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HOUSE BILL 329

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Joseph L. Sanchez

AN ACT

RELATING TO SERVICE CONTRACTS; AMENDING THE SERVICE CONTRACT  
REGULATION ACT; AMENDING THE PROCEDURE FOR CANCELLATION;  
PROVIDING FOR AUTOMATIC RENEWAL OF SERVICE CONTRACTS.

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

**SECTION 1.** 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  
Regulation Act:

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

B. "automatic renewal provision" means that a  
provision pursuant to a service contract is renewed for a

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1 specified period of more than one month if the renewal causes  
2 the service contract to continue in effect more than two months  
3 after the end of the term of the original contract and such  
4 renewal is effective unless the holder gives notice to the  
5 provider or administrator of the holder's intention to  
6 terminate the service contract;

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

11 ~~[G-]~~ D. "holder" means a resident of this state  
12 who:

13 (1) purchases a service contract; or

14 (2) is legally in possession of a service  
15 contract and is entitled to enforce the rights of the original  
16 purchaser of the service contract;

17 ~~[D-]~~ E. "incidental costs" means expenses specified  
18 in a warranty that are incurred by the warranty holder due to  
19 the failure of the product to perform as provided in the  
20 contract. Incidental costs may include, without limitation,  
21 insurance policy deductibles, rental vehicle charges, the  
22 difference between the actual value of a motor vehicle at the  
23 time of failure and the cost of a replacement vehicle, gross  
24 receipts taxes, registration fees, transaction fees and  
25 mechanical inspection fees. Incidental costs may be reimbursed

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1 in either a fixed amount specified in the warranty or by use of  
2 a formula itemizing specific incidental costs incurred by the  
3 warranty holder;

4 ~~[E.]~~ F. "maintenance agreement" means a contract  
5 for a limited period that provides only for scheduled  
6 maintenance;

7 ~~[F.]~~ G. "major manufacturing company" means a  
8 person who:

9 (1) manufactures or produces and sells  
10 products under its own name or label or is a wholly owned  
11 subsidiary or affiliate of the person who manufactures or  
12 produces products; and

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

16 ~~[G.]~~ H. "property" means all property, whether  
17 movable at the time of purchase or a fixture, that is used  
18 primarily for personal, family or household purposes;

19 ~~[H.]~~ I. "provider" means a person who is  
20 contractually obligated to a holder or to indemnify the holder  
21 for the costs of repairing, replacing or performing maintenance  
22 on property;

23 ~~[I.]~~ J. "reimbursement insurance policy" means a  
24 policy of insurance issued to a provider to either provide  
25 reimbursement to the provider under the terms of the insured

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1 service contracts issued or sold by the provider or, in the  
2 event of the provider's non-performance, to pay on behalf of  
3 the provider all covered contractual obligations incurred by  
4 the provider under the terms of the insured service contracts  
5 issued or sold by the provider;

6 ~~[J-]~~ K. "road hazard" means a hazard that is  
7 encountered while driving a motor vehicle and that may include  
8 potholes, rocks, wood debris, metal parts, glass, plastic,  
9 curbs or composite scraps;

10 ~~[K-]~~ L. "seller" means a person who sells service  
11 contracts that contractually obligate another party or parties;

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

22 (1) incidental payment of indemnity under  
23 limited circumstances, including towing, rental and emergency  
24 road service and food spoilage;

25 (2) the repair, replacement or maintenance of

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1 property for damages that result from power surges or  
2 accidental damage from handling;

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

6 (4) the removal of dents, dings or creases on  
7 a motor vehicle that can be repaired using the process of  
8 paintless dent removal without affecting the existing paint  
9 finish and without replacing vehicle body panels, sanding,  
10 bonding or painting;

11 (5) the repair of chips or cracks in motor  
12 vehicle windshields or the replacement of motor vehicle  
13 windshields as a result of damage caused by road hazards;

14 (6) the replacement of a motor vehicle key or  
15 key fob in the event the key or key fob becomes inoperable or  
16 is lost or stolen; and

17 (7) other services approved by the  
18 superintendent if not inconsistent with other provisions of the  
19 Service Contract Regulation Act; and

20 [M-] N. "warranty" means a warranty provided solely  
21 by a manufacturer, importer or seller of property for which the  
22 manufacturer, importer or seller did not receive separate  
23 consideration and that:

24 (1) is not negotiated or separated from the  
25 sale of the property;

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1 (2) is incidental to the sale of the property;  
2 and

3 (3) guarantees to indemnify the consumer for  
4 defective parts, mechanical or electrical failure, labor or  
5 other remedial measures required to repair or replace the  
6 property and may provide specified incidental costs."

7 SECTION 2. Section 59A-58-9 NMSA 1978 (being Laws 2001,  
8 Chapter 206, Section 9) is amended to read:

9 "59A-58-9. RIGHT OF HOLDER TO RETURN SERVICE CONTRACT FOR  
10 REFUND.--

11 A. A service contract is void and a provider shall  
12 refund to the holder the purchase price of the service contract  
13 if the holder has not made a claim under the service contract  
14 and the holder returns the service contract to the provider:

15 (1) within twenty days after the date the  
16 provider mails a copy of the service contract to the holder;

17 (2) within ten days after the purchaser  
18 receives a copy of the service contract if the provider  
19 furnishes the holder with the copy at the time the contract is  
20 purchased; or

21 (3) within a longer period specified in the  
22 service contract.

23 B. The right of a holder to return a service  
24 contract pursuant to Subsection A of this section applies only  
25 to the original purchaser of the service contract.

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1           C. Subsequent to the time period specified in  
2 Subsection A of this section, or if a claim was made during  
3 that time period, a holder may cancel a service contract and  
4 the provider shall refund to the contract holder one hundred  
5 percent of the unearned pro rata provider fee, less any claims  
6 paid. If the service contract is canceled by the holder, a  
7 reasonable administrative fee may be charged by the provider,  
8 not to exceed ten percent of the purchase price of the service  
9 contract. A provider who cancels a service contract may not  
10 impose an administrative fee.

11           ~~[G.]~~ D. A service contract must include a provision  
12 that clearly states the right of a holder to return a service  
13 contract pursuant to this section. Notwithstanding Subsection  
14 C of this section, a provider is not required to deduct the  
15 amount of any claims paid under a service contract from the  
16 amount of a refund a holder is entitled to.

17           ~~[D.]~~ E. The provider shall refund to the holder or  
18 credit to the account of the holder the purchase price of the  
19 service contract within sixty days after a service contract is  
20 returned pursuant to Subsection A of this section. If the  
21 provider fails to refund the purchase price or credit the  
22 account of the holder within that time, the provider shall pay  
23 the holder a penalty of ten percent of the purchase price for  
24 each thirty-day period or portion thereof that the refund and  
25 any accrued penalties remain unpaid."

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1           SECTION 3. A new section of the Service Contract

2 Regulation Act is enacted to read:

3           "[NEW MATERIAL] AUTOMATIC RENEWAL--NOTICE.--

4           A. A provider shall not include an automatic  
5 renewal provision within a service contract offered in this  
6 state unless the provider discloses the terms of the automatic  
7 renewal provision in a clear and conspicuous manner, or in the  
8 case of an offer conveyed by voice, in temporal proximity, to  
9 the request for consent to the offer and the consumer consents  
10 to the terms of the automatic renewal provision.

11           B. A provider shall provide notice to a holder  
12 specifying, in a clear and conspicuous manner, the procedure by  
13 which the holder may cancel the service contract, and such  
14 notice shall be provided at least thirty days before the last  
15 day on which the holder may give notice of the holder's  
16 intention to terminate the service contract but not sooner than  
17 sixty days before the last day on which the holder may give  
18 notice.

19           C. The notice required by Subsection B of this  
20 section may be provided by United States mail, postage prepaid,  
21 or electronic mail if the consumer consents to receive notice  
22 via electronic mail at the inception of the service contract."