

Title 23. Public Utilities and Regulated Industries
Chapter I. State Insurance Department, Department of Commerce
Subchapter A. Generally
Part 36. Creating a Legal Framework Within Which Service Contracts are Defined, Sold, and Regulated

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Section 1. Authority

This rule is promulgated by the Arkansas Commissioner of Insurance pursuant to Ark. Code Ann. § 23-61-108, Ark. Code Ann. §§ 25-15-201, et seq., and the Service Contracts Act, codified at Ark. Code Ann. §§ 4-114-101, et seq."

"Section 9. Effective Date

The effective date of this Rule is October 1, 2007."

Subpart 1. Generally

23 CAR § 36-101. Purpose and scope.

(a) The purposes of this part are to:

- (1) Create a legal framework within which service contracts are defined, may be sold, and are regulated in this state;
- (2) Add significant consumer protections; and
- (3) Eliminate unnecessary administration.

(b)(1) A service contract, as defined in the Service Contracts Act, Arkansas Code § 4-114-101 et seq., and this part, is not insurance and is not subject to the Arkansas Insurance Code.

(2) The Service Contracts Act and this part do not apply to the agreements and transactions set forth in Arkansas Code § 4-114-102(c).

Authority. Arkansas Code §§ 23-61-108, 4-114-101.

23 CAR § 36-102. Definitions.

As used in this part:

(1) "Administrator" means the person who is responsible for the administration of a service contract;

(2) "Commissioner" means the Insurance Commissioner of the State of Arkansas;

(3) "Consumer" means an individual who buys other than for purposes of resale any tangible personal property that is:

(A) Distributed in commerce; and

(B) Normally used for personal, family, or household purposes and not for business or resale purposes;

(4) "Person" means:

(A) An individual;

(B) A partnership;

(C) A corporation;

(D) An incorporated or unincorporated association;

(E) A joint stock company;

(F) A reciprocal;

(G) A syndicate; or

(H) Any similar entity or combination of entities acting in concert;

(5) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy;

(6) "Provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract;

(7) "Provider fee" means the consideration paid for a service contract;

(8) "Reimbursement insurance policy" means a policy of insurance issued to a provider to either:

(A) Provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider; or

(B) 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;

(9)(A) "Service contract" means a contract or an agreement for a separately stated consideration and 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 property due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including without limitation:

- (i) Unavailability of parts;
- (ii) Obsolescence;
- (iii) Food spoilage;
- (iv) Rental; or
- (v) Shipping.

(B) "Service contract" does not include mechanical breakdown insurance or maintenance agreements.

(C) A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling.

(D) A service contract is not insurance in this state or otherwise regulated under the Arkansas Insurance Code; and

(10) "Service contract holder" means a person who is the purchaser or holder of a service contract.

Authority. Arkansas Code §§ 23-61-108, 4-114-101.

23 CAR § 36-103. Requirements for doing business.

(a)(1) Service contracts shall not be issued, sold, or offered for sale in this state unless the provider or its designee has complied with the requirements of Arkansas Code § 4-114-104(b).

(2) Each provider of service contracts sold in this state shall file a registration with the Insurance Commissioner annually on or before October 1 of each year using the form attached to this part or a substantially similar form.

(3) Each provider shall pay to the commissioner a fee in the amount of two hundred dollars (\$200) upon initial registration and every year thereafter.

(4) The registration shall be updated by written notification to the commissioner if material changes occur in the registration.

(5) In addition to the registration, each provider of service contracts sold in this state must also submit a certificate of compliance using the form attached to this part or a substantially similar form.

(b) In order to ensure the faithful performance of a provider's obligations to its contract holders, each provider shall comply with the financial requirements of Arkansas Code § 4-114-104(d).

Authority. Arkansas Code §§ 23-61-108, 4-114-101.

23 CAR § 36-104. Required disclosures and prohibited acts.

(a) A service contract issued, sold, or offered for sale in this state shall be written in clear, understandable language that is easy to read and must conspicuously disclose the requirements of Arkansas Code § 4-114-106.

(b) It is a violation of this part and the Service Contracts Act, Arkansas Code § 4-114-101 et seq., for a provider to engage in any act prohibited by Arkansas Code § 4-114-107.

Authority. Arkansas Code §§ 23-61-108, 4-114-101.

23 CAR § 36-105. Recordkeeping requirements.

(a) A provider shall keep accurate accounts, books, and records concerning transactions regulated under the Service Contracts Act, Arkansas Code § 4-114-101 et seq.

(b) Providers must comply with all recordkeeping requirements set forth in Arkansas Code § 4-114-108.

Authority. Arkansas Code §§ 23-61-108, 4-114-101.

23 CAR § 36-106. Enforcement.

(a)(1) The Insurance Commissioner may conduct investigations or examinations of providers, administrators, insurers, or other persons to enforce the provisions of the Service Contracts Act, Arkansas Code § 4-114-101 et seq., and this part and to protect service contract holders in this state.

(2) The commissioner may take any action that is necessary and appropriate to enforce the provisions of the Service Contracts Act and this part, including but not limited to the actions authorized by Arkansas Code § 4-114-111.

(b) Upon request by the commissioner, a provider shall submit to the commissioner any requested documents or other evidence of compliance with the Service Contracts Act and this part.

Authority. Arkansas Code §§ 23-61-108, 4-114-101.

23 CAR § 36-107. Severability.

If any provision of this part or its application to any person or circumstance is for any reason held to be invalid, the remainder of the part and the application of the provision to other persons or circumstances shall not be affected.

Authority. Arkansas Code §§ 23-61-108, 4-114-101.

Appendix A. Forms

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/149/23CARpt.36Forms.pdf>