

**Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

ENGROSSED

This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction

LLS NO. 14-0741.01 Bart Miller x2173

HOUSE BILL 14-1199

HOUSE SPONSORSHIP

Williams, Szabo

SENATE SPONSORSHIP

Jahn and Balmer,

House Committees

Business, Labor, Economic, & Workforce Development

Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CHANGES TO THE REGULATION OF CONSUMER GOODS**
102 **SERVICE CONTRACTS, AND, IN CONNECTION THEREWITH,**
103 **MAKING AND REDUCING APPROPRIATIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill provides for changes to the regulation of consumer goods service contracts based on the model act of the national association of insurance commissioners. These contracts require the provider to perform repair, replacement, or maintenance on any consumer good covered by

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 4, 2014

the service contract. The bill requires that service contracts be in writing and disclose to the contract holder the terms and conditions of the contract, the covered consumer goods, the identity of the provider and any administrator appointed by the provider, procedures for cancellation of the contract by either the provider or the service contract holder, and whether the service contract is protected by reimbursement insurance coverage. Under this bill, a provider must provide the contract holder with a sample copy of the service contract prior to selling the contract, and must provide an actual copy of the contract to the contract holder within a reasonable time following sale of the contract.

The bill requires that a contract holder be allowed to void the contract within 20 days after the contract holder receives the contract unless the contract holder has already made a claim under the contract. Either a contract holder or a provider may cancel a contract at any time, in which case the provider must refund to the contract holder a pro rata share of the consideration paid to the provider minus a 10% administrative fee.

In order for a service contract provider to sell service contracts, the provider must demonstrate an ability to faithfully provide the services covered under the contract. The provider can do this by either obtaining reimbursement insurance coverage, maintaining a funded reserve account and placing a financial security deposit in trust with the commissioner of insurance, or demonstrating that the provider's company or parent company has a net worth of at least \$100,000,000.

A service contract provider must also adhere to record-keeping requirements, and must maintain those records for a period of at least one year after the specified coverage has expired.

The bill specifies that service contracts are not insurance, and service contract providers, as well as their agents and employees, are not required to be licensed under any other provisions of the state insurance laws. Service contract providers, with some exceptions, are not allowed to use terms descriptive of the insurance industry in their name. Service contract providers are also prohibited from making false and misleading statements. Lending institutions, sellers, and manufacturers are further prohibited from requiring a service contract as a condition of a loan or for the sale of any property.

The commissioner may discipline noncompliance with the bill through an administrative hearing and may seek a judicial remedy for enforcement. Any civil penalties assessed by the commissioner are limited to \$500 per violation, up to \$10,000 for all violations of a similar nature.

1 *Be it enacted by the General Assembly of the State of Colorado:*

1 PROPERTY THAT IS DISTRIBUTED IN COMMERCE AND IS NORMALLY USED
2 FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, INCLUDING ANY
3 TANGIBLE PERSONAL PROPERTY INTENDED TO BE ATTACHED TO OR
4 INSTALLED IN ANY REAL PROPERTY WITHOUT REGARD TO WHETHER IT IS
5 SO ATTACHED OR INSTALLED.

6 (5) "MAINTENANCE AGREEMENT" MEANS A CONTRACT OF LIMITED
7 DURATION THAT PROVIDES FOR SCHEDULED MAINTENANCE ONLY AND
8 DOES NOT INCLUDE REPAIR OR REPLACEMENT.

9 (6) "NONORIGINAL MANUFACTURER'S PARTS" MEANS
10 REPLACEMENT PARTS NOT MADE FOR OR BY THE ORIGINAL
11 MANUFACTURER OF THE PROPERTY.

12 (7) "PERSON" HAS THE SAME MEANING AS SET FORTH IN SECTION
13 2-4-401, C.R.S.

14 (8) "PREMIUM" MEANS THE CONSIDERATION PAID TO AN INSURER
15 FOR A REIMBURSEMENT INSURANCE POLICY.

16 (9) "PROVIDER" MEANS A PERSON WHO IS CONTRACTUALLY
17 OBLIGATED TO THE SERVICE CONTRACT HOLDER UNDER THE TERMS OF THE
18 SERVICE CONTRACT.

19 (10) "PROVIDER FEE" MEANS THE CONSIDERATION PAID FOR A
20 SERVICE CONTRACT.

21 (11) "REIMBURSEMENT INSURANCE COMPANY" MEANS AN INSURER
22 THAT ISSUES ANY REIMBURSEMENT INSURANCE POLICY.

23 (12) "REIMBURSEMENT INSURANCE POLICY" MEANS A POLICY OF
24 INSURANCE ISSUED TO A PROVIDER TO EITHER PROVIDE REIMBURSEMENT
25 TO THE PROVIDER UNDER THE TERMS OF THE INSURED SERVICE CONTRACTS
26 ISSUED OR SOLD BY THE PROVIDER OR, IN THE EVENT OF THE PROVIDER'S
27 NONPERFORMANCE, TO PAY ON BEHALF OF THE PROVIDER ALL COVERED

1 CONTRACTUAL OBLIGATIONS INCURRED BY THE PROVIDER UNDER THE
2 TERMS OF THE INSURED SERVICE CONTRACTS ISSUED OR SOLD BY THE
3 PROVIDER.

4 (13) "RELATED SERVICE CONTRACT SELLER" MEANS ANY
5 EMPLOYEE OF THE PROVIDER WHO IS RESPONSIBLE FOR MARKETING,
6 SELLING, OR OFFERING TO SELL SERVICE CONTRACTS ON THE PROVIDER'S
7 BEHALF.

8 (14) "SERVICE CONTRACT" MEANS A CONTRACT OR AGREEMENT OF
9 A SPECIFIC DURATION, FOR A SEPARATELY STATED CONSIDERATION, TO
10 PERFORM THE REPAIR, REPLACEMENT, OR MAINTENANCE OF A CONSUMER
11 PRODUCT OR INDEMNIFY THE CONSUMER FOR THE REPAIR, REPLACEMENT,
12 OR MAINTENANCE OF A CONSUMER PRODUCT FOR THE OPERATIONAL OR
13 STRUCTURAL FAILURE OF THE CONSUMER PRODUCT DUE TO A DEFECT IN
14 MATERIALS, WORKMANSHIP, ACCIDENTAL DAMAGE FROM HANDLING, OR
15 NORMAL WEAR AND TEAR, WITH OR WITHOUT ADDITIONAL PROVISIONS FOR
16 INCIDENTAL PAYMENT OF INDEMNITY UNDER LIMITED CIRCUMSTANCES.
17 SERVICE CONTRACTS MAY PROVIDE FOR THE REPAIR, REPLACEMENT, OR
18 MAINTENANCE OF A CONSUMER PRODUCT FOR DAMAGE RESULTING FROM
19 POWER SURGES OR INTERRUPTION. SERVICE CONTRACTS ARE NOT
20 INSURANCE IN THIS STATE OR OTHERWISE REGULATED UNDER THIS TITLE.

21 (15) "SERVICE CONTRACT HOLDER" OR "CONTRACT HOLDER"
22 MEANS A PERSON WHO IS THE PURCHASER OR HOLDER OF A SERVICE
23 CONTRACT.

24 (16) "WARRANTY" MEANS A WARRANTY THAT IS MADE SOLELY BY
25 THE MANUFACTURER, IMPORTER, OR SELLER OF TANGIBLE PERSONAL
26 PROPERTY OR SERVICES WITHOUT CONSIDERATION, THAT IS NOT
27 NEGOTIATED OR SEPARATED FROM THE SALE OF THE PROPERTY AND IS

1 INCIDENTAL TO THE SALE OF THE PRODUCT, AND THAT GUARANTEES
2 EITHER:

3 (a) INDEMNITY FOR DEFECTIVE PARTS OR FOR DAMAGE RESULTING
4 FROM A MECHANICAL OR ELECTRICAL BREAKDOWN, INCLUDING LABOR; OR

5 (b) OTHER REMEDIAL MEASURES, SUCH AS REPAIR OR
6 REPLACEMENT OF THE PROPERTY OR REPETITION OF SERVICES.

7 **10-4-1602. Exemptions.** (1) THE FOLLOWING ITEMS ARE EXEMPT
8 FROM THIS PART 16:

9 (a) WARRANTIES;

10 (b) MAINTENANCE AGREEMENTS;

11 (c) SERVICE CONTRACTS OFFERED BY PUBLIC UTILITIES ON THEIR
12 TRANSMISSION DEVICES TO THE EXTENT THEY ARE REGULATED BY THE
13 PUBLIC UTILITIES COMMISSION;

14 (d) SERVICE CONTRACTS SOLD OR OFFERED FOR SALE TO PERSONS
15 OTHER THAN CONSUMERS;

16 (e) SERVICE CONTRACTS ON TANGIBLE PROPERTY WHERE THE
17 TANGIBLE PROPERTY FOR WHICH THE SERVICE CONTRACT IS SOLD HAS A
18 PURCHASE PRICE OF ONE HUNDRED DOLLARS OR LESS, EXCLUSIVE OF SALES
19 TAX;

20 (f) PREOWNED HOME WARRANTY SERVICE CONTRACTS GOVERNED
21 BY PART 6 OF ARTICLE 61 OF TITLE 12, C.R.S.; AND

22 (g) MOTOR VEHICLE SERVICE CONTRACTS GOVERNED BY ARTICLE
23 11 OF TITLE 42, C.R.S.

24 **10-4-1603. Requirements for sale of consumer goods service**
25 **contracts - definitions.** (1) A PROVIDER MAY APPOINT AN
26 ADMINISTRATOR OR OTHER DESIGNEE TO BE RESPONSIBLE FOR ANY OR ALL
27 OF THE ADMINISTRATION OF SERVICE CONTRACTS ISSUED BY THE

1 PROVIDER AND FOR COMPLIANCE WITH THIS PART 16.

2 (2) A PROVIDER SHALL NOT ISSUE, SELL, OR OFFER FOR SALE A
3 SERVICE CONTRACT UNLESS THE PROVIDER HAS:

4 (a) PROVIDED A RECEIPT FOR, OR OTHER WRITTEN EVIDENCE OF,
5 THE PURCHASE OF THE SERVICE CONTRACT TO THE CONTRACT HOLDER;
6 AND

7 (b) PROVIDED A COPY OF THE SERVICE CONTRACT TO THE SERVICE
8 CONTRACT HOLDER BEFORE OR WITHIN A REASONABLE PERIOD OF TIME
9 AFTER THE DATE OF PURCHASE.

10 (3) UPON A CONSUMER'S REQUEST, A PROVIDER SHALL PROVIDE
11 THE CONSUMER WITH A COMPLETE SAMPLE COPY OF THE SERVICE
12 CONTRACT TERMS AND CONDITIONS OR DIRECT THE CONSUMER TO A WEB
13 SITE CONTAINING A COMPLETE SAMPLE OF THE TERMS AND CONDITIONS OF
14 THE SERVICE CONTRACT.

15 (4) (a) A PROVIDER SHALL ASSURE FAITHFUL PERFORMANCE TO ITS
16 SERVICE CONTRACT HOLDERS BY COMPLYING WITH ONE OR MORE OF THE
17 FOLLOWING:

18 (I) INSURING ALL SERVICE CONTRACTS UNDER A REIMBURSEMENT
19 INSURANCE POLICY ISSUED BY A LICENSED INSURER; OR

20 

21 (II) MAINTAINING, OR TOGETHER WITH ITS PARENT COMPANY
22 MAINTAINING, A NET WORTH OR STOCKHOLDERS' EQUITY OF AT LEAST ONE
23 HUNDRED MILLION DOLLARS.

24 

25 

26 (b) FOR THE PURPOSES OF SUBPARAGRAPH (II) OF PARAGRAPH (a)
27 OF THIS SUBSECTION (4), A PROVIDER SHALL:

1 (I) UPON THE COMMISSIONER'S REQUEST, PROVIDE A COPY OF THE
2 PROVIDER'S OR PROVIDER'S PARENT COMPANY'S MOST RECENT FORM 10-K
3 OR FORM 20-F FILED WITH THE FEDERAL SECURITIES AND EXCHANGE
4 COMMISSION; OR

5 (II) IF THE COMPANY DOES NOT FILE WITH THE FEDERAL
6 SECURITIES AND EXCHANGE COMMISSION, PROVIDE, UPON THE
7 COMMISSIONER'S REQUEST, A COPY OF THE COMPANY'S AUDITED
8 FINANCIAL STATEMENTS SHOWING A NET WORTH OF THE PROVIDER OR ITS
9 PARENT COMPANY OF AT LEAST ONE HUNDRED MILLION DOLLARS; OR

10 (III) IF THE PROVIDER'S PARENT COMPANY'S FORM 10-K, FORM
11 20-F, OR FINANCIAL STATEMENTS ARE FILED TO MEET THE REQUIREMENTS
12 OF THIS SUBSECTION (4), AGREE TO GUARANTEE THE OBLIGATIONS OF THE
13 PROVIDER RELATING TO SERVICE CONTRACTS SOLD BY THE PROVIDER IN
14 THIS STATE.

15 (c) EXCEPT FOR THE REQUIREMENTS SET FORTH IN THIS
16 SUBSECTION (4), THE COMMISSIONER SHALL REQUIRE NO OTHER FINANCIAL
17 SECURITY REQUIREMENTS FOR SERVICE CONTRACT PROVIDERS.

18 (5) (a) A PROVIDER MUST PERMIT THE SERVICE CONTRACT HOLDER
19 TO VOID THE SERVICE CONTRACT BY RETURNING IT WITHIN TWENTY DAYS
20 AFTER THE DATE THE SERVICE CONTRACT IS MAILED TO THE SERVICE
21 CONTRACT HOLDER OR WITHIN TEN DAYS AFTER DELIVERY IF THE SERVICE
22 CONTRACT IS DELIVERED TO THE SERVICE CONTRACT HOLDER AT THE TIME
23 OF SALE. THE SERVICE CONTRACT IS VOID WHEN THE SERVICE CONTRACT
24 HOLDER RETURNS THE SERVICE CONTRACT TO THE PROVIDER, AND THE
25 PROVIDER SHALL REFUND TO THE SERVICE CONTRACT HOLDER, OR CREDIT
26 THE ACCOUNT OF THE CONTRACT HOLDER, THE FULL PURCHASE PRICE OF
27 THE SERVICE CONTRACT.

1 (b) A SERVICE CONTRACT MAY ESTABLISH A RETURN PERIOD
2 GREATER THAN TWENTY DAYS.

3 (c) THE RIGHT TO VOID THE SERVICE CONTRACT IS NOT
4 TRANSFERABLE AND APPLIES ONLY TO THE ORIGINAL SERVICE CONTRACT
5 PURCHASER.

6 (d) THE RIGHT TO VOID THE SERVICE CONTRACT DOES NOT APPLY
7 IF A CLAIM HAS BEEN MADE PRIOR TO THE RETURN OF THE SERVICE
8 CONTRACT TO THE PROVIDER.

9 (e) IF A REFUND OF A SERVICE CONTRACT PROVIDER FEE IS NOT
10 PAID OR CREDITED WITHIN FORTY-FIVE DAYS AFTER THE RETURN OF THE
11 SERVICE CONTRACT UNDER THIS SUBSECTION (5), THEN A TEN PERCENT
12 PENALTY PER MONTH SHALL BE ADDED TO THE REFUND.

13 (6) (a) AFTER THE TIME SPECIFIED IN SUBSECTION (5) OF THIS
14 SECTION, OR IF A CLAIM HAS BEEN MADE WITHIN THAT TIME, A SERVICE
15 CONTRACT HOLDER MAY CANCEL THE SERVICE CONTRACT. UPON
16 CANCELLATION, THE PROVIDER SHALL REFUND TO THE CONTRACT HOLDER
17 ONE HUNDRED PERCENT OF THE UNEARNED PRO RATA PROVIDER FEE, LESS
18 ANY CLAIMS MADE.

19 (b) A PROVIDER MAY CHARGE A REASONABLE ADMINISTRATIVE
20 FEE, NOT TO EXCEED TEN PERCENT OF THE GROSS PROVIDER FEE PAID BY
21 THE SERVICE CONTRACT HOLDER.

22 (7) (a) THE PROVIDER MAY CANCEL A SERVICE CONTRACT UPON
23 MAILING, AT LEAST FIVE DAYS PRIOR TO THE DATE OF CANCELLATION, A
24 WRITTEN NOTICE TO THE SERVICE CONTRACT HOLDER AT THE CONTRACT
25 HOLDER'S LAST-KNOWN ADDRESS CONTAINED IN THE PROVIDER'S
26 RECORDS. THE NOTICE MUST STATE THE EFFECTIVE DATE OF THE
27 CANCELLATION AND THE REASON FOR THE CANCELLATION.

1 (b) PRIOR NOTICE IS NOT REQUIRED IF THE REASON FOR
2 CANCELLATION IS NONPAYMENT OF THE PROVIDER FEE, A MATERIAL
3 MISREPRESENTATION BY THE SERVICE CONTRACT HOLDER TO THE
4 PROVIDER, OR A SUBSTANTIAL BREACH BY THE SERVICE CONTRACT
5 HOLDER RELATING TO THE COVERED PRODUCT OR ITS USE.

6 (c) ■ IF THE PROVIDER CANCELS A SERVICE CONTRACT FOR A
7 REASON OTHER THAN NONPAYMENT OF THE PROVIDER FEE, THE PROVIDER
8 SHALL REFUND TO THE SERVICE CONTRACT HOLDER ONE HUNDRED
9 PERCENT OF THE UNEARNED PRO RATA PROVIDER FEE, LESS ANY CLAIMS
10 PAID.

11 ■
12 (8) (a) PROVIDER FEES COLLECTED ON SERVICE CONTRACTS ARE
13 NOT SUBJECT TO PREMIUM TAXES.

14 (b) PREMIUMS FOR REIMBURSEMENT INSURANCE POLICIES ARE
15 SUBJECT TO APPLICABLE TAXES.

16 (9) (a) PROVIDERS, RELATED SERVICE CONTRACT SELLERS, AND
17 ADMINISTRATORS ARE EXEMPT FROM ANY LICENSING REQUIREMENTS OF
18 THIS STATE SET FORTH IN THIS TITLE.

19 (b) (I) EACH PROVIDER OF SERVICE CONTRACTS SOLD IN
20 COLORADO SHALL REGISTER WITH THE COMMISSIONER. THE REGISTRATION
21 MUST CONTAIN THE PROVIDER'S NAME, FULL CORPORATE ADDRESS,
22 TELEPHONE NUMBER, AND THE NAME OF AN INDIVIDUAL CONTACT PERSON.
23 IN ADDITION, THE PROVIDER SHALL DESIGNATE AN AGENT FOR SERVICE OF
24 PROCESS IN COLORADO. THE PROVIDER SHALL GIVE THE COMMISSIONER
25 WRITTEN NOTICE OF ANY CHANGE IN THIS INFORMATION WITHIN THIRTY
26 DAYS AFTER THE CHANGE.

27 (II) UPON INITIAL REGISTRATION, AND ANNUALLY THEREAFTER,

1 EACH PROVIDER THAT REGISTERS PURSUANT TO THIS PARAGRAPH (b)
2 SHALL PAY TO THE COMMISSIONER A FEE, SET BY THE COMMISSIONER, IN
3 AN AMOUNT SUFFICIENT TO DEFRAY THE COMMISSIONER'S DIRECT AND
4 INDIRECT COSTS OF ADMINISTERING THIS PART 16 AND SUBJECT TO
5 PERIODIC ADJUSTMENT IN ACCORDANCE WITH SECTION 24-75-402, C.R.S.

6 (10) WITH THE EXCEPTION OF THE REQUIREMENTS SET FORTH IN
7 THIS PART 16, THE MARKETING, SALE, OFFERING FOR SALE, ISSUANCE,
8 MAKING, PROPOSING TO MAKE, AND ADMINISTRATION OF SERVICE
9 CONTRACTS BY PROVIDERS, RELATED SERVICE CONTRACT SELLERS, AND
10 ADMINISTRATORS ARE EXEMPT FROM THE REQUIREMENTS OF THIS TITLE.

11 **10-4-1604. Obligations of reimbursement insurance**
12 **companies.** (1) INSURERS ISSUING REIMBURSEMENT INSURANCE POLICIES
13 TO PROVIDERS ARE DEEMED TO HAVE RECEIVED THE PREMIUMS FOR THIS
14 INSURANCE UPON THE PAYMENT OF PROVIDER FEES BY CONSUMERS FOR
15 SERVICE CONTRACTS ISSUED BY THE INSURED PROVIDERS.

16 (2) IF THE PROVIDER DOES NOT PROVIDE COVERED SERVICE WITHIN
17 SIXTY DAYS AFTER PROOF OF LOSS BY THE SERVICE CONTRACT HOLDER,
18 THE CONTRACT HOLDER MAY APPLY DIRECTLY TO THE REIMBURSEMENT
19 INSURANCE COMPANY.

20 (3) THIS PART 16 DOES NOT PREVENT OR LIMIT THE RIGHT OF A
21 REIMBURSEMENT INSURANCE COMPANY THAT ISSUED A REIMBURSEMENT
22 INSURANCE POLICY TO SEEK INDEMNIFICATION OR SUBROGATION AGAINST
23 A PROVIDER IF THE REIMBURSEMENT INSURANCE COMPANY PAYS OR IS
24 OBLIGATED TO PAY THE SERVICE CONTRACT HOLDER SUMS THAT THE
25 PROVIDER WAS OBLIGATED TO PAY PURSUANT TO THE PROVISIONS OF THE
26 SERVICE CONTRACT.

27 (4) AN INSURER THAT ISSUED A REIMBURSEMENT INSURANCE

1 POLICY TO A PROVIDER SHALL NOT TERMINATE THE POLICY UNTIL A
2 NOTICE OF TERMINATION HAS BEEN MAILED OR DELIVERED TO THE
3 INSURED PROVIDER AS REQUIRED BY APPLICABLE LAW WITH A COPY OF THE
4 NOTICE PROVIDED TO THE COMMISSIONER. THE TERMINATION OF A
5 REIMBURSEMENT INSURANCE POLICY DOES NOT REDUCE THE ISSUER'S
6 RESPONSIBILITY FOR SERVICE CONTRACTS ISSUED BY PROVIDERS PRIOR TO
7 THE DATE OF THE TERMINATION.

8 **10-4-1605. Required disclosures - reimbursement insurance**
9 **policy.** (1) REIMBURSEMENT INSURANCE POLICIES INSURING SERVICE
10 CONTRACTS ISSUED, SOLD, OR OFFERED FOR SALE MUST STATE THAT THE
11 REIMBURSEMENT INSURANCE COMPANY SHALL EITHER:

12 (a) REIMBURSE OR PAY ON BEHALF OF THE PROVIDER ANY
13 COVERED SUMS THE PROVIDER IS OBLIGATED TO PAY UNDER THE SERVICE
14 CONTRACT; OR

15 (b) IN THE EVENT OF THE PROVIDER'S NONPERFORMANCE, PROVIDE
16 THE SERVICE THAT THE PROVIDER MUST PERFORM ACCORDING TO THE
17 TERMS AND CONDITIONS OF THE SERVICE CONTRACT.

18 **10-4-1606. Required disclosures - service contracts.**
19 (1) SERVICE CONTRACTS MARKETED, SOLD, OFFERED FOR SALE, ISSUED,
20 MADE, PROPOSED TO BE MADE, OR ADMINISTERED IN THIS STATE MUST BE
21 WRITTEN, PRINTED, OR TYPED IN CLEAR, UNDERSTANDABLE LANGUAGE
22 THAT IS EASY TO READ.

23 (2) SERVICE CONTRACTS INSURED UNDER A REIMBURSEMENT
24 INSURANCE POLICY MUST CONTAIN A STATEMENT IN SUBSTANTIALLY THE
25 FOLLOWING FORM: "OBLIGATIONS OF THE PROVIDER UNDER THIS SERVICE
26 CONTRACT ARE INSURED UNDER A SERVICE CONTRACT REIMBURSEMENT
27 INSURANCE POLICY." THE SERVICE CONTRACT MUST ALSO STATE THE

1 NAME AND ADDRESS OF THE REIMBURSEMENT INSURANCE COMPANY AND
2 DISCLOSE TO THE CONSUMER THAT IF THE SERVICE CONTRACT PROVIDER
3 DOES NOT PROVIDE A COVERED SERVICE WITHIN SIXTY DAYS AFTER PROOF
4 OF LOSS BY THE SERVICE CONTRACT HOLDER, THE CONTRACT HOLDER MAY
5 APPLY DIRECTLY TO THE REIMBURSEMENT INSURANCE COMPANY.

6 (3) SERVICE CONTRACTS NOT INSURED UNDER A REIMBURSEMENT
7 INSURANCE POLICY MUST CONTAIN A STATEMENT IN SUBSTANTIALLY THE
8 FOLLOWING FORM: "OBLIGATIONS OF THE PROVIDER UNDER THIS SERVICE
9 CONTRACT ARE BACKED BY THE FULL FAITH AND CREDIT OF THE
10 PROVIDER."

11 (4) (a) SERVICE CONTRACTS MUST IDENTIFY THE FOLLOWING:

12 (I) THE NAME AND ADDRESS OF THE PROVIDER;

13 (II) THE IDENTITY OF ANY ADMINISTRATOR, IF DIFFERENT FROM
14 THE PROVIDER;

15 (III) THE SERVICE CONTRACT SELLER; AND

16 (IV) THE SERVICE CONTRACT HOLDER TO THE EXTENT THAT THE
17 NAME OF THE SERVICE CONTRACT HOLDER HAS BEEN FURNISHED BY THE
18 SERVICE CONTRACT HOLDER.

19 (b) THE IDENTITIES OF THE PARTIES IN THIS SUBSECTION (4) ARE
20 NOT REQUIRED TO BE PREPRINTED ON THE SERVICE CONTRACT AND MAY
21 BE ADDED TO THE SERVICE CONTRACT AT THE TIME OF SALE.

22 (5) SERVICE CONTRACTS MUST STATE THE TOTAL PURCHASE PRICE
23 AND THE TERMS UNDER WHICH THE SERVICE CONTRACT IS SOLD. THE
24 PURCHASE PRICE IS NOT REQUIRED TO BE PREPRINTED ON THE SERVICE
25 CONTRACT AND MAY BE NEGOTIATED AT THE TIME OF SALE WITH THE
26 SERVICE CONTRACT HOLDER.

27 (6) IN ADDITION TO THE OTHER REQUIREMENTS OF THIS SECTION,

1 A SERVICE CONTRACT MUST:

2 (a) IDENTIFY THE CONSUMER GOODS COVERED BY THE CONTRACT;

3 (b) STATE THE EXISTENCE OF ANY DEDUCTIBLE AMOUNT, IF
4 APPLICABLE;

5 (c) SPECIFY THE MERCHANDISE AND SERVICES TO BE PROVIDED
6 AND ANY LIMITATIONS, EXCEPTIONS, OR EXCLUSIONS;

7 (d) STATE WHETHER THE USE OF A NONORIGINAL
8 MANUFACTURER'S PART IS ALLOWED;

9 (e) STATE ANY RESTRICTIONS GOVERNING THE TRANSFERABILITY
10 OF THE SERVICE CONTRACT, IF APPLICABLE;

11 (f) STATE THE TERMS, RESTRICTIONS, OR CONDITIONS GOVERNING
12 CANCELLATION OF THE SERVICE CONTRACT, EITHER BY THE PROVIDER OR
13 THE SERVICE CONTRACT HOLDER, PRIOR TO THE TERMINATION OR
14 EXPIRATION DATE OF THE SERVICE CONTRACT;

15 (g) SET FORTH ALL OF THE OBLIGATIONS AND DUTIES OF THE
16 SERVICE CONTRACT HOLDER, SUCH AS THE DUTY TO PROTECT AGAINST
17 ANY FURTHER DAMAGE AND ANY REQUIREMENT TO FOLLOW THE OWNER'S
18 MANUAL; AND

19 (h) STATE WHETHER OR NOT THE SERVICE CONTRACT PROVIDES
20 FOR OR EXCLUDES CONSEQUENTIAL DAMAGES OR PREEXISTING
21 CONDITIONS, IF APPLICABLE.

22 **10-4-1607. Prohibited acts.** (1) (a) A PROVIDER SHALL NOT USE
23 IN ITS NAME:

24 (I) THE WORDS "INSURANCE", "CASUALTY", "SURETY", "MUTUAL",
25 OR ANY OTHER WORDS DESCRIPTIVE OF THE INSURANCE, CASUALTY, OR
26 SURETY BUSINESS; OR

27 (II) A NAME DECEPTIVELY SIMILAR TO THE NAME OR DESCRIPTION

1 OF ANY INSURANCE OR SURETY CORPORATION, OR TO THE NAME OF ANY
2 OTHER PROVIDER. THE WORD "GUARANTY" OR SIMILAR WORD MAY BE
3 USED BY A PROVIDER.

4 (b) (I) THIS SECTION DOES NOT APPLY TO A PROVIDER THAT WAS
5 USING ANY OF THE PROHIBITED LANGUAGE IN ITS NAME PRIOR TO THE
6 EFFECTIVE DATE OF THIS PART 16.

7 (II) A PROVIDER USING THE PROHIBITED LANGUAGE IN ITS NAME
8 SHALL INCLUDE IN ITS SERVICE CONTRACTS A STATEMENT IN
9 SUBSTANTIALLY THE FOLLOWING FORM: "THIS AGREEMENT IS NOT AN
10 INSURANCE CONTRACT."

11 (2) A PROVIDER OR ITS REPRESENTATIVE SHALL NOT IN ITS SERVICE
12 CONTRACTS OR LITERATURE MAKE, PERMIT, OR CAUSE TO BE MADE ANY
13 FALSE OR MISLEADING STATEMENT, OR DELIBERATELY OMIT ANY
14 MATERIAL STATEMENT THAT WOULD BE CONSIDERED MISLEADING IF
15 OMITTED.

16 (3) A MANUFACTURER OR SELLER OF ANY PRODUCT SHALL NOT
17 REQUIRE THE PURCHASE OF A SERVICE CONTRACT AS A CONDITION FOR THE
18 SALE OF ANY PROPERTY.

19 (4) NOTHING IN THIS SECTION LIMITS OR PROHIBITS A PERSON FROM
20 PURSUING ANY CLAIM, CAUSE OF ACTION, OR RIGHT AVAILABLE UNDER
21 COLORADO LAW.

22 **10-4-1608. Required record-keeping.** (1) A PROVIDER SHALL
23 KEEP ACCURATE ACCOUNTS, BOOKS, AND RECORDS CONCERNING
24 TRANSACTIONS REGULATED UNDER THIS PART 16.

25 (2) A PROVIDER'S ACCOUNTS, BOOKS, AND RECORDS MUST
26 INCLUDE:

27 (a) COPIES OF EACH TYPE OF SERVICE CONTRACT SOLD;

1 (b) THE NAME AND ADDRESS OF EACH SERVICE CONTRACT HOLDER
2 TO THE EXTENT THAT THE NAME AND ADDRESS HAVE BEEN FURNISHED BY
3 THE SERVICE CONTRACT HOLDER;

4 (c) A LIST OF THE LOCATIONS WHERE SERVICE CONTRACTS ARE
5 MARKETED, SOLD, OR OFFERED FOR SALE; AND

6 (d) WRITTEN CLAIMS FILES CONTAINING AT LEAST THE DATES AND
7 DESCRIPTIONS OF ALL CLAIMS RELATED TO THE SERVICE CONTRACTS.

8 (3) EXCEPT AS SET FORTH IN SUBSECTION (5) OF THIS SECTION, A
9 PROVIDER SHALL RETAIN ALL RECORDS REQUIRED UNDER THIS SECTION
10 FOR AT LEAST ONE YEAR AFTER THE SPECIFIED PERIOD OF COVERAGE HAS
11 EXPIRED.

12 (4) THE RECORDS REQUIRED UNDER THIS SECTION MAY BE, BUT
13 ARE NOT REQUIRED TO BE, MAINTAINED IN ELECTRONIC FORM OR OTHER
14 RECORD-KEEPING TECHNOLOGY. IF THE RECORDS ARE MAINTAINED IN
15 OTHER THAN HARD COPY, THE RECORDS MUST BE CAPABLE OF
16 DUPLICATION TO LEGIBLE HARD COPY AT THE REQUEST OF THE
17 COMMISSIONER.

18 (5) A PROVIDER DISCONTINUING BUSINESS IN THIS STATE SHALL
19 MAINTAIN ITS RECORDS UNTIL IT HAS DISCHARGED ALL OBLIGATIONS TO
20 CONTRACT HOLDERS IN THIS STATE.

21 **10-4-1609. Enforcement provisions - rules.** (1) (a) THE
22 COMMISSIONER MAY CONDUCT MARKET EXAMINATIONS OR FINANCIAL
23 EXAMINATIONS OF PROVIDERS UNDER SECTIONS 10-1-201 TO 10-1-205 TO
24 ENFORCE THIS PART 16.

25 (b) UPON THE COMMISSIONER'S REQUEST, THE PROVIDER SHALL
26 MAKE AVAILABLE TO THE COMMISSIONER ALL ACCOUNTS, BOOKS, AND
27 RECORDS CONCERNING SERVICE CONTRACTS SOLD BY THE PROVIDER THAT

1 ARE NECESSARY TO ENABLE THE COMMISSIONER TO REASONABLY
2 DETERMINE THE PROVIDER'S COMPLIANCE OR NONCOMPLIANCE WITH THIS
3 PART 16 AND THE COMMISSIONER'S RULES ADOPT IN FURTHERANCE OF THIS
4 PART 16.

5 (2) THE PROVIDER EXAMINED IN ANY FINANCIAL OR MARKET
6 CONDUCT EXAMINATION SHALL BEAR THE COST OF THE EXAMINATION IN
7 ACCORDANCE WITH SECTION 10-1-205 (4).

8 (3) (a) IF A PROVIDER VIOLATES THIS PART 16, THE COMMISSIONER
9 MAY TAKE THE FOLLOWING DISCIPLINARY ACTIONS:

10 (I) ISSUE AN ORDER DIRECTING THE PROVIDER TO CEASE AND
11 DESIST FROM COMMITTING VIOLATIONS OF THIS PART 16;

12 (II) ISSUE AN ORDER PROHIBITING A SERVICE CONTRACT PROVIDER
13 FROM SELLING OR OFFERING FOR SALE SERVICE CONTRACTS IN VIOLATION
14 OF THIS PART 16;

15 (III) ISSUE AN ORDER IMPOSING A CIVIL PENALTY ON THE
16 PROVIDER; OR

17 (IV) ANY COMBINATION OF THE ACTIONS SET FORTH IN
18 SUBPARAGRAPHS (I) TO (III) OF THIS PARAGRAPH (a).

19 (b) ANY CIVIL PENALTY ASSESSED BY THE COMMISSIONER IS
20 LIMITED TO NOT MORE THAN FIVE HUNDRED DOLLARS PER VIOLATION AND
21 NOT MORE THAN TEN THOUSAND DOLLARS IN THE AGGREGATE FOR ALL
22 VIOLATIONS OF A SIMILAR NATURE. FOR PURPOSES OF THIS PARAGRAPH
23 (b), VIOLATIONS ARE OF A SIMILAR NATURE IF THE VIOLATIONS CONSIST OF
24 THE SAME OR SIMILAR COURSE OF CONDUCT, ACTION, OR PRACTICE,
25 REGARDLESS OF THE NUMBER OF TIMES THE NONCOMPLIANT ACT,
26 CONDUCT, OR PRACTICE OCCURRED.

27 (c) A PERSON AGGRIEVED BY ANY ACTION TAKEN OR PENALTY

1 ASSESSED UNDER THIS SUBSECTION (3) MAY REQUEST A REVIEW IN
2 ACCORDANCE WITH SECTION 10-1-205 (4).

3 (4) (a) THE COMMISSIONER MAY BRING AN ACTION IN ANY COURT
4 OF COMPETENT JURISDICTION FOR AN INJUNCTION OR OTHER APPROPRIATE
5 RELIEF TO ADDRESS THREATENED OR EXISTING VIOLATIONS OF THIS PART
6 16.

7 (b) AN ACTION FILED UNDER THIS SUBSECTION (4) MAY ALSO SEEK
8 RESTITUTION ON BEHALF OF PERSONS AGGRIEVED BY A VIOLATION OF THIS
9 PART 16 OR ORDERS OR RULES OF THE COMMISSIONER.

10 (5) THE COMMISSIONER MAY PROMULGATE RULES TO IMPLEMENT
11 THE PROVISIONS OF THIS PART 16.

12 **SECTION 3.** In Colorado Revised Statutes, 42-11-101, **amend**
13 (2) as follows:

14 **42-11-101. Definitions.** As used in this article, unless the context
15 otherwise requires:

16 (2) "Motor vehicle" means any vehicle subject to registration
17 under section 42-1-102 (58) OR ANY POWERSPORTS VEHICLE AS DEFINED
18 IN SECTION 12-6-502 (10), C.R.S.

19 **SECTION 4. Appropriation - adjustments to 2014 long bill.**

20 (1) In addition to any other appropriation, there is hereby appropriated,
21 out of any moneys in the division of insurance cash fund created in
22 section 10-1-103 (3), Colorado Revised Statutes, not otherwise
23 appropriated, to the department of regulatory agencies, for the fiscal year
24 beginning July 1, 2014, the sum of \$13,560 and 0.2 FTE, or so much
25 thereof as may be necessary, to be allocated for the implementation of this
26 act as follows:

27 (a) \$9,917 and 0.2 FTE to the division of insurance for personal

1 services; and

2 (b) \$3,643 to the executive director's office and administrative
3 services for the purchase of legal services.

4 (2) In addition to any other appropriation, there is hereby
5 appropriated to the department of law, for the fiscal year beginning July
6 1, 2014, the sum of \$3,643, or so much thereof as may be necessary, for
7 the provision of legal services for the department of regulatory agencies
8 related to the implementation of this act. Said sum is from reappropriated
9 funds received from the department of regulatory agencies out of the
10 appropriation made in paragraph (b) of subsection (1) of this section.

11 (3) For the implementation of this act, the general fund
12 appropriation made in the annual general appropriation act to the
13 controlled maintenance trust fund created in section 24-75-302.5 (2) (a),
14 Colorado Revised Statutes, for the fiscal year beginning July 1, 2014, is
15 decreased by \$13,560.

16 **SECTION 5. Act subject to petition - effective date -**
17 **applicability.** (1) This act takes effect January 1, 2015; except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within the ninety-day period after final adjournment of the general
21 assembly, then the act, item, section, or part will not take effect unless
22 approved by the people at the general election to be held in November
23 2014 and, in such case, will take effect on January 1, 2015, or on the date
24 of the official declaration of the vote thereon by the governor, whichever
25 is later.

26 (2) This act applies to service contracts issued on or after the
27 applicable effective date of this act.