

**22 GCA BUSINESS REGULATIONS
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**DIVISION 2
INSURANCE LAW**

2014 NOTE: P.L. 4-102 (Sept. 12, 1958) added Title 39 to the Government Code (Chapters 1 - 4, §§ 43000 - 43501) entitled "Insurance Law." It was codified by the Compiler to the Guam Code Annotated between as Title 22, Division 2, Chapters 12 - 29, §§ 12101 - 29110 after the 21st Guam Legislature and was first published in print during the 1994 codification of the GCA.

- Chapter 12. Administration.
- Chapter 15. Business of Insurance.
- Chapter 18. The Contract of Insurance.
- Chapter 20. Effective Date.
- Chapter 23. Captive Insurance Companies.
- Chapter 26. Prepaid Legal Service Programs.
- Chapter 29. Medical Care Insurance.

**CHAPTER 12
ADMINISTRATION**

- Article 1. General Provisions.
- Article 2. Service Contracts.

2011 NOTE: Reference to the "Banking Commissioner" and the "Insurance Commissioner" changed to the "Commissioner of Banking and Insurance" pursuant to P.L. 27-088:10 (May 6, 2004). Reference to the "Banking Board" changed to the "Banking and Insurance Board" pursuant to P.L. 27-088:10 (May 6, 2004).

**ARTICLE 1
GENERAL PROVISIONS**

- § 12101. Short Title.
- § 12102. Provisions Construed as Continuations.
- § 12103. Not Retroactive.
- § 12104. Definitions.
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- § 12110. False Swearing.
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- § 12111.1. Misrepresentations and False Advertising Prohibited.
- § 12112. Twisting Prohibited.
- § 12113. Air Ambulance Services Membership Plan Exempted.

§ 12101. Short Title.

This Title may be cited as the Insurance Law.

SOURCE: GC §43000.

§ 12102. Provisions Construed as Continuations.

The provisions of this Title insofar as they are substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations thereof, and not as new enactments.

SOURCE: ~~SOURCE:~~ GC § 43001.

§ 12103. Not Retroactive.

No action or proceedings commenced, and no right accrued, prior to the effective date hereof, is affected by the provisions of this Title, but all procedure hereafter taken shall conform to the provisions of this Title so far as possible.

SOURCE: GC § 43002.

§ 12104. Definitions.

The rules and definitions contained in this section shall be used in interpreting the provisions of this Title.

(a) The present tense includes the past and future tenses; and the future, the present.

(b) The masculine gender includes the feminine and neuter.

(c) The singular number includes the plural, and the plural includes the singular.

(d) The word shall is mandatory and the word may is permissive, unless otherwise apparent from the context.

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(e) Adjuster means any person who acts for or on behalf of an insurer or an insured in determining and making settlement of the amount payable to the insured for any loss or damage under a policy.

(f) Admitted in relation to a person, means entitled to transact insurance business in Guam under the laws of Guam; nonadmitted, in relation to a person, means not entitled to transact insurance business in Guam under the laws of Guam.

(g) Advisory organization means every person, other than an admitted insurer, who prepares policy forms or makes underwriting rules, or who collects and furnishes loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate making, capacity. No duly authorized attorney-at-law acting in the usual course of his profession shall be deemed an advisory organization.

(h) Agent means both general agent and sub-agent, unless otherwise apparent from the context

(i) Alien means organized under the laws of any government other than Guam or the United States or any political subdivision thereof, whether or not admitted.

(j) Broker means a person who, for compensation and on behalf of another person, transacts insurance business other than as insurer, general agent, sub-agent or solicitor.

(k) Certificate means the Certificate of Authority required of an insurer to transact insurance business in Guam.

(l) 'Department' means the Department of Revenue and Taxation.

(n) Domestic means organized under the laws of Guam, whether or not admitted.

(o) Foreign means not organized under the laws of Guam, but organized under the laws of the United States or any political subdivision thereof, whether or not admitted.

(p) General Agent means a person authorized by an insurer to countersign, issue and deliver new policies, to accept service of process on behalf of the insurer, and vested with full authority to consummate a contract of insurance and to transact all other necessary business of the

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insurer in Guam. [*Gordon Mailloux Enterprises, Inc. v. Fireman's Ins. Co.* (1966), 366 F.2d. 740.]

(q) Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from contingent or unknown events.

(r) Insurer means the person who undertakes to indemnify another by insurance; insured means the person so indemnified.

(s) Issue means to write, renew, execute, effect or otherwise enter into a contract of insurance.

(t) Paid-in capital or Capital paid-in means the lower of the following amounts:

(1) The value of an insurer's assets in excess of the sum of its liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law;

(2) The aggregate par value of an insurer's issued shares of stock, including treasury shares.

For the purpose of computing paid in capital or capital, paid in, shares of stock are not considered as liabilities.

(u) Person means any person, association, organization, partnership, business trust, or corporation.

(v) Policy means the written instrument in which a contract of insurance is set forth.

(w) Political subdivision in reference to the United States, means any State, the District of Columbia, any territory, possession, or commonwealth belonging to or part of the United States.

(x) Rating bureau means every person, other than an admitted insurer, who has as his object or purpose the making of rates, rating plans or rating systems.

(y) Reinsurance means the insurance ceded and accepted between two insurers one of whom has effected the direct insurance.

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(z) Signature includes a mark when the signer or subscriber cannot write, provided his name is written near the mark by a witness who also signs the instrument together with a second witness.

(aa) Solicitor means a person authorized by either the insurer or its general agent or a sub-agent to act as its representative but whose duties and authority are confined merely to soliciting insurance and aiding in the preparation of applications for insurance.

(bb) Sub-agent means a person authorized by either the insurer or its general agent to solicit applications, receive proposals, receive premiums, deliver policies, and to make contracts of insurance. The receipt by a sub-agent of any premiums shall bind the insurer on the contract of insurance for that period of time covered by the premium payment.

(cc) Transact means, when applied to insurance, solicitation, negotiations preliminary to execution, execution or transaction subsequent to execution, or a contract of insurance or matters appertaining thereto.

(dd) United States means its entire system and group of political jurisdictions including the States, the District of Columbia, territories, possessions, or commonwealths.

(ee) Writing means any form of recorded message capable of comprehension by ordinary visual means.

(ff) Board' means the Banking and Insurance Board.

(gg) Commissioner means the Commissioner of Banking and Insurance.

(hh) Office means the office of the Commissioner of Banking and Insurance.

(ii) Air Ambulance Service means the emergency and non-emergency transportation of a doctor-qualified patient-candidate for higher level care from Guam to another location by a legally authorized air ambulance in which health care services, including advanced life support services, are provided to the patient for the duration of such transportation.

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(jj) **Air Ambulance Services Membership Plan** means a plan contract between air ambulance services providers and members or enrollees in which such providers provide air ambulance services for its members or enrollees in exchange for an annual fee.

SOURCE: GC § 43003. Subsection (l) amended and subsections (ff), (gg) and (hh) added by P.L. 27-88:7(a). Subsections (ii) and (jj) added by P.L. 29-113:VI:56(b-c) (Sept. 30, 2008).

§ 12105. Exercise of Power.

Whenever, by the provisions of this Title, a power is granted to a public officer or a duty imposed upon such officer, the power or duty may be performed by a deputy or assistant of such officer authorized to do so.

SOURCE: GC § 43004.

§ 12106. Notice.

Whenever any notice is required by this Title, it shall be in writing unless expressly otherwise provided. Any required notice may be given by mailing such notice, postage prepaid, addressed to the person to be notified, at his last known residence or his principal place of business, unless expressly otherwise provided. An affidavit setting forth the facts of such mailing by the person doing so is prima facie evidence of such notice.

SOURCE: GC § 43005.

§ 12107. Time.

Any date or time mentioned in this Title, or in any policy of insurance issued under authority thereof, shall be conclusively presumed to refer to Guam time unless specifically and clearly otherwise stated.

SOURCE: GC § 43006.

§ 12108. Scope of Title.

All insurance transacted in Guam is governed by the provisions of this Title.

SOURCE: GC § 43007.

§ 12109. Penalty.

Any person violating any of the provisions of this Title, or of any regulation issued hereunder, or any lawful order of the Commissioner, for

which a penalty is not otherwise specifically provided, shall be guilty of a misdemeanor.

SOURCE: GC § 43008. Amended by P.L. 13-187:212.

§ 12110. False Swearing.

Any person who shall knowingly swear to, or verify, any false or fraudulent statement, or who, when testifying at any hearing, examination or inquiry pursuant to this Title shall make any false or fraudulent statement, shall be guilty of a felony.

SOURCE: GC § 43009. Amended by P.L. 13-187:213.

§ 12111. Conflict of Interest Between Insured and Insurer.

(a) If the provisions of a policy of insurance impose a duty to defend upon an insurer and a conflict of interest arises which creates a duty on the part of the insurer to provide independent counsel to the insured, the insurer shall provide independent counsel to represent the insured, unless, at the time the insured is informed that a possible conflict may arise or does exist, the insured expressly waives, in writing, the right to independent counsel. An insurance contract may contain a provision which sets forth the method of selecting independent counsel consistent with this Section.

(b) For purposes of this Section, a conflict of interest does not exist as to all allegations or facts in the litigation for which the insurer denies coverage; however, when an insurer reserves its rights on a given issue and the outcome of that coverage issue can be controlled by counsel first retained by the insurer for the defense of the claim, a conflict of interest may exist. No conflict of interest shall be deemed to exist as to allegations of punitive damages or be deemed to exist solely because an insured is sued for an amount in excess of the insurance policy limits.

(c) When the insured has selected independent counsel to represent the insured, the insurer may exercise its right to require that the counsel selected by the insured possess certain minimum qualifications, which may include that the selected counsel have: (i) at least five (5) years in civil litigation practice, which includes substantial defense experience in the subject at issue in the litigation; and (ii) errors and omissions coverage.

The insurer's obligation to pay fees to the independent counsel selected by the insured is limited to the rates which are actually paid by the insurer to attorneys retained by it in the ordinary course of business in the defense of

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similar actions in the community where the claim arose or is being defended. This Article does not invalidate other different or additional policy provisions pertaining to attorney's fees or providing methods of settlement of disputes concerning those fees.

Any dispute concerning attorney's fees not resolved by these methods shall be resolved by final and binding arbitration by a single neutral arbitrator selected by the parties to the dispute. In the event that the parties cannot agree upon the selection of a neutral arbitrator, then upon petition of any party to the dispute, the Superior Court of Guam shall designate a neutral arbitrator.

(d) When independent counsel has been selected by the insured, it shall be the duty of that counsel and the insured to disclose to the insurer all information concerning the action, except privileged materials relevant to coverage disputes, and to timely inform and consult with the insurer on all matters relating to the action. Any claim of privilege asserted is subject to in camera review by the Superior Court of Guam. Any information disclosed by the insured or by independent counsel is not a waiver of the privilege as to any other party, person or legal entity.

(e) The insured may waive its rights to select independent counsel by signing the following statement: 'I have been advised and informed of my right to select independent counsel to represent me in this lawsuit. I have considered this matter fully and freely waive my right to select independent counsel at this time. I authorize my insurer to select a defense attorney to represent me in this lawsuit.'

(f) Where the insured selects independent counsel pursuant to the provisions of this Section, both the counsel provided by the insurer and independent counsel selected by the insured shall be allowed to participate in all aspects of the litigation. Counsel shall cooperate fully in the exchange of information that is consistent with each counsel's ethical and legal obligation to the insured.

Nothing in this Section shall relieve the insured of the insured's duty to cooperate with the insurer under the provisions of the insurance contract.

SOURCE: Added by P.L. 26-39:2.

NOTE: The Compiler has changed "Subdivision" to Article in (c) para. 2 to reflect the fact that this Chapter of the GCA does not contain subdivisions, but does contain Articles.

§ 12111.1. Misrepresentations and False Advertising Prohibited.

(a) No person shall:

(1) make, issue, circulate, or cause to be made, issued or circulated, any estimate, circular or statement misrepresenting the terms of any policy issued, or to be issued, or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon;

(2) make any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(3) make any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve upon which any life insurer operates; or

(4) use any name or title of any policy or class of policies misrepresenting the true nature thereof.

(b) Only the words in the carrier's actual policy are actionable, and falsely written advertisements by the carrier about its actual policy shall not give rise to a cause of action against the carrier; provided, the carrier, or its licensed representative, is not in violation of Subsection (a) herein.

SOURCE: Added as § 12111 by P.L. 26-56:1. Number changed by Compiler because § 12111 was already used on another subject.

§ 12112. Twisting Prohibited.

No person shall make or issue, nor cause to be made or issued, any written statement misrepresenting or making incomplete comparisons as to the terms, conditions or benefits contained in any policy for the purpose of inducing, or attempting to induce, the policyholder to lapse, forfeit, surrender, retain, exchange or convert any insurance policy.

SOURCE: Added by P.L. 26-56:2. Renumbered by Compiler.

§ 12113. Air Ambulance Services Membership Plan Exempted.

The provisions of this Chapter shall not prohibit or apply to Air Ambulance Services Membership Plans.

SOURCE: Added by P.L. 29-113:VI:56(d) (Sept. 30, 2008).

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**ARTICLE 2
SERVICE CONTRACTS**

SOURCE: P.L. 04-102 (Sept. 12, 1958) added Article 2, §§ 43025-43036, entitled "Insurance Commissioner." P.L. 09-202 (July 9, 1968) added § 43027. Article 2 repealed by P.L. 27-088:2 (May 5, 2004). New Article 2 added by P.L. 32-087:2 (Nov. 27, 2013).

2014 NOTE: This article (§§ 12202-12213) was formerly entitled Insurance Commissioner, codified from Government Code (§§ 43025-43037). The entire article was repealed by P.L. 27-088:8 (May 6, 2004), which created a new Banking and Insurance Commissioner, defined by 11 GCA § 103102. References to the "Banking Commissioner" and the "Insurance Commissioner" have been altered to the "Commissioner of Banking and Insurance" pursuant to P.L. 27-088:10.

- § 12201. Service Contracts Excepted.
- § 12202. Definitions.
- § 12203. License Required.
- § 12204. Financial Responsibility.
- § 12205. Powers and Duties.
- § 12206. Recordkeeping.
- § 12207. Filing of Annual Report.
- § 12208. Receipt and Disclosures.
- § 12209. Returns and Refunds.
- § 12210. Prohibited Acts.
- § 12211. Rules.
- § 12212. Enforcement.
- § 12213. Effective Date.
- § 12214. Severability.

§ 12201. Service Contracts Excepted.

The marketing, sale, offering for sale, issuance, making, proposing to make and administration of a service contract shall not be construed to be the business of insurance, and shall be exempt from regulation as insurance under this Division. Express or implied warranties shall be exempt from the requirements under this Article.

§ 12202. Definitions.

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(a) Administrator means a person appointed or designated by a provider who administers service contracts and service contract plans on behalf of the provider, and subject to the requirements of this Article.

(b) Commissioner means the Insurance and Banking Commissioner.

(c) Consumer means an individual who buys any tangible personal goods that is primarily for personal, family, or household use.

(d) Non-original manufacturer's parts means replacement parts not made for or by the original manufacturer of the goods, commonly referred to as "after-market parts."

(e) Person means an individual, limited liability partnership, partnership, limited liability company, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or combination of entities acting in concert.

(f) Reimbursement insurance policy means a policy of insurance issued to a service contract provider by an authorized insurer. Pursuant to this insurance policy, the insurer agrees, for the benefit of the service contract holders, to discharge all of the obligations and liabilities of the service contract provider under the terms of the issued service contracts or in the event of non-performance by the insured service contract provider. A reimbursement insurance policy insurer shall not terminate the policy until it has issued a notice of termination required by the Commissioner under the insurance laws, rules, or regulations of the government of Guam. The termination of a reimbursement insurance policy shall not reduce the insurer's responsibility for service contracts issued by service contract providers prior to the date of termination. A service contract provider shall be considered the agent of the reimbursement insurance policy insurer for purposes of determining duties owed by the insurer to service contract holders in accordance with the service contract, and this Article. Insurers 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 service contract provider. "All obligations and liabilities" include:

(1) the failure or inability of the insured service contract provider to perform under the terms and conditions of the provider's issued service contracts; and

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(2) in the event of cancellation, the service contract provider's failure or inability to return the unearned portion of the paid service contract fee to the service contract holder.

(g) Service contract, for the purposes of this Article, means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement or maintenance of goods or indemnification for repair, replacement or maintenance, for the operational or structural failure of any motor vehicle or other goods due to a defect in materials, workmanship, accidental damage from handling, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental and emergency road service, and road hazard protection. Motor vehicle manufacturer and original equipment manufacturer (OEM)-backed contracts shall be exempt from the requirements in this Article. Service contracts may provide for repair, replacement, or maintenance of goods for damage resulting from power surges or interruption. Service contracts also include a contract or agreement sold for a separately stated consideration for a specific duration that provides for any of the following:

(1) the repair or replacement or indemnification for the repair or replacement of a motor vehicle for the operational or structural failure of one or more parts or systems of the motor vehicle brought about by the failure of an additive product to perform as represented;

(2) the repair or replacement of tires and/or wheels on a motor vehicle damaged as a result of coming into contact with road hazards, including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps;

(3) the removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paint-less dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding or painting;

(4) the repair of small motor vehicle windshield chips or cracks, but which expressly excludes the replacement of the entire windshield; or

(5) the repair of damage to the interior components of a motor vehicle caused by wear and tear, but which expressly excludes the replacement of any part or component of a motor vehicle's interior.

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(h) Service Contract Provider means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(i) Service Contract Holder or contract holder means a person who is the purchaser or holder of a service contract.

(j) Service Contract Seller means the person who sells the service contract to the consumer.

(k) Warranty means a warranty made without consideration, solely by the manufacturer, importer, or seller of goods or services, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that provides repair or replacement for defective parts, mechanical or electrical breakdown, labor, or other remedial measures.

§ 12203. License Required.

It shall be unlawful for any person to act as, or offer to act as, or hold himself or herself out to be a service contract provider, nor may a service contract be sold to a consumer, unless the service contract provider has a valid license as a service contract provider issued by the Commissioner. A service contract provider shall make an application to the Commissioner upon a form prescribed by the Commissioner, and shall pay to the Commissioner a fee as provided under this Article. A service contract provider shall update the application information and documents annually and furnish such updates to the Commissioner. The application shall include or be accompanied by the following information and documents:

(a) all basic organizational documents of the service contract provider, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, bylaws, and other applicable documents, and all amendments to those documents;

(b) the identities of the service contract provider's executive officers directly responsible for the service contract provider's service contract business, and, if more than fifty percent (50%) of the service contract provider's gross revenue is derived from the sale of service contracts, the identities of the service contract provider's directors and stockholders having beneficial ownership of ten percent (10%) or more of any class of securities;

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(c) audited annual financial statements or other financial reports acceptable to the Commissioner for the two most recent years, which prove that the applicant is solvent, and any information the Commissioner may require in order to review the current financial condition of the applicant;

(d) an application fee of Two Hundred Fifty Dollars (\$250.00), which shall be deposited in the Better Public Service Fund; and

(e) any other pertinent information required by the Commissioner.

§ 12204. Financial Responsibility.

(a) Any service contract provider applying for a license shall be solvent and shall meet the minimum requirements under this Section. If the financial responsibility requirement under this Section is to be maintained by the service contract provider's parent company, the parent company shall guarantee the service contract provider's obligations under service contracts sold by the service contract provider licensed under this Article.

(b) The service contract provider shall provide one of the following:

(1) provide both:

(A) maintain a funded reserve account for all obligations under service contracts issued and in force on Guam. The reserves shall not be less than forty percent (40%) of the gross consideration received from the sale of the service contract, less claims paid, for all in force contracts. The reserve account shall be subject to examination by the Commissioner; and

(B) place in trust with the Commissioner, for all service contracts issued and in force on Guam, a financial security deposit having a value that is the larger of Forty Thousand Dollars (\$40,000) or five percent (5%) of the gross consideration received, less claims paid for the sale of the service contracts. The financial security deposit shall consist 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 on Guam;

(iii) cash or time certificate of deposit issued by a bank that is licensed in Guam and is insured by the Federal

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Deposit Insurance Corporation (FDIC) or by the National Credit Union Administration (NCUA);

(iv) a letter of credit issued by a qualified financial institution; or

(v) another form of security authorized by the Commissioner by rule, subject to the approval of I Liheslaturan Guåhan.

Service contracts for those service contract providers that provide the security in Subsections (A) and (B) of § 12204(b)(1) shall contain a statement in substantially the same format:

“The service contract provider’s obligations stated in this service contract are backed by the full faith and credit of the service contract provider.”

(2) insure the performance for all service contracts issued by the service contract provider by a reimbursement insurance policy issued by an insurer holding a certificate of authority from the Commissioner, and who is in good standing with the Commissioner. Service contracts insured by a reimbursement insurance policy shall:

(A) conspicuously state the name and either the address or contact information for the insurance company; and

(B) contain a statement in substantially the following format:

“The service contract provider’s obligations stated in this service contract are covered by a reimbursement insurance policy. If your service contract provider fails to pay or provide service on your claim, or a cancellation refund, or any other covered obligation under this service contract within sixty (60) days after that claim or request has been made by you to this service contract provider, you may then directly present your claim or request for service or payment to your service contract provider’s insurance company.”

§ 12205. Powers and Duties.

The Commissioner shall:

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- (a) receive applications for certification or license of service contract providers;
- (b) establish the procedure for processing applications made under this Article;
- (c) retain all applications and other records submitted to him or her;
- (d) maintain a registry of the names and addresses of persons licensed under this Article;
- (e) establish and collect fees as required by this Article;
- (f) approve/disapprove applications for license;
- (g) establish, suspend, revoke, or reprimand service contract licenses; and
- (h) perform the other duties necessary to implement this Article.

§ 12206. Recordkeeping.

(a) The service contract provider or service contract provider's administrator shall keep accurate accounts, books, and records of all transactions regulated under this Article.

(b) Accounts, books, and records maintained as required by this Section shall include the following:

- (1) copies of each type of service contract 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 the service contract provider's service contracts are marketed, sold, or offered for sale; and
- (4) recorded claims filed which, at a minimum, shall contain the date and description of each claim under the service contract provider's service contracts.

(c) The service contract provider for each service contract shall retain records required under this Section for at least one year after coverage under the contract has expired. A service contract provider discontinuing business on Guam shall maintain records required under this Section until it provides

the Commissioner with satisfactory proof that the service contract provider has discharged all contractual obligations to contract holders on Guam.

(d) The records required under this Section may be, but are not required to be, maintained on a computer disk, computer drive or server or other electronic recordkeeping technology. If records are maintained in a form other than hard copy, the records shall be in a form allowing duplication as a legible hard copy at the request of the Commissioner.

(e) Upon request of the Commissioner, the service contract provider shall make available to the Commissioner all accounts, books, and records concerning service contracts sold by the service contract provider reasonably necessary to enable the Commissioner to determine compliance or noncompliance with this Article.

§ 12207. Filing of Annual Report.

(a) Every registered service contract provider must file an annual report for the preceding calendar year with the Commissioner on or before July 1st of each year, or within any extension of the time the Commissioner for good cause may grant. The report must be in the form and contain those matters as the Commissioner prescribes, and shall be verified by at least two officers of the service contract provider, or for service contract providers with a single officer, the sole officer of service contract providers with a single officer.

(b) At the time of filing the report, the service contract provider must pay a filing fee of Twenty Five Dollars (\$25.00), which shall be deposited in the Better Public Service Fund.

(c) As part of any investigation by the Commissioner, the Commissioner may require a service contract provider to file monthly financial reports whenever, in the Commissioner's discretion, there is a need to more closely monitor the financial activities of the service contract provider. If the Commissioner requires monthly financial reports, the service contract provider shall file monthly financial statements, which shall be filed with the Commissioner no later than the twenty-fifth (25th) day of the month following the month for which the financial report is being filed. These monthly financial reports are the internal financial statements of the service contract provider. The monthly financial reports that are filed with the Commissioner constitute information that might be damaging to the service contract provider if made available to its competitors, and therefore shall be kept confidential by the Commissioner. This information may not be made

public or be subject to subpoena, other than by the Commissioner, and then only for the purpose of enforcement actions taken by the Commissioner.

§ 12208. Receipt and Disclosures.

(a) Service contract providers shall provide purchasers of a service contract with:

(1) a receipt or other written evidence of the purchase of the service contract that shall be provided to the service contract holder;

(2) a copy of the service contract that shall be provided within a reasonable period of time from the date of purchase; and

(3) except for offers or sales of service contracts by telephone, mail, or electronic means, a written copy of the basic terms and conditions of the service contract to be made available to the purchaser where the purchaser is physically present at the point of sale.

(b) Service contracts shall be written in clear, understandable language, and shall be printed or typed in a typeface and format that is easy to read.

(c) All service contracts shall have the following information:

(1) the name and address of the service contract provider and the administrator of the service contract, if different from the service contract provider;

(2) the identity of the service contract seller and the service contract holder, to the extent that the service contract holder has furnished the service contract seller, administrator, or service contract provider with that information;

(3) the terms of the sale, including the purchase price;

(4) the procedure the service contract holder must follow to obtain service;

(5) any deductible amount that applies;

(6) the specific merchandise and services to be provided, and any limitations, exceptions, or exclusions;

(7) where the service contract covers a motor vehicle, whether the use of non-original manufacturer's parts is allowed;

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(8) any restrictions governing the transferability of the service contract that apply;

(9) the terms, restrictions, or conditions governing the return or cancellation of the service contract by either the service contract provider or service contract holder prior to the service contract's termination or expiration date;

(10) the obligations and duties of the service contract holder, such as the duty to protect against any further damage, or to follow the owner's manual instructions; and

(11) a provision for, or exclusion of consequential damages or pre-existing conditions that apply.

The information under Subsections (1) and (2) shall not be required to be preprinted on the service contract and may be added to the service contract at the time of sale. The purchase price under Subsection (3) shall not be required to be preprinted on the service contract and may be negotiated with the service contract holder at the time of sale.

§ 12209. Returns and Refunds.

(a) Service contracts shall state that the service contract holder may return the contract within:

(1) thirty (30) days of the date that the service contract was mailed to the service contract holder;

(2) twenty (20) days of the date the service contract was delivered to the service contract holder, if the service contract was delivered at the time of sale; or

(3) a longer time period as specified in the service contract.

(b) Upon return of the service contract to the service contract provider within the applicable time period, and if no claim has been made under the service contract prior to its return to the service contract provider, the service contract shall be void and the service contract provider shall refund to, or credit the account of, the service contract holder with the full purchase price of the service contract. A ten percent (10%) penalty per month shall be added to a refund that is not paid or credited within sixty (60) days after the return of the service contract to the service contract provider.

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(c) The right to void a service contract under Subsection (b) shall not be transferred and shall apply only to the original service contract purchaser upon the terms and conditions provided in the contract and consistent with this Article.

(d) Upon cancellation of a service contract by the service contract provider, the service contract provider, at least five (5) days prior to cancellation, shall mail to the service contract holder at the service contract holder's last known address, a written prior notice of cancellation that states the effective date of the cancellation; provided, that prior notice under this Subsection shall not be required if the cancellation is for:

(1) nonpayment of the service contract provider's fee for the service provided under the service contract;

(2) a material misrepresentation by the service contract holder to the service contract provider; or

(3) a substantial breach of duties of the service contract holder under the service contract, relating to a covered product or its use.

§ 12210. Prohibited Acts.

(a) No service contract provider shall use in its name, the word insurance, casualty, surety, mutual, guarantee, or any other word 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 service contract provider. This Section shall not apply to a service contract provider using any language prohibited by this Section in its name prior to July 1, 2013.

(b) A service contract provider or its representative shall not in its service contracts or literature make, permit, or cause to be made, any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted.

(c) No person shall condition a loan or the sale of any goods on the purchase of a service contract.

§ 12211. Rules.

The Commissioner may adopt rules to implement and administer this Article pursuant to the Administration Adjudication Act.

§ 12212. Enforcement.

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(a) The Commissioner shall take any action necessary or appropriate to enforce this Article, and the rules adopted and orders issued hereunder. The Commissioner shall conduct investigations and examinations of service contract providers and administrators, or other persons, upon receipt of a consumer complaint. If a service contract provider has violated this Article, or rules or orders under this Article, the Commissioner shall issue an order:

(1) requiring a person to cease and desist from violating this Article, or rules or orders under this Article;

(2) prohibiting a person from selling or offering for sale service contracts in violation of this Article until full remedy is afforded to comply with this Article; and

(3) imposing a civil penalty, at an amount not to exceed fifteen percent (15%) of the recourse afforded in §12204 of this Article for the purpose of affording remedy to comply with the provisions of this Article, on a person or any combination of the foregoing, as applicable.

§ 12213. Effective Date.

This Act shall take effect upon its enactment and apply prospectively.

§ 12214. Severability.

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application and to this end the provisions of this Act is severable.
