

NHSCA
HOME SERVICE CONTRACTS MODEL 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 a 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.
- 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 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.
- 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. “Home service contract” means a contract or agreement for a separately stated consideration for a specific 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 of any residential property due to a defect in materials, workmanship, inherent defect or normal wear and tear, with or without additional provisions for incidental payment or indemnity under limited circumstances. Home service contracts may provide for the service, repair, replacement, or maintenance of property for damage resulting from power surges or interruption and accidental damage from handling and may provide for leak or repair coverage to house roofing systems. Home service contracts are not insurance in this state or otherwise regulated under the insurance code.
- 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 address, telephone number and contact person and designate a person in this state for service of process. 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.
- 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. 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, 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. 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 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 or offering to sell home service contracts 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. Enforcement Provisions

- A. 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. Upon request of the Commissioner, the provider shall make all accounts, books, and records concerning service contract sold by the provider available to the Commissioner which are necessary to enable

the Commissioner to reasonably determine compliance or noncompliance with this Act.

- 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.

Section 5. 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 6. 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.