

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 522

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

AN ACT

RELATING TO CONSUMER PROTECTION; DECLARING AS AN UNLAWFUL PRACTICE THE AUTOMATIC RENEWAL OF CONSUMER CONTRACTS OR CONTINUATION OF DELIVERY OF PRODUCTS OR SERVICES WITHOUT PRIOR CONSUMER CONSENT; REQUIRING CERTAIN DISCLOSURES IN OFFERS TO RENEW CONTRACTS FOR AND CONTINUE DELIVERY OF PRODUCTS OR SERVICES TO CONSUMERS; REQUIRING THAT CONSUMERS BE PROVIDED WITH AN OPTION TO TERMINATE THOSE CONTRACTS OR TO CONTINUE DELIVERIES; EXTENDING THE PERIOD IN WHICH A HOLDER OF A SERVICE CONTRACT MAY OBTAIN A REFUND.

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

SECTION 1. A new section of the Unfair Practices Act is enacted to read:

"[NEW MATERIAL] RENEWAL AND CONTINUOUS DELIVERY CONTRACTS--REQUIREMENTS--REMEDIES FOR VIOLATIONS.--

.214130.1

underscored material = new  
[bracketed material] = delete

1           A. It is an unlawful practice within the meaning of  
2 the Unfair Practices Act for a person to renew a contract for  
3 or continue delivery of a product or service to a consumer  
4 after the expiration of the term of the contract, including  
5 after a free trial, discount or other introductory offer,  
6 without:

7                   (1) obtaining the consumer's prior explicit  
8 consent; provided that for an offer to:

9                           (a) renew a contract for or continue  
10 delivery of a product or service, the offer shall be provided  
11 to the consumer not more than sixty days, and not less than  
12 thirty days, prior to the expiration date of the term of the  
13 contract for delivery of the product or service; and

14                           (b) continue delivery of a product or  
15 service upon the expiration of a free trial, discount or other  
16 introductory offer period, the offer shall be provided to the  
17 consumer not more than ten days, and not less than five days,  
18 prior to the date of expiration; and

19                   (2) simultaneously:

20                           (a) presenting to the consumer in larger  
21 type than the surrounding text, or in contrasting type, font or  
22 color to the surrounding text of the same size, or set off from  
23 the surrounding text of the same size by symbols or other  
24 marks, in a manner that clearly calls attention to the  
25 language: 1) clear instructions to the consumer on how to

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1 cancel the contract for or continued delivery of the product or  
2 service, including a toll-free telephone number, electronic  
3 mail address and postal address, if the person directly bills  
4 the consumer, for cancellation, and if a person makes and the  
5 consumer accepts the offer online, instructions on how the  
6 consumer may terminate the contract or continuous service offer  
7 online; 2) the recurring charges that will be charged to the  
8 consumer's credit or debit account or payment account with a  
9 third party as a result of accepting the offer; 3) the length  
10 of the term of delivery of the product or service; and 4) the  
11 minimum purchase obligation, if any; and

12 (b) in the case of an audio disclosure,  
13 providing to the consumer the terms listed in Subparagraph (a)  
14 of this paragraph in a volume and cadence sufficient to be  
15 readily audible and understandable to the consumer prior to the  
16 consumer's consent.

17 B. If a person violates a provision of this  
18 section, in addition to any other remedy provided pursuant to  
19 the Unfair Practices Act, the product or service that is the  
20 subject of a contract or continued delivery shall be deemed an  
21 unconditional gift to the consumer. The consumer may use or  
22 dispose of the product or service in any manner without any  
23 obligation to that person."

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

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

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

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

11 C. "holder" means a resident of this state who:  
12 (1) purchases a service contract; or  
13 (2) is legally in possession of a service  
14 contract and is entitled to enforce the rights of the original  
15 purchaser of the service contract;

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

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1 itemizing specific incidental costs incurred by the warranty  
2 holder;

3 E. "maintenance agreement" means a contract for a  
4 limited period that provides only for scheduled maintenance;

5 F. "major manufacturing company" means a person  
6 who:

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

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

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

17 H. "provider" means a person who is contractually  
18 obligated to a holder or to indemnify the holder for the costs  
19 of repairing, replacing or performing maintenance on property;

20 I. "reimbursement insurance policy" means a policy  
21 of insurance issued to a provider to either provide  
22 reimbursement to the provider under the terms of the insured  
23 service contracts issued or sold by the provider or, in the  
24 event of the provider's non-performance, to pay on behalf of  
25 the provider all covered contractual obligations incurred by

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1 the provider under the terms of the insured service contracts  
2 issued or sold by the provider;

3 J. "renewal provision" means a provision within a  
4 service contract that acts to renew the service contract after  
5 the end of the original term for a renewal term greater than  
6 two months, and such renewal is not effective unless the holder  
7 gives notice to the provider or administrator of the holder's  
8 intention to review the service contract;

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

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

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

25 (1) incidental payment of indemnity under

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1 limited circumstances, including towing, rental and emergency  
2 road service and food spoilage;

3 (2) the repair, replacement or maintenance of  
4 property for damages that result from power surges or  
5 accidental damage from handling;

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

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

14 (5) the repair of chips or cracks in motor  
15 vehicle windshields or the replacement of motor vehicle  
16 windshields as a result of damage caused by road hazards;

17 (6) the replacement of a motor vehicle key or  
18 key fob in the event the key or key fob becomes inoperable or  
19 is lost or stolen; and

20 (7) other services approved by the  
21 superintendent if not inconsistent with other provisions of the  
22 Service Contract Regulation Act; and

23 [M.] N. "warranty" means a warranty provided solely  
24 by a manufacturer, importer or seller of property for which the  
25 manufacturer, importer or seller did not receive separate

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1 consideration and that:

2 (1) is not negotiated or separated from the  
3 sale of the property;

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

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

10 SECTION 3. Section 59A-58-9 NMSA 1978 (being Laws 2001,  
11 Chapter 206, Section 9) is amended to read:

12 "59A-58-9. RIGHT OF HOLDER TO RETURN SERVICE CONTRACT FOR  
13 REFUND.--

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

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

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

24 (3) within a longer period specified in the  
25 service contract.

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1           B. The right of a holder to return a service  
2 contract pursuant to Subsection A of this section applies only  
3 to the original purchaser of the service contract.

4           C. Subsequent to the time period specified in  
5 Subsection A of this section, or if a claim was made during  
6 that time period, a holder may cancel a service contract and  
7 the provider shall refund to the contract holder one hundred  
8 percent of the unearned pro rata provider fee, less any claims  
9 paid. The provider shall not charge any additional fee.

10          ~~[G.]~~ D. 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. Notwithstanding Subsection  
13 C of this section, a provider is not required to deduct the  
14 amount of any claims paid under a service contract from the  
15 amount of a refund a holder is entitled to.

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

25           SECTION 4. A new section of the Service Contract

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1 Regulation Act is enacted to read:

2 "[NEW MATERIAL] RENEWAL--NOTICE.--

3 A. A provider shall not include a renewal provision  
4 within a service contract offered in this state unless the  
5 renewal provision explicitly states that no renewal of the  
6 service contract beyond the expiration date of the contract is  
7 effective without:

8 (1) obtaining the holder's prior explicit  
9 consent; provided that for an offer to renew a contract for or  
10 continue delivery of a service, the offer shall be provided to  
11 the holder not more than sixty days, and not less than thirty  
12 days, prior to the expiration date of the term of the contract  
13 for delivery of the service; and

14 (2) simultaneously:

15 (a) presenting to the holder in larger  
16 type than the surrounding text, or in contrasting type, font or  
17 color to the surrounding text of the same size, or set off from  
18 the surrounding text of the same size by symbols or other  
19 marks, in a manner that clearly calls attention to the  
20 language: 1) clear instructions to the holder on how to cancel  
21 the contract for the service, including a toll-free telephone  
22 number, electronic mail address and postal address, if the  
23 person directly bills the holder, for cancellation, and if a  
24 person makes and the holder accepts the offer online,  
25 instructions on how the holder may terminate the contract or

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1 continuous service offer online; 2) the recurring charges that  
2 will be charged to the holder's credit or debit account or  
3 payment account with a third party as a result of accepting the  
4 offer; 3) the length of the term of delivery of the service;  
5 and 4) the minimum purchase obligation, if any; and

6 (b) in the case of an audio disclosure,  
7 providing to the holder the terms listed in Subparagraph (a) of  
8 this paragraph in a volume and cadence sufficient to be readily  
9 audible and understandable to the holder prior to the holder's  
10 consent.

11 B. If a person violates a provision of this  
12 section, in addition to any other remedy provided pursuant to  
13 the Service Contract Regulation Act, the service that is the  
14 subject of a contract or continued delivery shall be deemed an  
15 unconditional gift to the holder. The holder may use or  
16 dispose of the service in any manner without any obligation to  
17 that person."

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