

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 556

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO CONTRACTS; ENACTING THE SERVICE CONTRACT  
REGULATION ACT TO IMPOSE RESTRICTIONS AND REQUIREMENTS ON  
SALES OF SERVICE CONTRACTS; PROVIDING FOR THE SUPERINTENDENT  
OF INSURANCE TO ADMINISTER THAT ACT; PROVIDING CIVIL PENALTIES  
FOR VIOLATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 19 of this act may be cited as the "Service Contract  
Regulation Act".

Section 2. [NEW MATERIAL] 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;

underscored material = new  
[bracketed material] = delete

1           B. "consumer" means a person who purchases, other  
2 than for resale, property used primarily for personal, family  
3 or household purposes and not for business or research  
4 purposes;

5           C. "holder" means a resident of this state who:  
6                 (1) purchases a service contract; or  
7                 (2) is legally in possession of a service  
8 contract and is entitled to enforce the rights of the original  
9 purchaser of the service contract;

10          D. "maintenance agreement" means a contract for a  
11 limited period that provides only for scheduled maintenance;

12          E. "property" means all property, whether movable  
13 at the time of purchase or a fixture, that is used primarily  
14 for personal, family or household purposes;

15          F. "provider" means a person who is obligated to a  
16 holder pursuant to the terms of a service contract to repair,  
17 replace or perform maintenance on, or to indemnify the holder  
18 for the costs of repairing, replacing or performing  
19 maintenance on, property;

20          G. "service contract" means a contract pursuant to  
21 which a provider, in exchange for separately stated  
22 consideration, is obligated for a specified period to a holder  
23 to repair, replace or perform maintenance on, or indemnify or  
24 reimburse the holder for the costs of repairing, replacing or  
25 performing maintenance on, property that is described in the

underscored material = new  
[bracketed material] = delete

1 service contract and that has an operational or structural  
2 failure as a result of a defect in materials, workmanship or  
3 normal wear and tear, including:

4 (1) a contract that includes a provision for  
5 incidental payment of indemnity under limited circumstances,  
6 including towing, rental and emergency road service and food  
7 spoilage; and

8 (2) a contract that provides for the repair,  
9 replacement or maintenance of property for damages that result  
10 from power surges or accidental damage from handling;

11 H. "superintendent" means the superintendent of  
12 insurance of the insurance division of the public regulation  
13 commission; and

14 I. "warranty" means a warranty provided solely by  
15 a manufacturer, importer or seller of property for which the  
16 manufacturer, importer or seller did not receive separate  
17 consideration and that:

18 (1) is not negotiated or separated from the  
19 sale of the property;

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

22 (3) guarantees to indemnify the consumer for  
23 defective parts, mechanical or electrical failure, labor or  
24 other remedial measures required to repair or replace the  
25 property.

underscored material = new  
[bracketed material] = delete

1           Section 3.   [NEW MATERIAL] EXCLUSIONS FROM ACT. -- The  
2 provisions of the Service Contract Regulation Act do not apply  
3 to:

- 4           A.   a warranty;
- 5           B.   a maintenance agreement;
- 6           C.   a service contract provided by a public utility  
7 on its transmission device if the service contract is  
8 regulated by the public regulation commission;
- 9           D.   a service contract sold or offered for sale to  
10 a person who is not a consumer; or
- 11          E.   a service contract for property if the purchase  
12 price of the property is less than two hundred fifty dollars  
13 (\$250) and the consideration for the service contract is less  
14 than twenty-five dollars (\$25.00).

15           Section 4.   [NEW MATERIAL] SALE OF SERVICE CONTRACT NOT  
16 INSURANCE BUSINESS. -- The sale of a service contract pursuant  
17 to the Service Contract Regulation Act does not constitute the  
18 business of insurance for the purposes of 18 USCA Sections  
19 1033 and 1034.

20           Section 5.   [NEW MATERIAL] PROHIBITION OF SALE OF SERVICE  
21 CONTRACT UNLESS REGISTERED. -- A provider shall not issue, sell  
22 or offer for sale service contracts in this state unless he  
23 has been registered with the superintendent pursuant to the  
24 provisions of the Service Contract Regulation Act.

25           Section 6.   [NEW MATERIAL] REGISTRATION REQUIREMENTS. --  
. 134182. 5

underscored material = new  
[bracketed material] = delete

1           A. A provider who wishes to issue, sell or offer  
2 for sale service contracts in this state must submit to the  
3 superintendent:

4                   (1) a registration application on a form  
5 prescribed by the superintendent;

6                   (2) proof that he has complied with the  
7 requirements for security pursuant to Section 7 of the Service  
8 Contract Regulation Act;

9                   (3) the name, address and telephone number of  
10 each administrator with whom the provider intends to contract;  
11 and

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

13           B. A provider's registration is valid for one year  
14 after the date the registration is filed. A provider may  
15 renew his registration if, before the registration expires, he  
16 submits to the superintendent an application on a form  
17 prescribed by the superintendent and a fee of five hundred  
18 dollars (\$500).

19           Section 7. [NEW MATERIAL] SECURITY REQUIRED FOR  
20 REGISTRATION OF PROVIDER. --

21           A. To assure the faithful performance of a  
22 provider's obligations to his contract holders, a provider  
23 shall maintain a deposit with the superintendent as provided  
24 in this section.

25           B. A provider of a service contract shall deposit

underscored material = new  
[bracketed material] = delete

1 fifty thousand dollars (\$50,000) unless the contract covers  
2 the following, in which case he shall deposit one hundred  
3 thousand dollars (\$100,000):

- 4 (1) a motor vehicle; and
- 5 (2) mechanical, plumbing and electrical  
6 systems and appliances at a residential dwelling when the  
7 service contract was sold in conjunction with the sale of the  
8 residential dwelling.

9 C. Deposits required pursuant to Subsection B of  
10 this section shall be:

- 11 (1) a surety bond issued by a surety company  
12 authorized to do business in New Mexico on a form acceptable  
13 to the superintendent;
- 14 (2) securities of the type eligible for  
15 deposit by an insurance company;
- 16 (3) cash; or
- 17 (4) a clean and irrevocable letter of credit  
18 issued by a financial institution acceptable to the  
19 superintendent.

20 D. Additional financial security may be required  
21 of any provider when it is determined by the superintendent  
22 that an additional deposit is necessary for the protection of  
23 the public.

24 Section 8. [NEW MATERIAL] TRANSACTIONS EXEMPT FROM  
25 PREMIUM TAX. --The premium tax imposed pursuant to Chapter 59A,  
. 134182. 5

underscored material = new  
[bracketed material] = delete

1 Article 6 NMSA 1978 does not apply to any business transacted  
2 pursuant to the provisions of the Service Contract Regulation  
3 Act.

4 Section 9. [NEW MATERIAL] TRANSACTIONS NOT SUBJECT TO  
5 NEW MEXICO INSURANCE CODE-- EXCEPTIONS. --

6 A. Except as otherwise provided in the Service  
7 Contract Regulation Act, the marketing, issuance, sale,  
8 offering for sale, making, proposing to make and  
9 administration of service contracts are not subject to the  
10 provisions of the New Mexico Insurance Code, except, when  
11 applicable, the provisions of Chapter 59A, Article 16 NMSA  
12 1978.

13 B. A provider, person who sells service contracts,  
14 administrator or any other person is not required to obtain a  
15 certificate of authority or license from the superintendent to  
16 issue, sell, offer for sale or administer service contracts.

17 Section 10. [NEW MATERIAL] RIGHT OF HOLDER TO RETURN  
18 SERVICE CONTRACT FOR REFUND. --

19 A. A service contract is void and a provider shall  
20 refund to the holder the purchase price of the service  
21 contract if the holder has not made a claim under the service  
22 contract and the holder returns the service contract to the  
23 provider:

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

. 134182. 5

underscored material = new  
[bracketed material] = delete

1 (2) within ten days after the purchaser  
2 receives a copy of the service contract if the provider  
3 furnishes the holder with the copy at the time the contract is  
4 purchased; or

5 (3) within a longer period specified in the  
6 service contract.

7 B. The right of a holder to return a service  
8 contract pursuant to this section applies only to the original  
9 purchaser of the service contract.

10 C. A service contract must include a provision  
11 that clearly states the right of a holder to return a service  
12 contract pursuant to this section.

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

22 Section 11. [NEW MATERIAL] INFORMATION REQUIRED IN  
23 SERVICE CONTRACT. --

24 A. A service contract shall:

25 (1) be written in language that is



1 understandable and printed in a typeface that is easy to read;

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

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

6 (a) the name, address and telephone  
7 number of the administrator; and

8 (b) the name of the holder, if provided  
9 by the holder; 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;

15 (5) include a description of the property  
16 covered by the service contract;

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

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

23 (8) include, if applicable, any restrictions  
24 on transferring or renewing the service contract;

25 (9) include the terms, restrictions or

underscored material = new  
[bracketed material] = delete

1 conditions for canceling the service contract before it  
2 expires and the procedure for canceling the service contract.  
3 The conditions for canceling the service contract shall  
4 include the provisions of Section 13 of the Service Contract  
5 Regulation Act;

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

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

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

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

24 Section 12. [NEW MATERIAL] RECEIPT FOR AND COPY OF  
25 SERVICE CONTRACT REQUIRED. --

. 134182. 5

underscored material = new  
[bracketed material] = delete

1           A. A provider shall provide a receipt for, or  
2 other written evidence of, the purchase of a service contract.

3           B. The provider shall furnish a copy of the  
4 service contract to the holder within a reasonable time after  
5 the contract is purchased.

6           Section 13. [NEW MATERIAL] CANCELLATION OF SERVICE  
7 CONTRACT. --

8           A. No service contract that has been in effect for  
9 at least seventy days may be canceled by the provider before  
10 the expiration of the agreed term or one year after the  
11 effective date of the service contract, whichever occurs  
12 first, except on any of the following grounds:

13                   (1) failure by the holder to pay an amount  
14 when due;

15                   (2) conviction of the holder of a crime that  
16 results in an increase in the service required under the  
17 service contract;

18                   (3) discovery of fraud or material  
19 misrepresentation by the holder in obtaining the service  
20 contract or in presenting a claim for service thereunder; or

21                   (4) discovery of either of the following if  
22 it occurred after the effective date of the service contract  
23 and substantially and materially increased the service  
24 required under the service contract:

25                           (a) an act or omission by the

underscored material = new  
[bracketed material] = delete

1 holder; or

2 (b) a violation by the holder of any  
3 condition of the service contract.

4 B. No cancellation of a service contract may  
5 become effective until at least fifteen days after the notice  
6 of cancellation is mailed to the holder.

7 Section 14. [NEW MATERIAL] BUSINESS NAME RESTRICTIONS. --

8 A. Except as otherwise provided in this section, a  
9 provider shall not include in the name of his business:

10 (1) the words "insurance", "casualty",  
11 "surety", "mutual" or any other word or term that implies that  
12 he is engaged in the business of transacting insurance or is a  
13 surety company; or

14 (2) a name that is deceptively similar to the  
15 name or description of an insurer or surety company or the  
16 name of another provider.

17 B. A provider may include the word "guaranty" or a  
18 similar word in the name of his business.

19 C. This section does not apply to a provider who,  
20 before January 1, 2002, includes in the name of his business a  
21 name that does not comply with the provisions of Subsection A  
22 of this section. Such a provider shall include in each  
23 service contract he issues, sells or offers for sale a  
24 statement that the service contract is not a contract of  
25 insurance.

underscored material = new  
[bracketed material] = delete

1           Section 15.   ~~[NEW MATERIAL]~~ PROHIBITION OF REQUIRING  
2 PURCHASE OF SERVICE CONTRACT AS A CONDITION OF LOAN APPROVAL  
3 OR PURCHASE OF PROPERTY. --No person may require the purchase  
4 of a service contract as a condition for the approval of a  
5 loan or the purchasing of property.

6           Section 16.   ~~[NEW MATERIAL]~~ RECORDS REQUIREMENTS. --

7           A.   A provider shall maintain records of the  
8 transactions governed by the Service Contract Regulation Act.  
9 The records of a provider shall include:

10                   (1) a copy of each type of service contract  
11 that the provider issues, sells or offers for sale;

12                   (2) the name and address of each holder who  
13 possesses a service contract under which the provider has a  
14 duty to perform, to the extent that the provider knows the  
15 name and address of each holder;

16                   (3) a list that includes each location where  
17 the provider issues, sells or offers for sale service  
18 contracts; and

19                   (4) the date and a description of each claim  
20 made by a holder under a service contract.

21           B.   Except as otherwise provided in this  
22 subsection, a provider shall retain all records relating to a  
23 service contract for at least one year after the contract has  
24 expired. A provider who intends to discontinue doing business  
25 in this state shall provide the superintendent with

underscored material = new  
[bracketed material] = delete

1 satisfactory proof that he has discharged his duties to the  
2 holders in this state and shall not destroy his records  
3 without the prior approval of the superintendent.

4 C. The records required to be maintained pursuant  
5 to this section may be stored on a computer disk or other  
6 storage device for a computer from which the records can be  
7 readily printed.

8 Section 17. [NEW MATERIAL] EXAMINATIONS AND INSPECTION  
9 OF BOOKS BY SUPERINTENDENT. --

10 A. The superintendent may conduct examinations to  
11 enforce the provisions of the Service Contract Regulation Act  
12 pursuant to Chapter 59A, Article 4 NMSA 1978 at such times as  
13 he deems necessary.

14 B. A provider shall, upon the request of the  
15 superintendent, make available to the superintendent for  
16 inspection any accounts, books and records concerning any  
17 service contract issued, sold or offered for sale by the  
18 provider that are reasonably necessary to enable the  
19 superintendent to determine whether the provider is in  
20 compliance with the provisions of the Service Contract  
21 Regulation Act.

22 Section 18. [NEW MATERIAL] CIVIL PENALTY FOR  
23 VIOLATION. --A person who violates any provision of the Service  
24 Contract Regulation Act or an order or rule of the  
25 superintendent issued or adopted pursuant thereto may be

. 134182. 5

underscored material = new  
[bracketed material] = delete

1 assessed a civil penalty by the superintendent of not more  
2 than five thousand dollars (\$5,000) for each act or violation,  
3 not to exceed an aggregate amount of one hundred thousand  
4 dollars (\$100,000) for violations of a similar nature. For  
5 the purposes of this section, violations shall be deemed to be  
6 of a similar nature if the violations consist of the same or  
7 similar conduct, regardless of the number of times the conduct  
8 occurred.

9 Section 19. [NEW MATERIAL] RULEMAKING. --The  
10 superintendent may adopt rules necessary to carry out the  
11 provisions of the Service Contract Regulation Act.

12 Section 20. Section 59A-16-1 NMSA 1978 (being Laws 1984,  
13 Chapter 127, Section 269, as amended) is amended to read:

14 "59A-16-1. SCOPE OF ARTICLE. --The provisions of Chapter  
15 59A, Article 16 NMSA 1978 as applicable shall apply as to  
16 insurers, fraternal benefit societies, nonprofit health care  
17 plans, health maintenance organizations, prepaid dental  
18 services organizations, motor clubs, agents, brokers,  
19 solicitors, adjusters, providers of services contracts  
20 pursuant to the Service Contract Regulation Act and all other  
21 persons engaged in any business which is now or hereafter  
22 subject to the superintendent's supervision under the  
23 Insurance Code, as well as all alien and foreign insurers  
24 delivering or issuing for delivery in New Mexico any  
25 certificate or other evidence of coverage. For the purposes

. 134182. 5

underscored material = new  
[bracketed material] = delete

1 of that article, [~~such~~] the societies, organizations [~~and~~],  
2 clubs and persons shall be included within the meaning of  
3 "insurer", and contracts issued by them are included within  
4 the meaning of "policy". "

5 Section 21. EFFECTIVE DATE. -- The effective date of the  
6 provisions of this act is July 1, 2002.

7 - 16 -

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25