

NHSCA MODEL HOME SERVICE CONTRACT ACT

Registration and Financial Assurance – Home Service Contracts Only

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Section 1. Scope and Purpose

- A. The purposes of this Act is to create an independent legal framework within which home service contracts are defined, may be sold and are regulated in this state. It declares that service contracts, as defined, are not insurance and not otherwise subject to the insurance code. It requires simple registration, financial assurance options and enforcement by the Commissioner of Insurance.
- B. The following are exempt from this Act:
- (1) Warranties as defined below;
 - (2) Maintenance only agreements as defined below;
 - (3) Service contracts sold or offered for sale to persons other than consumers; consumer product (extended warranty) service contracts on new, retail goods if made at the time of sale; and motor vehicle service contracts; all of which may be separately regulated elsewhere in the state code.
 - (4) New product extended warranties and service contracts on individual items of new property sold at retail.
- C. The types of agreements covered by this act or exempt as stated in subsection (B) of this section are not insurance and do not have to comply with any provision of the insurance law of this state.

Section 2. Definitions

As used in this Act:

- A. “Administrator” means the person who is responsible for the administration of home service contracts or the home service contracts plan, who may promote the contract under their own private label or brand as long as the Provider is clearly identified on the contract, or who is responsible for any submission required by the Act.
- B. “Commissioner” means the commissioner of insurance of this state.
- C. “Consumer” means a natural person who buys other than for purposes of resale any property that is normally used for personal, family or household purposes and not for business or research purposes.
- D. “Maintenance agreement” means a contract of limited duration that provides for scheduled maintenance only and does not include repair or replacement.
- E. “Person” means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate or any similar entity or combination of entities acting in concert.
- F. “Provider” means the person who is the contractually named obligor to the home service contract holder under the terms of the service contract.
- G. “Provider fee” means the consideration paid for a home service contract.
- H. “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 home service contracts issued or sold by the provider or, in the event of the provider’s non-performance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured home service contracts issued or sold by the provider.
- I. “Service contract” means a contract or agreement for a separately stated consideration for a any duration to perform the service, repair, replacement or maintenance of property or indemnification for service, repair, replacement or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear including, but not limited to, towing, rental and emergency road service. Service contracts may provide for the service, repair, replacement, or maintenance of property for damage resulting from power surges, accidental damage from handling and roof leak.

- J. “Service contract holder” or “contract holder” means a person who is the purchaser or holder of a home service contract.
- K. “Warranty” means a warranty made solely by the manufacturer, importer or seller of property or services, including builders on new home construction, without consideration, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor or other remedial measures, such as repair or replacement of the property or repetition of services.

Section 3. Requirements for Doing Business

- A. Home service contracts shall not be issued, sold or offered for sale in this state unless the provider has:
 - (1) Provided a receipt for, or other written evidence of, the purchase of the home service contract to the contract holder; and
 - (2) Provided a copy of the home service contract to the service contract holder within a reasonable period of time from the date of purchase.
- B. Each provider of home service contracts sold in this state shall file a registration with the Commissioner consisting of their name, full corporate physical street address, telephone number and contact person and designate a person in this state for service of process. Said registration requirements may not be extended or expanded upon. Each provider shall pay to the Commissioner a fee in the amount of six hundred dollars (\$600) upon initial registration and every three years thereafter. Said registration need only be updated by written notification to the Commissioner if material changes occur in the registration on file. A registration on file that is substantially complete and fee paid shall be sufficient for the provider to begin conducting business in this state. Form and/or rate filing regulation is neither required nor contemplated by this act.
- C. In order to assure the faithful performance of a provider’s obligations to its contract holders, each provider shall be responsible for complying with the requirements of one of the following three subdivisions:
 - (1) (a) Maintain a funded reserve account for its obligations under its contracts issued and outstanding in this state. The reserves shall not be less than [forty percent (40%) of gross consideration received], then less claims paid, on the sale of the service contract for all in-force contracts in

this state. The reserve account shall be subject to examination and review by the Commissioner; and

(b) Place in trust with the Commissioner a financial security deposit, having a value of not less than [five percent (5%) of the gross consideration received], then less claims paid, on the sale of the service contract for all service contracts issued and in force in this state, but not less than \$25,000.00, consisting of one of the following:

- (i) A surety bond issued by an authorized surety;
- (ii) Securities of the type eligible for deposit by authorized insurers in this state;
- (iii) Cash;
- (iv) A letter of credit issued by a qualified financial institution; or
- (v) Another form of security prescribed by regulations issued by the Commissioner; or

(2) (a) Maintain, or together with its parent company maintain, a net worth or stockholders' equity of \$ 25 million; and

(b) Upon request, provide the Commissioner with a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's financial statements, which shows a net worth of the provider or its parent company of at least \$25 million based upon GAAP accounting standards. If the provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state; or

(3) Insure all service contracts covering property in this state are covered under a reimbursement insurance policy issued by an insurer licensed, registered, or otherwise authorized to do business in this state.

D. Except for the registration requirements in Section 3B above for providers, administrators and other persons marketing, selling, arranging for or offering to sell home service contracts, including but not limited to real estate licensees, are exempt from any licensing requirements of this state and shall not be subject to other registration information or security requirements.

- E. The marketing, sale, offering for sale, issuance, making, proposing to make and administration of home service contracts by providers and related service contract sellers, administrators, and other persons shall be exempt from all other provisions of this state's insurance law.

Section 4. Contract Terms and Disclosures

- A. Service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state shall be written, printed, or typed in clear, understandable language that is easy to read, and shall disclose the requirements set forth in this section, as applicable. Eight (8) point font type is an accepted minimum size.
- B. Service contracts insured under a reimbursement insurance policy pursuant to Section 3D(1) of this Act shall 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 shall also state the name and address of the insurer.
- C. Service contracts not insured under a reimbursement insurance policy pursuant to Section 3D(1) of this Act shall 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."
- D. Service contracts shall state the name and address of the provider and shall identify any administrator if different from the provider, the service contract seller, and the service contract holder to the extent that the name of the service contract holder has been furnished by the service contract holder. The identities of such parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale.
- E. Service contracts shall state the total purchase price and the terms under which service contract is sold. The purchase price is not required to be pre-printed on the service contract and may be negotiated at the time of sale with the service contract holder.
- F. Service contracts shall state the existence of any trade service fee, if applicable.
- G. Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions
- H. Service contracts shall state any restrictions governing the transferability of the service contract, if applicable.
- I. Service contracts shall state the terms, restrictions or conditions governing cancellation of the service contract.

- K. Service contracts shall 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 owner's manual.
- L. Service contracts shall state whether or not the service contract provides for or excludes consequential damages or pre-existing conditions, if applicable. Service contracts may, but are not required to, cover damage resulting from rust, corrosion or damage caused by a noncovered part or system.
- M. If prior approval of repair work is required, a service contract shall state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.

Section 5. Enforcement Provisions

- A. After initial registration and upon 30 days prior notice, the Commissioner may conduct examinations of providers, administrators, insurers or other persons to enforce the provisions of this Act and protect home service contract holders in this state. After initial registration, upon written request of the Commissioner and cause shown, the provider shall make sufficient accounts, books, and records concerning service contracts sold by the provider in this state available to the Commissioner, which are reasonably necessary to enable the Commissioner to determine compliance or noncompliance with this Act. Such authority does not expand the authority upon initial registration limited under Section 3(B) above. The Commissioner's authority does not extend to business or legal matters of the provider beyond this state.
- B. The Commissioner may take action, which is necessary or appropriate to enforce the provisions of this Act, the Commissioner's orders, and to protect service contract holders in this state.
 - (1) If a provider has violated this Act or the commissioner's regulations or orders, the commissioner must first issue a notice directed to that provider to cease and desist from committing violations of this Act and provide at least thirty (30) days for the provider to either conform its contracts to the provisions of this Act or cease business in this state; If the provider remains in substantial violation, the commissioner may issue an order prohibiting a service contract provider from selling or offering for sale service contracts in violation of this Act; or may issue an order imposing a civil penalty on that provider, or any combination of the foregoing, as applicable.
 - (a) A person aggrieved by an order issued under this paragraph may

request a hearing before the commissioner. The hearing request shall be filed with the commissioner within 20 days of the date the commissioner's order is effective:

- (b) If a hearing is requested, an order issued by the commissioner under this section shall be suspended from the original effective date of the order until completion of the hearing and final decision of the commissioner; and
 - (c) At the hearing, the burden shall be on the commissioner to show why the order issued pursuant to this paragraph is justified. The provisions of [insert citation to statutes concerning hearings before the commissioner] shall apply to a hearing requested under this section.
- (2) The commissioner may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of this Act or of the commissioner's orders or regulations. An action filed under this paragraph may also seek restitution on behalf of persons aggrieved by a violation of this Act or orders or regulations of the commissioner.
- (3) A person who is found to have violated this Act or orders or regulation of the commissioner may be assessed a civil penalty by a court of competent jurisdiction in an amount not more than five hundred dollars (\$500.00) per violation and no more than ten thousand dollars (\$10,000.00) in the aggregate for all violations of a similar nature. For purposes of this section, violations shall be of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the act, conduct, or practice which is determined to be a violation of this Act occurred.

Section 6. Separability Provision

If any provision of this Act, or the application of the provision to any person or circumstances, shall be held invalid, the remainder of this Act, and the application of the provision to person or circumstances other than those as to which it is held invalid, shall not be affected.

Section 7. Effective Date

This Act shall become effective 90 days after approval by the Governor or on January 1 of the year following adoption as designated by the legislature.