so much thereof as may be necessary, for the provision of legal services for the department of regulatory agencies related to the implementation of this act. Said sum is from reappropriated funds received from the department of regulatory agencies out of the appropriation made in paragraph (b) of subsection (1) of this section.

SECTION 5. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2015; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on January 1, 2015, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(2) This act applies to service contracts issued on or after the applicable effective date of this act.

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Morgan Carroll
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO