

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Capps**

A Bill

ACT 805 OF 1993
HOUSE BILL 1873

For An Act To Be Entitled

"MOTOR VEHICLE SERVICE CONTRACT ACT."

Subtitle

"MOTOR VEHICLE SERVICE CONTRACT ACT."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Title. This act is known and may be cited as the "Motor Vehicle Service Contract Act".

SECTION 2. Definitions. For purposes of this act:

(1) "Commissioner" shall mean the Insurance Commissioner for the state of Arkansas.

(2) "Motor vehicle service contract" or "service contract" shall mean a contract or agreement given for separate and identifiable consideration pursuant to which a service contract provider undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship and/or normal wear and tear, but does not include mechanical breakdown insurance.

(3) "Motor vehicle" shall mean any vehicle designed for highway use and subject to registration under Arkansas Code Ann. §27-14-701 et seq.

(4) "Mechanical breakdown insurance" shall mean a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear and that is issued by an insurer that is authorized or approved to transact the business of insurance in this state.

(5) "Motor vehicle service contract provider" or "provider" shall mean

1 a person who, as the principal or obligor, issues, makes, sells, or offers to
2 sell a service contract.

3 (6) "Service contract holder" or "holder" shall mean the person who
4 purchases a service contract or a permitted transferee.

5 (7) "Motor vehicle service contract reimbursement insurance policy"
6 shall mean a policy of insurance providing coverage for all obligations and
7 liabilities incurred by a motor vehicle service contract provider under the
8 terms of the motor vehicle service contracts issued or sold by the provider.

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10 SECTION 3. Exclusive governance of provisions. Except as provided in
11 this act, motor vehicle service contract providers shall be governed by the
12 provisions of this act and shall be exempt from all other provisions of the
13 Arkansas Insurance Code. Nothing in this act shall, however, prohibit or
14 affect the giving, free of charge, of the usual warranties or performance
15 guarantees by manufacturers, distributors or dealers in connection with the
16 sale of new motor vehicles; further, the requirements of this act shall not
17 apply to motor vehicle service contracts issued by a motor vehicle
18 manufacturer, distributor, importer or dealer of motor vehicles, *nor shall the*
19 *requirements of this act apply to nonrenewable motor vehicle service contracts*
20 *issued for a period of less than six (6) months, provided that the issuer of*
21 *such motor vehicle service contracts is the entity which sold the motor*
22 *vehicle to which the service contract applies or is an affiliate of such*
23 *entity. For purposes of this act, an "affiliate" is an entity whose ownership*
24 *is held fifty-one percent (51%) or more by the same entity which holds fifty-*
25 *one percent (51%) or more ownership of the seller of the motor vehicle.*

26
27 SECTION 4. Mandatory insurance. No motor vehicle service contract
28 shall be issued, sold, or offered for sale in this state unless the motor
29 vehicle service contract provider is insured under a motor vehicle service
30 contract reimbursement insurance policy issued by an insurer authorized to do
31 business in this state and providing that the insurer will pay on behalf of
32 the provider all sums which the provider is legally obligated to pay and will
33 guarantee the performance of the provider_s obligations undertaken, according
34 to the provider_s contractual obligations under the service contracts issued
35 or sold by the provider. No such policy of insurance may be cancelled,

1 terminated, or nonrenewed by the insurer unless a sixty (60) day written
2 notice thereof has been given to the motor vehicle service contract provider
3 before the date of the cancellation, termination or nonrenewal. No such
4 cancellation, termination or nonrenewal shall affect the liability of the
5 insurer to guarantee the provider_s performance under the motor vehicle
6 service contracts issued or sold prior to the effective date of cancellation
7 or termination or nonrenewal.

8 (1) The insured motor vehicle service contract must conspicuously
9 state:

10 (a) that the obligations of the provider to the service contract
11 holder are guaranteed under a motor vehicle service contract reimbursement
12 insurance policy;

13 (b) the name, address, and telephone number of the issuer of the
14 provider_s motor vehicle service contract reimbursement insurance policy; and

15 (c) the procedure for filing a claim under the service contract
16 directly with the motor vehicle service contract reimbursement insurer.

17 (2) The motor vehicle service contract reimbursement insurer shall
18 establish and maintain unearned premium reserves and claims reserves for the
19 gross policy obligations under the motor vehicle service contract
20 reimbursement insurance policy, net of reinsurance ceded, for which the
21 insurer is entitled to full reserve credit on its financial statements, in
22 accordance with the provisions of this act.

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24 SECTION 5. Required service contract disclosures. All motor vehicle
25 service contracts issued or sold for delivery in this state shall contain the
26 following disclosures in a conspicuous and readable manner:

27 (1) the name and address of the provider and the holder;

28 (2) the total retail price of the service contract;

29 (3) the procedure for making a claim under the service contract,
30 including the name, address, and telephone number of any person from whom
31 approval is required before covered repairs may be commenced;

32 (4) the existence and amount of a deductible, if any;

33 (5) the motor vehicle parts and components covered under the service
34 contract, and any limitations, exceptions, or exclusions;

35 (6) the terms, conditions, and restrictions governing transferability

1 of the service contract, if any;

2 (7) the provisions governing termination and refunds in accordance with
3 Section 6 of this act; and

4 (8) a statement that purchase of the motor vehicle service contract is
5 not required in order to purchase or obtain financing for a motor vehicle.

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7 SECTION 6. Termination and refunds. No motor vehicle service contract
8 may be issued, sold, or offered for sale or delivery in this state unless the
9 service contract conspicuously states that the holder is allowed to cancel the
10 service contract:

11 (1) within thirty (30) days of its purchase if no claim has been made,
12 and receive a full refund of the service contract retail price, less any
13 cancellation fee stated in the service contract not exceeding fifty dollars
14 (\$50.00); or

15 (2) at any other time, and receive a pro rata refund of the service
16 contract retail price for the unexpired term of the service contract, based on
17 the number of elapsed months or miles, less any cancellation fee stated in the
18 service contract not exceeding fifty dollars (\$50.00).

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20 SECTION 7. Incidental benefits. A motor vehicle service contract may
21 provide reimbursement for towing and rental vehicle expenses incurred by the
22 service contract holder as a direct and proximate result of an operational or
23 structural failure covered by the service contract, emergency road service,
24 and such other incidental benefits as may be approved by the commissioner.

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26 SECTION 8. Rulemaking power. The commissioner may adopt such
27 administrative rules and regulations as are necessary to implement the
28 provisions of this act.

29

30 SECTION 9. Investigations and enforcement. The commissioner is
31 authorized to conduct such investigations of the motor vehicle service
32 contract business, of any provider and of any person assisting the provider in
33 the conduct of such business as the commissioner may deem necessary. The
34 commissioner shall have and may exercise all of the powers conferred by
35 Arkansas Code Ann. §§23-61-103, 108, 109, and 110; 23-61-201(a)(1), 203, 204,

1 205, and 206; and 23-61-301 et seq. of this title in the conduct of such
2 investigations and in the enforcement of this act and any rules and
3 regulations promulgated by the commissioner.

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5 SECTION 10. Unfair trade practices. Motor vehicle service contract
6 providers shall be subject to the provisions of the Arkansas Trade Practices
7 Act (Ark. Code Ann. §§23-66-201 - 23-66-214) to the extent such act may be
8 appropriately applied to motor vehicle service contract providers given the
9 nature of such contracts.

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11 SECTION 11. Form of service contracts. No motor vehicle service
12 contract may be issued which:

13 (1) is in any respect in violation of or does not comply with this act,
14 any specifically applicable provision of the Arkansas Insurance Code, or any
15 applicable rule of the department;

16 (2) contains or incorporates by reference when such incorporation is
17 otherwise permissible, any inconsistent, ambiguous, illusory, or misleading
18 clauses, or exceptions and conditions which deceptively affect the risk
19 purported to be assumed in the general coverage of the service agreement;

20 (3) has any title, heading, or other indication of its provisions which
21 is misleading;

22 (4) is printed or otherwise reproduced in such manner as to render any
23 material provision of the form substantially illegible;

24 (5) contains any provision which is unconscionable or which encourages
25 misrepresentation;

26 (6) contains any provision which makes it difficult to determine the
27 actual provider issuing the form; or

28 (7) contains any provision for reducing claim payments due to
29 depreciation of parts.

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31 SECTION 12. Filing of service contracts. The commissioner may
32 promulgate rules and regulations providing for the filing with the
33 commissioner of motor vehicle service contract forms by providers authorized
34 under Section 4 herein, provided that any such rules and regulations may not
35 require the approval of such forms by the commissioner prior to their initial

1 use.

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3 SECTION 13. Arkansas Code Section 23-67-103 is hereby amended to add
4 the following:

5 "(9) Motor vehicle service contracts, for so long as the motor vehicle
6 service contract providers_ exposures to their customers are fully insured by
7 an insurer that is authorized to transact property and casualty insurance
8 business in this state."

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10 SECTION 14. All provisions of this act of a general and permanent
11 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
12 Code Revision Commission shall incorporate the same in the Code.

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14 SECTION 15. If any provision of this act or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of the act which can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 act are declared to be severable.

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20 SECTION 16. All laws and parts of laws in conflict with this act are
21 hereby repealed.

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23 SECTION 17. This act shall apply to motor vehicle service contracts
24 sold on or after thirty (30) days after the effective date of this act.

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26 SECTION 18. EMERGENCY. It is hereby found and determined by the
27 General Assembly that the common law and statutory law of this state does not
28 adequately address the matter of the issuance and regulation of motor vehicle
29 service contracts; it is further found that legislation is necessary to allow
30 for the marketing of such contracts in a manner that is consistent with
31 protection of the public which purchases such contracts and that such
32 legislation should go into effect immediately. Therefore, an emergency is
33 hereby declared to exist and this act being necessary for the immediate
34 preservation of the public peace, health and safety shall be in full force and
35 effect from and after its passage and approval.

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/s/John Paul Capps

APPROVED: 4/1/93