

Section 8-32-1

Purpose.

- (a) The purpose of this chapter is to create a framework to regulate service contracts sold to consumers in this state.
- (b) The following are exempt from Sections 8-32-2 to Section 8-32-12, inclusive, of this chapter:
 - (1) Warranties.
 - (2) Maintenance agreements.
 - (3) Warranties, service contracts, or maintenance agreements offered by electric, gas, water, or telephone utilities on their transmission devices.
 - (4) Service contracts sold or offered for sale in commercial transactions.
 - (5) Service contracts sold or offered for sale to persons other than consumers.
 - (6) Service contracts sold at the point of sale, or within 60 days of the original purchase date of the property, which cover tangible property where the tangible property for which the service contract is sold, has a purchase price of two hundred and fifty dollars (\$250) or less, exclusive of sales tax.
- (c) Manufacturer's service contracts on the manufacturer's products and service contracts sold or offered for sale by Alabama electric cooperatives, and their subsidiaries and affiliates, including without limitation, affiliates managed or controlled by electric cooperatives, are required to comply only with Section 8-32-3(a), Section 8-32-3(g), Section 8-32-5(a), Section 8-32-5(d) to (n), inclusive, Section 8-32-6, Section 8-32-10(a), and Section 8-32-10(c) to (f), inclusive, as applicable, of this chapter.
- (d) The types of agreements referred to in subsections (b) and (c) are not insurance for any purpose including, without limitation, compliance with the Alabama Insurance Code.

(Acts 1997, No. 97-445, P. 753, §1.)

Section 8-32-2

Definitions.

As used in this chapter, the following terms shall have the following meanings:

- (1) ADMINISTRATOR. The person designated by a provider to be responsible for the administration of service contracts or the service contracts plan or to make the filings required by this chapter.
- (2) COMMISSIONER. The Commissioner of Insurance of this state.
- (3) CONSUMER. A natural person who buys, primarily for personal, family, or household purposes, and not for resale, any tangible personal property normally used for personal, family, or household purposes and not for commercial or research purposes.
- (4) MAINTENANCE AGREEMENT. A contract of limited duration that provides for scheduled maintenance only.
- (5) MANUFACTURER. A person that is one of the following:
 - a. A manufacturer or producer of property that sells the property under its own name or label.
 - b. A subsidiary of the person who manufactures or produces the property.
 - c. A corporation which owns at least 80 percent of the person who manufactures or produces the property.
 - d. A person who manufactures or produces the property even though the property is sold under the trade name or label of another person.
- (6) MECHANICAL BREAKDOWN INSURANCE. For purposes of this chapter, a policy, contract, or agreement issued by an authorized insurance company directly to a consumer or other owner of property that provides for, among other coverages, the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational or structural failure of the property due to a defect in materials or workmanship or due to normal wear and tear.
- (7) NON-ORIGINAL MANUFACTURER'S PARTS. Replacement parts not made for or by the original manufacturer of the property, commonly referred to as "after market parts."
- (8) PERSON. An individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any other entity, or combination of persons acting in concert.
- (9) PREMIUM. The consideration paid to an insurer for a reimbursement insurance policy.
- (10) PROVIDER. A person who administers, makes, provides, sells, or offers to sell a service contract, who is contractually obligated to provide service under a service contract.

(11) PROVIDER FEE. The total purchase price paid for a service contract. In cases where a reimbursement insurance policy is issued to a provider, the "provider fee" is the total purchase price paid for a service contract net of the premium.

(12) REIMBURSEMENT INSURANCE POLICY. A policy of insurance issued to a provider pursuant to which the insurer agrees, for the benefit of the service contract holders, to discharge the obligations of the provider under the terms of the service contracts in the event of non-performance by the provider.

(13) SERVICE CONTRACT. A contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials or workmanship, or normal wear and tear, with or without additional provision for incidental payment or indemnity under limited circumstances, for related expenses, including, but not limited to, towing, rental, and emergency road service. Service contracts may provide for the repair, replacement or maintenance of property for damage resulting from power surges and accidental damage from handling. "Service contract" does not include warranties, mechanical breakdown insurance or maintenance agreements. A service contract is not insurance for any purpose, including, but not limited to, compliance with the Alabama Insurance Code, other than for the purpose of a service contract holder's claim against a service contract provider for failure to comply with the provisions of the service contract if so provided by other law.

(14) SERVICE CONTRACT HOLDER or CONTRACT HOLDER. A person who is the purchaser or holder of a service contract.

(15) WARRANTY. A warranty made by the manufacturer, importer, distributor, or seller of property or services without consideration stated separately from the price of the property or services sold, that is not negotiated separate from the sale of the product and is incidental to the sale of the product, that guarantees repair or replacement, or indemnity for repair or replacement, for defective parts, mechanical or electrical breakdown, labor or other remedial measures, such as repair or replacement of the property or repetition of services.

(Acts 1997, No. 97-445, p. 753, §2.)

Section 8-32-3

Requirements for selling or offering to sell service contracts.

(a) Either the provider or its designee shall:

(1) Provide a receipt for, or other written evidence of, the purchase of the service contract to the contract holder.

(2) Provide a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase.

(b) A provider may, but is not required to, appoint an administrator or other designee to be responsible for any or all of the administration of service contracts and compliance with this chapter.

(c) Each provider of service contracts sold in this state shall file a registration with the commissioner on a form prescribed by the commissioner. Each provider shall pay to the commissioner a fee in the amount of two hundred dollars (\$200) annually. All fees collected shall be paid into a special revolving fund to be set up by the State Treasurer referred to as the "Service Contract Revolving Fund." The Service Contract Revolving Fund shall be used in the supervision and examination of providers and otherwise in the administration of this chapter; provided however, that nothing in this section shall be construed to mean that all of the expenses of supervision and examination of providers and in the administration of this chapter incurred by the State Insurance Department shall come from the Service Contract Revolving Fund.

(d) All funds now or hereafter deposited in the State Treasury to the credit of the Service Contract Revolving Fund shall not be expended for any purpose whatsoever unless the same shall have been allotted and budgeted in accordance with the provisions of Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and only in the amounts and for the purposes provided by the Legislature in the general appropriation bill, other appropriations bills or this chapter.

(e) There is hereby appropriated for the fiscal year ending September 30, 1998, from the Service Contract Revolving Fund to the State Department of Insurance those amounts as deemed necessary to carry out the provisions of this chapter as determined by the Commissioner of Insurance.

(f) In order to assure the faithful performance of a provider's obligations to its service contract holders, each provider shall be responsible for complying with the requirements of one of the following subdivisions:

(1) Insure all service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or issued pursuant to Chapter 10, Title 27.

(2) Do both of the following:

- a. Maintain a funded reserve account for its obligations under its service contracts sold and outstanding in this state. The reserves shall be based on the loss experience of the provider as certified by an actuary or, at the election of the provider, the reserves shall be 30 percent of the aggregate provider fees for all service contracts sold and then in force. The reserve account shall be subject to examination and review by the commissioner.
- b. Place in trust with the commissioner a financial security deposit, having a value of not less than five percent of the aggregate provider fees, less claims paid, for all service contracts sold and then in force, but not less than twenty-five thousand dollars (\$25,000) 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.
 - (v) Another form of security prescribed by regulations issued by the commissioner.

(3) Do both of the following:

- a. Maintain a net worth or stockholders' equity of one hundred million dollars (\$100,000,000).
- b. Upon request, provide the commissioner with a copy of the financial statement of the provider included in its most recent annual report on Form 10-K or Form 20-F filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the provider does not file with the SEC, a copy of the audited financial statements of the provider, which shows a net worth of the provider of at least one hundred million dollars (\$100,000,000). A consolidated Form 10-K, Form 20-F or audited financial statements shall meet the requirements of this chapter for the provider if it shows a net worth or stockholders' equity of the provider of at least one hundred million dollars (\$100,000,000) and there shall be no requirement of a parent company guarantee, reimbursement insurance, or other form of financial stability requirement. However, if the Form 10-K, Form 20-F or audited financial statements of the parent company of the provider are filed to meet the provider's financial stability requirement because the provider's net worth or stockholders' equity of the provider is not at least one hundred million dollars (\$100,000,000), or because the net worth or stockholders' equity is not determinable from the consolidated Form 10-K, Form 20-F or audited financial statements of the parent company, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state.
- (g) Service contracts shall require the provider to permit the service contract holder to return the service contract within no less than 20 days of the date the service contract was mailed to the service contract holder or within no less than 10 days of delivery if the service contract is delivered to the service contract holder at the time of sale. Upon return of the service contract to the provider within the applicable time period, if no claim has been made under the service contract prior to its return to the provider, the service contract is void and the provider shall refund to the service contract holder the full purchase price of the service contract including any premium paid for any applicable reimbursement insurance policy. Any refund due a service contract holder may be credited to any outstanding balance of the account of the service contract holder, and the excess, if any, shall be refunded to the service contract holder. The right to void the service contract provided in this subsection (g) is not transferable and shall apply only to the original service contract purchaser, and only if no claim has been made prior to its return to the provider. A 10 percent penalty per month shall be added to a refund that is not paid or credited within 45 days after return of the service contract to the provider.
- (h) In the event the original service contract holder makes a written demand for cancellation of a service contract pursuant to the terms of the service contract, the provider shall refund to the service contract holder the unearned portion of the full purchase price of the service contract including the unearned portion of any premium paid for any applicable reimbursement insurance policy. Any refund due a service contract holder may be credited to any outstanding balance of the account of the service contract holder, and the excess, if any, shall be refunded to the service contract holder. If the original contract purchaser or a contract holder elects cancellation, the provider may retain an administrative fee of up to twenty-five dollars (\$25) for issuance of the service contract if such fee is provided for in the service contract; however, this amount may not be deducted in the event the service contract is terminated pursuant to the provisions of subsection (g).
- (i)(1) Provider fees are not subject to premium taxes.
- (2) Premiums for reimbursement insurance policies are subject to applicable taxes.
- (j) Except for the registration requirement in subsection (c), providers, administrators, and other persons marketing, selling, or offering to sell service contracts for providers are exempt from any licensing requirements of this state.
- (k) Providers are not required to comply with any provision of Title 27.

(Acts 1997, No. 97-445, p. 753, §3.)

Section 8-32-4

Required provisions, reimbursement insurance policy.

Reimbursement insurance policies insuring service contracts sold in this state shall provide that, upon failure of the provider to perform under the service contract, including, without limitation, failure to refund or credit the unearned portion of the purchase price of the service contract to the extent required by this chapter, the insurer that issued the reimbursement insurance policy shall pay on behalf of the provider any sums the provider is legally obligated to pay to a service contract holder, or shall provide the service which the provider is legally obligated to perform, according to the provider's contractual obligations under the service contracts sold by the provider. The reimbursement insurance company shall be responsible to refund only the unearned premium net of the unearned provider fee, and the provider shall be responsible for refunding or crediting the unearned provider fee in excess of the unearned premium. If the provider fails to refund or credit any portion of the unearned provider fee required to be refunded or credited by this chapter, the reimbursement insurance company shall be responsible for the entire refund of the unearned premium and unearned provider fee. The amount of the reserve relative to the unearned provider fee to be maintained by the reimbursement insurance company shall be based on the loss experience of the reimbursement insurance company as certified by an actuary.

(Acts 1997, No. 97-445, p. 753, §4.)

Section 8-32-5

Required provisions, service contracts.

- (a) Service contracts sold or offered for sale in this state, in their entirety, shall be written, printed, or typed in eight point type size, or larger, and shall comply with the requirements set forth in this section, as applicable.
- (b) Service contracts insured under a reimbursement insurance policy pursuant to subdivision (1) of subsection (f) of Section 8-32-3 shall contain a statement in substantially the following form:
"Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy."
- If the provider fails to pay or to provide service on a claim within 60 days after proof of loss has been filed, the service contract holder is entitled to make a claim directly against the reimbursement insurance company. The service contract shall state the name and address of the reimbursement insurance company.
- (c) Service contracts not insured under a reimbursement insurance policy pursuant to subdivision (1) of subsection (f) of Section 8-32-3 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, the service contract seller, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder. Neither the name of the service contract seller nor other provisions are 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 purchase price of the service contract, the term of the service contract and any applicable renewal provisions. Neither the purchase price nor any other provisions are required to be pre-printed on the service contract and may be negotiated at the time of sale with the service contract holder.
- (f) If the provider will reimburse the contract holder for repair work performed by third parties and if prior approval of repair work is required, (i) the 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 (ii) if the service contract provides services essential to public health, safety, or welfare, the service contract shall either provide for 24-hour telephone assistance, or state the procedure for obtaining emergency repairs performed outside of normal business hours.
- (g) Service contracts shall state the existence of any deductible amount.
- (h) Service contracts shall describe the property upon which the services are to be provided, the services to be provided and any limitations, exceptions, or exclusions to the services to be provided.
- (i) Service contracts shall state whether the use of non-original manufacturer's parts is allowed.
- (j) Service contracts shall state any restrictions governing the transferability of the service contract.

(k) Service contracts shall state the terms, restrictions, or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the provider or by the service contract holder. The provider of the service contract shall mail a written notice to the service contract holder at the last known address of the service contract holder contained in the records of the provider at least five days prior to cancellation by the provider. Prior notice is not required if the reason for cancellation is nonpayment of the provider fee or a material misrepresentation by the service contract holder to the provider relating to the covered property or its use. The notice shall state the effective date of the cancellation and the reason for the cancellation.

(l) Service contracts shall set forth the obligations and duties of the service contract holder relating to the property covered by the service contract.

(m) Service contracts shall state whether or not the service contract provides for or excludes consequential damages or preexisting conditions, to the extent applicable.

(n) Service contracts may contain other provisions as determined by the provider.

(Acts 1997, No. 97-445, p. 753, §5.)

Section 8-32-6

Prohibited acts.

(a) A provider shall not use in its name the words insurance, casualty, surety, mutual, or any other words descriptive of the insurance, casualty, or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other provider. The word "guaranty" or similar word may be used by a provider. This section shall not apply to a company that was using any of the prohibited language in its name prior to August 1, 1997. However, a company using the prohibited language in its name shall include in its service contracts a statement in substantially the following form: "This agreement is not an insurance contract."

(b) A person, such as a bank, savings and loan association, lending institution, manufacturer, or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.

(Acts 1997, No. 97-445, p. 753, §6.)

Section 8-32-7

Record keeping requirements.

(a)(1) The provider shall keep accurate accounts, books, and records concerning transactions regulated under this chapter.

(2) The provider's accounts, books, and records shall include the following:

a. Copies of each type of service contract sold.

b. The name and address of each service contract holder to the extent that the name and address have been furnished by the service contract holder.

c. A list of the locations where service contracts are marketed, sold, or offered for sale.

d. Recorded claims files which shall contain at least the dates, amounts, and description of all receipts, claims, and expenditures related to the service contracts.

(3) The provider shall retain all records required to be maintained by this subsection (a) for at least three years after the specified period of coverage has expired.

(4) The records required under this chapter may be, but are not required to be, maintained on a computer disk or other record keeping technology. If the records are maintained in other than hard copy, the records shall be capable of duplication to legible hard copy at the request of the commissioner.

(b) A provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to service contract holders in this state.

(Acts 1997, No. 97-445, p. 753, §7.)

Section 8-32-8

Cancellation of reimbursement insurance policy.

To the extent applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination in accordance with Chapter 40 of Title 27 has been mailed or delivered to the commissioner. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for service contracts sold by providers which it insured prior to the date of the termination.

(Acts 1997, No. 97-445, p. 753, §8.)

Section 8-32-9

Obligation of reimbursement insurance policy insurers.

(a) Where reimbursement insurance is applicable, providers are considered to be the agent of the insurer which issued the reimbursement insurance policy solely for purposes of obligating the insurers to service contract holders in accordance with the service contract and this chapter. In cases where a provider is acting as an administrator and enlists other providers, the provider acting as the administrator shall notify the insurer of the existence and identities of the other providers.

(b) This chapter shall not prevent or limit the right of an insurer which issued a reimbursement insurance policy to seek indemnification or subrogation against a provider if the insurer pays or is obligated to pay the service contract holder sums that the provider was obligated to pay pursuant to the provisions of the service contract.

(Acts 1997, No. 97-445, p. 753, §9.)

Section 8-32-10

Enforcement provisions.

(a) The commissioner may conduct investigations or examinations of providers, administrators, insurers, or other persons to enforce this chapter and protect service contract holders in this state. Upon request of the commissioner, the provider shall make all accounts, books, and records concerning service contracts sold in this state by the provider available to the commissioner which are necessary to enable the commissioner to reasonably determine compliance or noncompliance with this chapter.

(b) Providers, administrators, or insurers being examined shall pay to the commissioner the travel expense to and from such examination, a living expense allowance at reasonable rates customary for the examination in the state where the examination takes place and as established or adopted by regulation of the commissioner, and the compensation of the examiners making the examination, upon presentation by the commissioner of a detailed account of the allowances and expenses. The account may be presented periodically during the course of the examination or at the termination of the examination, as the commissioner deems proper. All payments collected by the commissioner shall be paid into the special fund provided by Section 8-32-3(c) and used to pay the cost of the examination of providers.

(c) The commissioner may take action which is necessary or appropriate to enforce this chapter and the commissioner's regulations and orders, and to protect service contract holders in this state.

(d) If a provider has violated this chapter or the commissioner's regulations or orders, the commissioner may issue an order directed to that provider (i) to cease and desist from committing violations of this chapter or the commissioner's regulations or orders; (ii) prohibiting that provider from selling or offering for sale service contracts in violation of this chapter; or (iii) imposing a civil penalty on that provider; or (iv) any combination of the foregoing, as applicable.

(1) A person aggrieved by an order issued under this subsection (d) 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.

(2) If a hearing is requested, pending the hearing and the decision by the commissioner, the effective date of the order automatically shall be suspended until completion of the hearing and final decision of the commissioner.

(3) At the hearing, the burden shall be on the commissioner to show why the order issued pursuant to this subsection is justified. The provisions of Sections 27-2-30, 27-2-31, and 27-2-32 shall apply to a hearing requested under this subsection (d).

(e) The commissioner may bring an action in the Circuit Court of Montgomery County, Alabama, for an injunction or other appropriate relief to enjoin threatened or existing violations of this chapter or of the commissioner's orders or regulations. An action filed under this section also may seek restitution on behalf of persons aggrieved by a violation of this chapter or orders or regulations of the commissioner.

(f) A person who is found to have violated this chapter may be ordered to pay to the commissioner a civil penalty in an amount determined by the commissioner of not more than five hundred dollars (\$500) per violation and no more than ten thousand dollars (\$10,000) 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 chapter occurred. All civil penalties collected shall be paid into the special fund provided by Section 8-32-3(c) and used in the supervision and examination of providers and otherwise in the administration of this chapter.

(Acts 1997, No. 97-445, p. 753, §10.)

Section 8-32-11

Rules and regulations.

The commissioner may promulgate reasonable rules and regulations necessary to implement this chapter.

(Acts 1997, No. 97-445, p. 753, §11.)

Section 8-32-12

Service contracts prior to January 1, 1998.

Service contracts entered into prior to January 1, 1998, and renewals thereof, may but are not required to comply with this chapter. Providers and other persons are not required to comply with this chapter until January 1, 1998. A provider or other person may, but is not required to, implement the requirements of this chapter prior to January 1, 1998. The failure of a provider or other person to comply with this chapter or otherwise to administer a service contract plan, in the manner required by this chapter prior to January 1, 1998, shall not be admissible in any court, arbitration, or alternative dispute resolution proceedings or otherwise used to prove that the action of any person or the service contract was unlawful or otherwise improper.

(Acts 1997, No. 97-445, p. 753, §13.)