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SENATE BILL 220

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

John M. Sapien

AN ACT

RELATING TO SERVICE CONTRACTS; AMENDING THE SERVICE CONTRACT
REGULATION ACT; ADDING AND AMENDING DEFINITIONS; PROVIDING FOR
THEFT PROTECTION PROGRAM WARRANTIES AND FOR SURETY THROUGH
INSURANCE POLICIES; SPECIFYING INFORMATION TO BE INCLUDED IN
CONTRACTS AND WARRANTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 59A-58-1 NMSA 1978 (being Laws 2001,
Chapter 206, Section 1) is amended to read:

"59A-58-1. SHORT TITLE.--~~[Sections 1 through 19 of this
act]~~ Chapter 59A, Article 58 NMSA 1978 may be cited as the
"Service Contract Regulation Act"."

SECTION 2. Section 59A-58-2 NMSA 1978 (being Laws 2001,
Chapter 206, Section 2, as amended) is amended to read:

"59A-58-2. DEFINITIONS.--As used in the Service Contract
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1 Regulation Act:

2 A. "administrator" means a person who is
3 responsible for administering a service contract that is
4 issued, sold or offered for sale by a provider or sold by a
5 seller;

6 B. "consumer" means a person who purchases, other
7 than for resale, property used primarily for personal, family
8 or household purposes and not for business or research
9 purposes;

10 C. "holder" means:

11 (1) in a service contract, a resident of this
12 state who:

13 [~~1~~] (a) purchases a service contract;
14 or

15 [~~2~~] (b) is legally in possession of a
16 service contract and is entitled to enforce the rights of the
17 original purchaser of the service contract; and

18 (2) in a theft protection program, a resident
19 of this state who purchases a theft protection program, any
20 authorized transferee or assignee of the purchaser or any other
21 person legally assuming the purchaser's rights under the theft
22 protection program warranty;

23 D. "incidental costs" means expenses specified in a
24 theft protection program warranty that are incurred by the
25 warranty holder due to the failure of a theft protection

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1 program to perform as provided in the contract. Incidental
2 costs may include, without limitation, insurance policy
3 deductibles, rental vehicle charges, the difference between the
4 actual value of a stolen vehicle at the time of theft and the
5 cost of a replacement vehicle, gross receipts taxes,
6 registration fees, transaction fees and mechanical inspection
7 fees. Incidental costs may be reimbursed in either a fixed
8 amount specified in the theft protection program warranty or by
9 use of a formula itemizing specific incidental costs incurred
10 by the warranty holder;

11 ~~[D-]~~ E. "maintenance agreement" means a contract
12 for a limited period that provides only for scheduled
13 maintenance;

14 ~~[E-]~~ F. "major manufacturing company" means a
15 person who:

16 (1) manufactures or produces and sells
17 products under its own name or label or is a wholly owned
18 subsidiary or affiliate of the person who manufactures or
19 produces products; and

20 (2) maintains, or its parent company
21 maintains, a net worth or stockholders' equity of at least one
22 hundred million dollars (\$100,000,000);

23 ~~[F-]~~ G. "property" means all property, whether
24 movable at the time of purchase or a fixture, that is used
25 primarily for personal, family or household purposes;

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1 [~~G.~~] H. "provider" means a person who is
2 contractually obligated to a holder or to indemnify the holder
3 for the costs of repairing, replacing or performing maintenance
4 on property;

5 I. "road hazard" means a hazard that is encountered
6 while driving a motor vehicle and that may include potholes,
7 rocks, wood debris, metal parts, glass, plastic, curbs or
8 composite scraps;

9 J. "seller" means a person who sells service
10 contracts that contractually obligate another party or parties;

11 [~~H.~~] K. "service contract" means a contract
12 pursuant to which a provider, in exchange for separately stated
13 consideration, is obligated for a specified period to a holder
14 to repair, replace or perform maintenance on, or indemnify or
15 reimburse the holder for the costs of repairing, replacing or
16 performing maintenance on, property that is described in the
17 service contract and that has an operational or structural
18 failure as a result of a defect in materials, workmanship or
19 normal wear and tear, including a contract that provides or
20 includes one or more of the following:

21 (1) [~~a contract that includes a provision for~~]
22 incidental payment of indemnity under limited circumstances,
23 including towing, rental and emergency road service and food
24 spoilage; [~~and~~]

25 (2) [~~a contract that provides for~~] the repair,

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1 replacement or maintenance of property for damages that result
2 from power surges or accidental damage from handling; [and

3 ~~I. "warranty" means a warranty provided solely by a~~
4 ~~manufacturer, importer or seller of property for which the~~
5 ~~manufacturer, importer or seller did not receive separate~~
6 ~~consideration and that:~~

7 ~~(1) is not negotiated or separated from the~~
8 ~~sale of the property;~~

9 ~~(2) is incidental to the sale of the property;~~
10 and

11 ~~(3) guarantees to indemnify the consumer for~~
12 ~~defective parts, mechanical or electrical failure, labor or~~
13 ~~other remedial measures required to repair or replace the~~
14 ~~property]~~

15 (3) the repair or replacement of tires and
16 wheels on a motor vehicle damaged as a result of coming into
17 contact with road hazards;

18 (4) the removal of dents, dings or creases on
19 a motor vehicle that can be repaired using the process of
20 paintless dent removal without affecting the existing paint
21 finish and without replacing vehicle body panels, sanding,
22 bonding or painting;

23 (5) the repair of chips or cracks in motor
24 vehicle windshields or the replacement of motor vehicle
25 windshields as a result of damage caused by road hazards;

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1 (6) the replacement of a motor vehicle key or
2 key fob in the event the key or key fob becomes inoperable or
3 is lost or stolen; and

4 (7) other services approved by the
5 superintendent if not inconsistent with other provisions of the
6 Service Contract Regulation Act;

7 L. "theft protection program" means a device or
8 system that is installed on or applied to a motor vehicle, is
9 designed to prevent loss or damage to a motor vehicle from
10 theft and includes a theft protection program warranty, alarm
11 systems, body part marking products, steering locks, window
12 etch products, pedal and ignition locks, fuel and ignition kill
13 switches and electronic, radio and satellite tracking devices;
14 and does not include fuel additives, oil additives or other
15 chemical products applied to the engine, transmission or fuel
16 system or interior or exterior surfaces of a motor vehicle;

17 M. "theft protection program warranty" means a
18 written agreement by a warrantor that provides that if the
19 theft protection program fails to prevent loss or damage to a
20 motor vehicle from theft, the warrantor will pay to or on
21 behalf of the warranty holder specified incidental costs as a
22 result of the failure of the theft protection program to
23 perform pursuant to the terms of the theft protection program
24 warranty; and

25 N. "warrantor" means the person who is

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1 contractually obligated under the terms of a theft protection
2 program warranty."

3 SECTION 3. Section 59A-58-3 NMSA 1978 (being Laws 2001,
4 Chapter 206, Section 3) is amended to read:

5 "59A-58-3. EXCLUSIONS FROM ACT.--The provisions of the
6 Service Contract Regulation Act do not apply to:

7 A. a warranty provided under the federal Manson-
8 Moss Warranty-Federal Trade Commission Improvement Act;

9 B. a maintenance agreement;

10 C. a service contract provided by a public utility
11 on its transmission device if the service contract is regulated
12 by the public regulation commission;

13 D. a service contract sold or offered for sale to a
14 person who is not a consumer; or

15 E. a service contract for property if the purchase
16 price of the property is less than two hundred fifty dollars
17 (\$250) and the consideration for the service contract is less
18 than twenty-five dollars (\$25.00)."

19 SECTION 4. Section 59A-58-4 NMSA 1978 (being Laws 2001,
20 Chapter 206, Section 4) is amended to read:

21 "59A-58-4. PROHIBITION OF SALE OF SERVICE CONTRACT UNLESS
22 REGISTERED.--A provider shall not issue, sell or offer for sale
23 service contracts in this state unless ~~[he]~~ the provider has
24 been registered with the superintendent pursuant to the
25 provisions of the Service Contract Regulation Act. However, an

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1 administrator or seller of a service contract is not required
2 to be registered. The provisions of this section shall not
3 apply to major manufacturing companies' service contracts."

4 SECTION 5. Section 59A-58-5 NMSA 1978 (being Laws 2001,
5 Chapter 206, Section 5) is amended to read:

6 "59A-58-5. REGISTRATION REQUIREMENTS.--

7 A. A provider who wishes to issue, sell or offer
8 for sale service contracts in this state must submit to the
9 superintendent:

10 (1) a registration application on a form
11 prescribed by the superintendent;

12 (2) proof that ~~[he]~~ the provider has complied
13 with the requirements for security pursuant to Section ~~[7 of~~
14 ~~the Service Contract Regulation Act]~~ 59A-58-7 NMSA 1978;

15 (3) the name, address and telephone number of
16 each administrator with whom the provider intends to contract,
17 if any; and

18 (4) a fee of five hundred dollars (\$500).

19 B. A provider's registration is valid for one year
20 after the date the registration is filed. A provider may renew
21 ~~[his]~~ the provider's registration if, before the registration
22 expires, ~~[he]~~ the provider submits to the superintendent an
23 application on a form prescribed by the superintendent and a
24 fee of five hundred dollars (\$500).

25 C. The provisions of this section shall not apply

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1 to major manufacturing companies' service contracts.

2 D. Service contract forms are not required to be
3 filed with the superintendent."

4 SECTION 6. A new section of the Service Contract
5 Regulation Act, Section 59A-58-5.1 NMSA 1978, is enacted to
6 read:

7 "59A-58-5.1. [NEW MATERIAL] REGISTRATION REQUIREMENTS FOR
8 WARRANTORS.--

9 A. A warrantor who wishes to offer theft protection
10 program warranties in this state shall submit to the
11 superintendent:

12 (1) a registration application on a form
13 prescribed by the superintendent;

14 (2) proof that the warrantor has complied with
15 the requirements for security pursuant to Section 59A-58-6.1
16 NMSA 1978;

17 (3) the name, address and telephone number of
18 each administrator with whom the provider intends to contract,
19 if any; and

20 (4) a fee of five hundred dollars (\$500).

21 B. A warrantor's registration is valid for one year
22 after the date the registration is filed. A warrantor may
23 renew the warrantor's registration if, before the registration
24 expires, the warrantor submits to the superintendent an
25 application on a form prescribed by the superintendent and a

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1 fee of five hundred dollars (\$500).

2 C. The provisions of this section do not apply to
3 major manufacturing companies' theft protection program
4 warranties.

5 D. Theft protection program warranty forms are not
6 required to be filed with the superintendent."

7 SECTION 7. Section 59A-58-6 NMSA 1978 (being Laws 2001,
8 Chapter 206, Section 6, as amended) is amended to read:

9 "59A-58-6. SECURITY REQUIRED FOR REGISTRATION OF
10 PROVIDER.--

11 A. To ensure the faithful performance of a
12 provider's obligations to the provider's service contract
13 holders, a provider shall comply with the requirements of one
14 of the following:

15 (1) maintain a deposit with the superintendent
16 as provided in this [~~section~~] paragraph:

17 [~~B-~~] (a) a provider of a service
18 contract shall deposit fifty thousand dollars (\$50,000) unless
19 the contract covers the following, in which case the provider
20 shall deposit one hundred thousand dollars (\$100,000): [~~(1)~~]
21 1) a motor vehicle; and [~~(2)~~] 2) mechanical, plumbing and
22 electrical systems and appliances at a residential dwelling
23 when the service contract was sold in conjunction with the sale
24 of the residential dwelling; and

25 [~~G-~~] (b) deposits required pursuant to

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1 ~~[Subsection B of this section]~~ Subparagraph (a) of this
2 paragraph shall be: ~~[(1)]~~ 1) a surety bond issued by a surety
3 company authorized to do business in New Mexico on a form
4 acceptable to the superintendent; ~~[(2)]~~ 2) securities of the
5 type eligible for deposit by an insurance company; or ~~[(3)]~~ 3)
6 a clean and irrevocable letter of credit issued by a financial
7 institution acceptable to the superintendent;

8 ~~[D. Additional financial security may be required~~
9 ~~of any provider when it is determined by the superintendent~~
10 ~~that an additional deposit is necessary for the protection of~~
11 ~~the public] or~~ or

12 (2) insure all service contracts under a
13 reimbursement insurance policy issued by an insurer licensed,
14 registered or otherwise authorized to do business in this
15 state, and either:

16 (a) at the time the policy is filed with
17 the superintendent, and continuously thereafter: 1) maintain a
18 surplus as to policyholders and paid-in capital of at least
19 fifteen million dollars (\$15,000,000); and 2) annually file
20 copies of the insurer's financial statements, its national
21 association of insurance commissioners annual statement and the
22 actuarial certification required by and filed in the insurer's
23 state of domicile; or

24 (b) at the time the policy is filed with
25 the superintendent, and continuously thereafter: 1) maintain a

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1 surplus as to policyholders and paid-in capital of less than
2 fifteen million dollars (\$15,000,000) but at least equal to ten
3 million dollars (\$10,000,000); 2) demonstrate to the
4 satisfaction of the superintendent that the company maintains a
5 ratio of net written premiums, wherever written, to surplus as
6 to policyholders and paid-in capital of not greater than three
7 to one; and 3) annually file copies of the insurer's audited
8 financial statements, its national association of insurance
9 commissioners annual statement and the actuarial certification
10 required by and filed in the insurer's state of domicile.

11 B. Except for the requirements specified in this
12 section, no other financial security requirements shall be
13 required by the superintendent.

14 [~~E-~~] C. The provisions of this section [~~shall~~] do
15 not apply to major manufacturing companies' service contracts."

16 SECTION 8. A new section of the Service Contract
17 Regulation Act, Section 59A-58-6.1 NMSA 1978, is enacted to
18 read:

19 "59A-58-6.1. [NEW MATERIAL] SECURITY REQUIRED FOR
20 REGISTRATION OF WARRANTOR.--

21 A. To ensure the faithful performance of a
22 warrantor's obligations to the warrantor's warranty holders, a
23 warrantor shall comply with the requirements of one of the
24 following:

25 (1) maintain a deposit with the superintendent

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1 as provided in this paragraph:

2 (a) a warrantor shall deposit one
3 hundred thousand dollars (\$100,000); and

4 (b) deposits required pursuant to
5 Subparagraph (a) of this paragraph shall be: 1) a surety bond
6 issued by a surety company authorized to do business in New
7 Mexico on a form acceptable to the superintendent; 2)
8 securities of the type eligible for deposit by an insurance
9 company; or 3) a clean and irrevocable letter of credit issued
10 by a financial institution acceptable to the superintendent; or

11 (2) insure all service contracts under a
12 reimbursement insurance policy issued by an insurer licensed,
13 registered or otherwise authorized to do business in this
14 state, and either:

15 (a) at the time the policy is filed with
16 the superintendent and continuously thereafter: 1) maintain
17 surplus as to policyholders and paid-in capital of at least
18 fifteen million dollars (\$15,000,000); and 2) annually file
19 copies of the insurer's financial statements, its national
20 association of insurance commissioners annual statement and the
21 actuarial certification required by and filed in the insurer's
22 state of domicile; or

23 (b) at the time the policy is filed with
24 the superintendent and continuously thereafter: 1) maintain
25 surplus as to policyholders and paid-in capital of less than

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1 fifteen million dollars (\$15,000,000) but at least equal to ten
2 million dollars (\$10,000,000); 2) demonstrate to the
3 satisfaction of the superintendent that the company maintains a
4 ratio of net written premiums, wherever written, to surplus as
5 to policyholders and paid-in capital of not greater than three
6 to one; and 3) annually file copies of the insurer's audited
7 financial statements, its national association of insurance
8 commissioners annual statement and the actuarial certification
9 required by and filed in the insurer's state of domicile.

10 B. Except for the requirements specified in this
11 section, no other financial security requirements shall be
12 required by the superintendent.

13 C. The provisions of this section do not apply to
14 major manufacturing companies' theft protection program
15 warranties."

16 SECTION 9. Section 59A-58-10 NMSA 1978 (being Laws 2001,
17 Chapter 206, Section 10) is amended to read:

18 "59A-58-10. INFORMATION REQUIRED IN SERVICE CONTRACT.--

19 A. A service contract shall:

20 (1) be written in language that is
21 understandable and printed in a typeface that is easy to read;

22 (2) include the amount, if applicable, of any
23 deductible that the holder is required to pay;

24 (3) include the name, address and telephone
25 number of the provider and, if applicable:

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1 (a) the name, address and telephone
2 number of the administrator; ~~[and]~~

3 (b) the name of the holder, if provided
4 by the holder; ~~[however, the names and addresses of the~~
5 ~~foregoing persons are not required to be preprinted on the~~
6 ~~service contract and may be added to the service contract at~~
7 ~~the time of the sale]~~ and

8 (c) the name, address and telephone
9 number of the seller; however, the names and addresses of the
10 foregoing persons are not required to be preprinted on the
11 service contract and may be added to the service contract at
12 the time of the sale;

13 (4) include the purchase price of the service
14 contract; however, the purchase price of the service contract
15 is not required to be preprinted on the service contract and
16 may be added to the service contract at the time of the sale;

17 (5) include a description of the property
18 covered by the service contract;

19 (6) specify the duties of the provider and any
20 limitations, exceptions or exclusions;

21 (7) if the service contract covers a motor
22 vehicle, indicate whether replacement parts that are not made
23 for or by the original manufacturer of the motor vehicle may be
24 used to comply with the terms of the service contract;

25 (8) include, if applicable, any restrictions

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1 on transferring or renewing the service contract;

2 (9) include the terms, restrictions or
3 conditions for canceling the service contract before it expires
4 and the procedure for canceling the service contract. The
5 conditions for canceling the service contract shall include the
6 provisions of Section [~~13 of the Service Contract Regulation~~
7 ~~Act~~] 59A-58-13 NMSA 1978;

8 (10) include the duties of the holder under
9 the contract, including the duty to protect against damage to
10 the property covered by the service contract or to comply with
11 any instructions included in the owner's manual for the
12 property;

13 (11) indicate whether the service contract
14 authorizes the holder to recover consequential damages; and

15 (12) indicate whether any defect in the
16 property covered by the service contract existing on the date
17 the contract is purchased is not covered under the service
18 contract.

19 B. A provider shall not allow, make or cause to be
20 made a false or misleading statement in any of [~~his~~] the
21 provider's service contracts or intentionally omit a material
22 statement that causes a service contract to be misleading. The
23 superintendent may require the provider to amend any service
24 contract that the superintendent determines is false or
25 misleading."

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1 SECTION 10. A new section of the Service Contract
2 Regulation Act, Section 59A-58-10.1 NMSA 1978, is enacted to
3 read:

4 "59A-58-10.1. [NEW MATERIAL] INFORMATION REQUIRED IN
5 THEFT PROTECTION WARRANTY PRODUCT WARRANTY.--

6 A. A theft protection program warranty shall:

7 (1) be written in language that is
8 understandable and printed in a typeface that is easy to read;

9 (2) include the amount, if applicable, of a
10 deductible that the holder is required to pay;

11 (3) include the name, address and telephone
12 number of the provider and, if applicable:

13 (a) the name, address and telephone
14 number of the administrator;

15 (b) the name of the holder, if provided
16 by the holder; and

17 (c) the name, address and telephone
18 number of the seller; however, the names and addresses of the
19 foregoing persons are not required to be preprinted on the
20 theft protection program warranty and may be added to the theft
21 protection program warranty at the time of the issuance;

22 (4) include the purchase price of the theft
23 protection program; however, the purchase price of the theft
24 protection program is not required to be preprinted on the
25 theft protection program warranty and may be added to the

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1 service contract at the time of the issuance;

2 (5) include a description of the property
3 covered by the theft protection program warranty;

4 (6) specify the duties of the provider and any
5 limitations, exceptions or exclusions;

6 (7) include the restrictions on canceling,
7 transferring or renewing the service contract, if any. The
8 cancellation provision of a theft protection program warranty,
9 if any, is not required to comply with Section 59A-58-12 NMSA
10 1978;

11 (8) include the duties of the holder under the
12 theft protection program warranty, including the duty to
13 protect against damage to the property covered by the theft
14 protection program warranty or to comply with any instructions
15 included in the owner's manual for the property; and

16 (9) indicate whether the theft protection
17 program warranty authorizes the holder to recover consequential
18 damages.

19 B. A warrantor shall not allow, make or cause to be
20 made a false or misleading statement in any of the warrantor's
21 theft protection program warranties or intentionally omit a
22 material statement that causes a theft protection program
23 warranty to be misleading. The superintendent may require the
24 provider to amend any theft protection program warranty that
25 the superintendent determines is false or misleading."

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