

## CHAPTER 59B

### REGULATION OF SERVICE CONTRACTS

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#### 59B.01 SCOPE AND PURPOSE.

(a) The purpose of this chapter is to create a legal framework within which service contracts may be sold in this state.

(b) The following are exempt from this chapter:

(1) warranties;

(2) maintenance agreements;

(3) warranties, service contracts, or maintenance agreements offered by public utilities, as defined in section 216B.02, subdivision 4, or an entity or operating unit owned by or under common control with a public utility;

(4) service contracts sold or offered for sale to persons other than consumers;

(5) service contracts on tangible property where the tangible property for which the service contract is sold has a purchase price of \$250 or less, exclusive of sales tax;

(6) service contracts for home security equipment installed by a licensed technology systems contractor; and

(7) motor club membership contracts that typically provide roadside assistance services to motorists stranded for reasons that include, but are not limited to, mechanical breakdown or adverse road conditions.

(c) The types of agreements referred to in paragraph (b) are not subject to chapters 60A to 79A, except as otherwise specifically provided by law.

(d) Service contracts issued by motor vehicle manufacturers covering private passenger automobiles are only subject to sections 59B.03, subdivision 5, 59B.05, and 59B.07.

(e) All warranty service contracts are deemed to be made in Minnesota for the purpose of arbitration.

**History:** *1Sp2005 c 1 art 5 s 1; 2008 c 344 s 2; 2009 c 178 art 1 s 4*

#### 59B.02 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Administrator.** "Administrator" means the person who is responsible for the administration of the service contracts or the service contracts plan or who is responsible for any filings required by this chapter.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 4. **Consumer.** "Consumer" means a natural person who buys, other than for purposes of resale, any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes.

Subd. 5. **Maintenance agreement.** "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

Subd. 5a. **Motor vehicle manufacturer.** "Motor vehicle manufacturer" means a person that:

(1) manufactures or produces motor vehicles and sells motor vehicles under its own name or label;

(2) is a wholly owned subsidiary of the person that manufactures or produces motor vehicles;

(3) is a corporation which owns 100 percent of the person that manufactures or produces motor vehicles;

(4) does not manufacture or produce motor vehicles, but sells motor vehicles under the trade name or label of another person that manufactures or produces motor vehicles;

(5) manufactures or produces motor vehicles and sells the motor vehicles under the trade name or label of another person that manufactures or produces motor vehicles; or

(6) does not manufacture or produce motor vehicles but, pursuant to a written contract, licenses the use of its trade name or label to another person that manufactures or produces motor vehicles and that sells motor vehicles under the licensor's trade name or label.

Subd. 6. **Person.** "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.

Subd. 7. **Premium.** "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

Subd. 8. **Provider.** "Provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

Subd. 9. **Provider fee.** "Provider fee" means the consideration paid for a service contract.

Subd. 10. **Reimbursement insurance policy.** "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 service contracts issued or sold by the provider or, in the event of the provider's nonperformance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider.

Subd. 11. **Service contract.** "Service contract" means 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, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited

circumstances, including without limitation, towing, rental, emergency road service, and road hazard protection. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling.

Subd. 12. **Service contract holder or contract holder.** "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

Subd. 13. **Warranty.** "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services 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.

**History:** *1Sp2005 c 1 art 5 s 2; 2008 c 344 s 3,4*

### **59B.03 REQUIREMENTS FOR TRANSACTING BUSINESS.**

Subdivision 1. **Appointment of administrator.** 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.

Subd. 2. **Contract copies and receipts.** Service contracts must 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 service contract to the contract holder;
- (2) provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase; and
- (3) complied with this chapter.

Subd. 3. **Registration.** 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 \$750 annually.

Subd. 4. **Financial requirements.** In order to ensure the faithful performance of a provider's obligations to its contract holders, each provider is responsible for complying with the requirements of one of the following:

(1) insure all service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state, a risk retention group, as that term is defined in United States Code, title 15, section 3901(A)(4), as long as that risk retention group is registered pursuant to section 60E.03 or 60E.04 as applicable, and is in full compliance with the federal Liability Risk Retention Act of 1986, United States Code, title 15, section 3901, et al., or issued pursuant to sections 60A.195 to 60A.209, and either:

(i) the insurer or risk retention group shall, at the time the policy is filed with the commissioner, and continuously thereafter, maintain surplus as to policyholders and paid-in capital of at least \$15,000,000, and annually file audited financial statements with the commissioner; or

(ii) the commissioner may authorize an insurer or risk retention group that has surplus as to policyholders and paid-in capital of less than \$15,000,000 but at least equal to \$10,000,000 to issue the insurance required by this section if the insurer or risk retention group demonstrates to the satisfaction of the commissioner that the company maintains a ratio of direct written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than 3-to-1; or

(2)(i) maintain a funded reserve account for obligations under contracts issued and outstanding in this state. The reserves must not be less than 40 percent of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account is subject to examination and review by the commissioner; and

(ii) place in trust with the commissioner a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than \$25,000, consisting of one of the following:

(A) a surety bond issued by an authorized surety;

(B) securities of the type eligible for deposit by authorized insurers in this state;

(C) cash;

(D) a letter of credit issued by a qualified financial institution containing an evergreen clause which prevents the expiration of the letter without due notice from the issuer; or

(E) another form of security prescribed by rules of the commissioner; or

(3)(i) maintain, or its parent company maintain, a net worth or stockholders' equity of \$100,000,000; and

(ii) 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 audited financial statements, which shows a net worth of the provider or its parent company of at least \$100,000,000. If the provider's parent company's Form 10-K, Form 20-F, or audited 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.

**Subd. 5. Right of return.** Service contracts must require the provider to permit the service contract holder to return the service contract within 20 days of the date the service contract was mailed to the service contract holder or within ten days of delivery if the service contract is delivered to the service contract holder at the time of sale or within a longer time period permitted under the service contract. Upon return of the service contract to the provider within the applicable time period, if no claim has been made under the service contract before its return to the provider, the service contract is void and the provider shall refund to the service contract holder, or credit the account of the service contract holder, with the full purchase price of the service contract. The right to void the service contract provided in this paragraph is not transferable and applies only to the original service contract purchaser, and only if no claim has been made before its return to the provider. A ten percent penalty per month must be added to a refund that is not paid or credited within 45 days after return of the service contract to the provider.

**Subd. 6. Premium taxes.** (a) Provider fees collected on service contracts are not subject to premium taxes.

(b) Premiums for reimbursement insurance policies are subject to applicable taxes.

**Subd. 7. Licensing exemption.** Except for the registration requirements in subdivision 3, providers and related service contract sellers, administrators, and other persons marketing, selling, or offering to sell service contracts are exempt from any licensing requirements of this state.

Subd. 8. **Insurance exemption.** The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of service contracts by providers and related service contract sellers, administrators, and other persons are exempt from all other provisions of the insurance laws of this state, except as provided in section 72A.20, subdivision 38.

**History:** *1Sp2005 c 1 art 5 s 3*

#### **59B.04 REQUIRED DISCLOSURES; REIMBURSEMENT INSURANCE POLICY.**

Subdivision 1. **Right to payment or reimbursement.** Reimbursement insurance policies insuring service contracts issued, sold, or offered for sale in this state shall state that the insurer that issued the reimbursement insurance policy shall either reimburse or pay on behalf of the provider any covered sums the provider is legally obligated to pay or, in the event of the provider's nonperformance, shall provide the service which the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.

Subd. 2. **Right to apply to company.** In the event covered service is not provided by the service contract provider within 60 days of proof of loss by the service contract holder, the contract holder is entitled to apply directly to the reimbursement insurance company.

**History:** *1Sp2005 c 1 art 5 s 4*

#### **59B.05 REQUIRED DISCLOSURE; SERVICE CONTRACTS.**

Subdivision 1. **Readability and general disclosure.** Service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must be written, printed, or typed in clear, understandable language that is easy to read and must disclose the requirements set forth in this section, as applicable.

Subd. 2. **Identities of parties.** Service contracts must state the name and address of the provider, and must 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 the parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale.

Subd. 3. **Total purchase price and sales terms.** Service contracts must state the total purchase price and the terms under which the service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale with the service contract holder.

Subd. 4. **Deductibles.** Service contracts must state the existence of any deductible amount, if applicable.

Subd. 5. **Coverages, limitations, and exclusions.** No particular causes of loss or property are required to be covered, but service contracts must specify the merchandise and services to be provided and, with equal prominence, any limitations, exceptions, or exclusions including, but not limited to, any damage or breakdown not covered by the service contract. Service contracts may cover damage resulting from rust, corrosion, or damage caused by a noncovered part or system.

Subd. 6. **Restrictions on transferability.** Service contracts must state any restrictions governing the transferability of the service contract, if applicable.

Subd. 7. **Cancellation terms.** Service contracts must 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 the service contract holder. The provider of the

service contract shall mail a written notice to the contract holder at the last known address of the service contract holder contained in the records of the provider at least 15 days before cancellation by the provider. Five days' notice is required if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation by the service contract holder to the provider, or a substantial breach of duties by the service contract holder relating to the covered product or its use. The notice must state the effective date of the cancellation and the reason for the cancellation.

Subd. 8. **Duties of contract holder.** Service contracts must 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 the owner's manual.

Subd. 9. **Exclusions; consequential damages and preexisting conditions.** Service contracts may exclude coverage for consequential damages or preexisting conditions. These exclusions, if applicable, must be stated in the contract.

**History:** *1Sp2005 c 1 art 5 s 5; 2008 c 344 s 5*

#### **59B.06 ADDITIONAL REQUIRED DISCLOSURE; SERVICE CONTRACTS.**

Subdivision 1. **Insurance disclosure.** Service contracts insured under a reimbursement insurance policy pursuant to section 59B.03, subdivision 4, clause (1), must 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 must also state the name and address of the insurer.

Subd. 2. **Disclosure of no insurance.** Service contracts not insured under a reimbursement insurance policy pursuant to section 59B.03, subdivision 4, clause (1), must 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."

**History:** *1Sp2005 c 1 art 5 s 6*

#### **59B.07 PROHIBITED ACTS.**

Subdivision 1. **Deceptive names.** 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 does not apply to a company that was using any of the prohibited language in its name before January 1, 2006. 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."

Subd. 2. **False or misleading statements.** A provider or its representative shall not in its service contracts, literature, or otherwise make, permit, or cause to be made any false or misleading statement or omit any material statement that would be considered misleading if omitted.

Subd. 3. **Required purchase.** A person, such as a bank, savings 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.

**History:** *1Sp2005 c 1 art 5 s 7*

**59B.08 RECORD-KEEPING REQUIREMENTS.**

Subdivision 1. **Generally.** The provider shall keep accurate accounts, books, and records concerning transactions regulated under this chapter.

The provider's accounts, books, and records include the following:

- (1) copies of each type of service contracts sold;
- (2) 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;
- (3) a list of the locations where service contracts are marketed, sold, or offered for sale; and
- (4) written claims files which shall contain information regarding the services provided or claims payments for contracts that provide for payments or reimbursement, including at least the dates and description of claims related to the service contracts.

Subd. 2. **Retention.** (a) Except as provided in paragraph (b), the provider shall retain all records required to be maintained by this section for at least three years after the specified period of coverage has expired.

(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 contract holders in this state.

Subd. 3. **Medium.** The records required by 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 must be capable of duplication to legible hard copy at the request of the commissioner.

**History:** *1Sp2005 c 1 art 5 s 8*

**59B.09 TERMINATION OF REIMBURSEMENT INSURANCE POLICY.**

An insurer that issued a reimbursement insurance policy may not terminate the policy unless the insurer mails or delivers written notice of the termination to the commissioner at least 30 days before the effective date of termination. The termination of a reimbursement insurance policy does not reduce the issuer's responsibility for service contracts issued by providers before the date of the termination.

**History:** *1Sp2005 c 1 art 5 s 9*

**59B.10 OBLIGATION OF REIMBURSEMENT INSURANCE POLICY INSURERS.**

Insurers issuing reimbursement insurance to providers are deemed to have received the premiums for the insurance upon the payment of provider fees by consumers for service contracts issued by the insured providers.

Nothing in this chapter prevents or limits the right of an insurer that issued a reimbursement insurance policy to seek indemnification or subrogation against a provider if the issuer 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.

**History:** *1Sp2005 c 1 art 5 s 10*

**59B.11 SEVERABILITY PROVISION.**

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

**History:** *1Sp2005 c 1 art 5 s 11*