

ASSEMBLY, No. 3882

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JANUARY 9, 2007

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Regulates certain service contracts to perform maintenance, repair, replacement, or service of property used for personal, family, or household purposes.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning service contracts, and supplementing and
2 amending P.L.1980, c.125.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. (New section) As used in this act:

8 "Administrator" means a person who performs the third-party
9 administration of a service contract, pursuant to the provisions of
10 section 5 of this act, on behalf of a provider.

11 "Consumer" means a natural person who buys other than for
12 purposes of resale any tangible personal property that is distributed
13 in commerce and that is normally used for personal, family, or
14 household purposes and not for business or research purposes.

15 "Director" means the Director of the Division of Consumer
16 Affairs.

17 "Division" means the Division of Consumer Affairs in the
18 Department of Law and Public Safety.

19 "Maintenance agreement" means a contract of limited duration
20 that provides for scheduled maintenance only, and does not include
21 repair or replacement of the property subject to the contract.

22 "Non-original manufacturer's part" means a replacement part not
23 made for or by the original manufacturer of the property, commonly
24 referred to as an "after market part."

25 "Person" means any natural person, company, corporation,
26 association, society, firm, partnership, or other similar legal entity.

27 "Premium" means the consideration paid to an insurer for a
28 reimbursement insurance policy, and is subject to any applicable
29 premium tax.

30 "Provider" means a person who is contractually obligated to the
31 service contract holder under the terms of the service contract.

32 "Provider fee" means the consideration paid for a service
33 contract, and is not subject to any premium tax.

34 "Reimbursement insurance policy" means a policy of insurance
35 issued to a provider to either provide reimbursement to, or payment
36 on behalf of, the provider under the terms of the insured service
37 contracts issued or sold by the provider, or, in the event of the
38 provider's non-performance, to provide or pay for, on behalf of the
39 provider, all covered contractual obligations incurred by the
40 provider.

41 "Service contract" means a contract or agreement for a specific
42 duration, for a provider fee or other separately stated consideration,
43 to perform the maintenance, repair, replacement, or service of a
44 motor vehicle or other property, or indemnification for
45 maintenance, repair, replacement, or service for the operational or
46 structural failure of the motor vehicle, or residential or other
47 property, due to a defect in materials or workmanship, or normal

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 wear and tear, and which may include additional provisions for
2 incidental payment of indemnity under limited circumstances,
3 including, but not limited to, towing, rental, and emergency road
4 services, and other road hazard protections. A service contract may
5 provide for the maintenance, repair, replacement, or service of the
6 motor vehicle or other property for damage resulting from power
7 surges or interruption, or accidental damage from handling. A
8 service contract shall not be considered to be an insurance contract,
9 and shall not be subject to regulation as insurance pursuant to Title
10 17 of the Revised Statutes.

11 "Service contract holder" or "contract holder" means a person
12 who is the purchaser of a service contract or is entitled to the
13 contractual obligations under the terms of the contract.

14 "Warranty" means a warranty made solely by the manufacturer,
15 importer, or seller of property or services without consideration,
16 that is incidental to, and not negotiated or separated from, the sale
17 of the property or services, that guarantees indemnity for defective
18 materials, parts, mechanical or electrical breakdown, labor, or
19 workmanship, or provides other remedial measures, including repair
20 or replacement of the property or repetition of services.

21

22 2. (New section) a. The purpose of this act is to create a legal
23 framework within which service contracts may be issued, offered
24 for sale, or sold in this State.

25 b. The following shall be exempt from the provisions of this act:

26 (1) warranties;

27 (2) maintenance agreements; and

28 (3) service contracts issued, offered, or sold:

29 (a) by a public utility to the extent that the public utility is
30 regulated by the Board of Public Utilities, but only with respect to a
31 service contract regarding a product sold to a consumer, or installed
32 or serviced for the consumer at the consumer's household, by the
33 utility; or

34 (b) to any person other than a consumer.

35 c. The making, proposing to make, issuing, marketing, offering,
36 selling, administering of, or providing contractual obligations for, a
37 service contract shall not be construed to be the business of
38 insurance and shall be exempt from regulation as insurance
39 pursuant to Title 17 of the Revised Statutes, however nothing in this
40 act shall be construed to exempt the making, issuing, marketing,
41 offering, or selling of a reimbursement insurance policy from any
42 applicable provisions of Title 17 of the Revised Statutes.

43

44 3. (New section) a. A provider of service contracts issued,
45 offered for sale, or sold in this State, shall not use in its name the
46 words "insurance," "casualty," "surety," "mutual" or any other
47 word descriptive of the insurance, casualty, or surety business, or a
48 name deceptively similar to the name or description of any

1 insurance or surety corporation, or to the name of any other
2 provider registered pursuant to section 4 of this act, but may use the
3 word “guaranty” or similar word.

4 b. This section shall not apply to the name of a provider of
5 service contracts in effect prior to the effective date of this act.
6

7 4. (New section) a. A provider of service contracts issued,
8 offered for sale, or sold in this State, shall file a registration, to be
9 updated at least annually, with the director, which shall include: the
10 provider’s name, which shall comply with the provisions of section
11 3 of this act; principal business address; name and telephone
12 number of an appropriate contact person; and name and address of
13 the provider’s agent for service of process in this State, which may
14 be the director, if the provider’s principal business address is not in
15 this State.

16 b. The registration shall also include an attestation from an
17 owner, partner, proprietor, corporate officer or director, or member,
18 as appropriate to the organizational structure of the provider, as to
19 the provider’s compliance with at least one of the following means
20 of assuring faithful performance to its contract holders:

21 (1) insuring each service contract under a reimbursement
22 insurance policy issued by an insurer licensed, registered, or
23 otherwise authorized to transact the business of insurance in this
24 State, and which complies with the provisions of section 6 of this
25 act;

26 (2) maintaining a funded reserve account for its obligations
27 under each contract issued and outstanding in this State, with
28 reserves not less than 40% of gross consideration received, less the
29 amount of claims paid, under those contracts. The reserve account
30 shall be subject to examination and review by the director pursuant
31 to section 10 of this act; or

32 (3) maintaining, alone or together with the provider’s parent or
33 other affiliated corporation, a net worth of stockholders’ equity of
34 not less than \$100,000,000. At the time of registration or any time
35 upon request by the director, the provider shall provide the director
36 with a copy of the provider’s or its parent’s or other affiliated
37 corporation’s most recent Form 10-K or Form 20-F, or successor
38 form containing substantially the same information, filed with the
39 Securities and Exchange Commission within the last 12-month
40 period, or if the provider, or parent or other affiliated corporation,
41 does not file this form with the Securities and Exchange
42 Commission, a copy of the entity’s audited financial statements,
43 which show a net worth of the provider, or parent or other affiliated
44 corporation, of not less than \$100,000,000. If the provider’s
45 parent’s or other affiliated corporation’s form or financial
46 statements are filed to meet the provider’s means of assuring
47 faithful performance to its contract holders, the parent or other
48 affiliated corporation shall agree to guarantee the obligations of the

1 provider.

2 c. Except for the requirements set forth in subsection b. of this
3 section, the provider shall not be subject to any additional financial
4 security requirements by the director in order to issue, offer, or sell
5 service contracts in this State.

6 d. At the time of registration, and annually thereafter, the
7 provider shall pay a fee to the director in the amount of \$500, which
8 the director may adjust pursuant to regulation to reflect the actual
9 costs of administering the provisions of this act.

10 e. (1) Upon acceptance and approval of the registration, the
11 director shall make appropriate information from the registration
12 and any updates available to providers and sellers of service
13 contracts, as well as the public, by posting the information on the
14 division's official Internet website. The information shall include
15 the provider's name, principal business address, telephone number,
16 form of financial security as required pursuant to subsection b. of
17 this section, and any other appropriate information as determined by
18 the director.

19 (2) If the provider fails to comply with any provision of this act
20 after the director's posting of information from the initial
21 registration, the director, upon notice to the provider and
22 opportunity for a hearing which concludes with a finding of
23 noncompliance, shall post on the website that the provider is
24 deemed noncompliant and that the provider or any other seller of
25 the provider's contracts shall no longer offer for sale or sell those
26 contracts until the provider's noncompliance is resolved.

27

28 5. (New section) A provider of any service contract issued,
29 offered for sale, or sold in this State may appoint an administrator
30 to perform the third-party administration of any contract, which
31 shall include, but not be limited to:

32 a. arranging or submitting the information and materials
33 required for the provider's initial or updated registration pursuant to
34 section 4 of this act;

35 b. maintaining the accounts, books, papers, documents, and
36 other records concerning the provider's activities and transactions
37 regulated under this act;

38 c. performing or arranging the collection, maintenance, or
39 disbursement of payments on behalf of the provider, related to any
40 claim arising under the provider's contracts; or

41 d. participating in the processing or adjustment of any claim
42 arising under the provider's contracts.

43

44 6. (New section) a. An insurer issuing a reimbursement
45 insurance policy to a provider for any service contract issued,
46 offered for sale, or sold in this State shall:

47 (1) be deemed to have received the premium for the insurance
48 policy:

- 1 (a) upon payment of a provider fee to the provider for the
2 contract; or
- 3 (b) upon payment or other consideration to the provider by the
4 seller of the contract;
- 5 (2) (a) provide reimbursement to, or payment on behalf of, the
6 provider under the terms of the contract; or
- 7 (b) in the event of the provider's non-performance, provide or
8 pay for, on behalf of the provider, all covered contractual
9 obligations incurred by the provider;
- 10 (3) accept a claim arising under the contract directly from a
11 contract holder, if the provider does not provide any contractual
12 obligation pursuant to the contract within 60 days of presentation of
13 a valid claim by the contract holder; and
- 14 (4) terminate the policy covering the contract only after a notice
15 of termination is presented to the director, at least 10 days prior to
16 the termination of the policy, which termination shall not reduce the
17 insurer's responsibility for any insured contract issued or sold prior
18 to the date of termination.
- 19 b. This section shall not be construed to limit the right of the
20 insurer to seek indemnification or subrogation against the provider
21 if the insurer provides or pays, or is obligated to provide or pay, for
22 any covered contractual obligation incurred by the provider.
23
- 24 7. (New section) A service contract issued, offered for sale, or
25 sold in this State shall be written, printed, or typed in clear and
26 understandable language, and shall contain the requirements set
27 forth in this section, as applicable:
- 28 a. the provider's name, principal or other appropriate business
29 address, and telephone number;
- 30 b. a statement accompanying the provider's name, if the name is
31 exempt from any wording prohibitions pursuant to subsection b. of
32 section 3 of this act, in substantially the following form: "This
33 service contract is not an insurance contract.";
- 34 c. the administrator's name, principal or other appropriate
35 business address, and telephone number;
- 36 d. the service contract holder's name and address, to the extent
37 this information is furnished by the contract holder;
- 38 e. the provider fee, or a reference to any other documentation
39 which contains the provider fee;
- 40 f. the property subject to coverage by the service contract, and
41 the contractual obligations of the provider with respect to that
42 property;
- 43 g. the amount of any deductible or service fee, as applicable;
- 44 h. whether the provider's use of non-original manufacturer's
45 parts is permitted;
- 46 i. whether the service contract provides for consequential
47 damages or preexisting conditions;
- 48 j. the contractual obligations of the service contract holder,

1 including, but not limited to, the duty of the contract holder to
2 comply with the provisions of the owner's manual for the property
3 and to protect the property against any further damage;

4 k. the conditions governing the transferability of the service
5 contract;

6 l. the conditions governing the cancellation of the service
7 contract by the service contract holder, which shall:

8 (1) permit the contract holder, if the contract holder makes no
9 claim arising under the contract, to cancel the contract:

10 (a) within 10 days of receipt of the contract, or a longer period
11 specified in the contract, if delivered at the time of purchase; or
12 (b) within 20 days of receipt of the contract, or a longer period
13 specified in the contract, if mailed; and

14 (2) require the provider:

15 (a) to provide the contract holder with the full purchase price of
16 the contract by:

17 (i) refund; or
18 (ii) credit to the account of the contract holder; and

19 (b) to additionally pay the contract holder a 10% per month
20 penalty, based upon the purchase price of the contract, if the refund
21 or credit is not completed within 45 days of the cancellation of the
22 contract;

23 m. the conditions governing cancellation of the service contract
24 by the provider, prior to the expiration of the contract, which shall:

25 (1) require, except as provided in paragraph (2) of this
26 subsection, that the provider mail a written notice to the contract
27 holder at the contract holder's last known address:

28 (a) which contains the reason for the cancellation and the
29 effective date of the cancellation; and

30 (b) is delivered at least five days prior to the effective date of
31 the cancellation; and

32 (2) explain that a written notice shall not be required if the
33 reason for cancellation is nonpayment of the provider fee, a material
34 misrepresentation or omission, or a substantial breach of contractual
35 obligations concerning the property or its use; and

36 n. whether the service contract is insured by a reimbursement
37 insurance policy, and:

38 (1) if insured, the contract shall contain:

39 (a) the insurer's name, principal or other appropriate business
40 address, and telephone number accompanied by a conspicuous
41 statement in substantially the following form: "Obligations of the
42 provider under this service contract are insured under a service
43 contract reimbursement insurance policy."; and

44 (b) information concerning the procedure for the contract holder
45 to present a claim arising under the contract directly to the
46 reimbursement insurance company, pursuant to the insurer's
47 obligations set forth in section 6 of this act, in the event that the
48 provider does not provide any contractual obligation pursuant to the

1 contract within 60 days of presentation of a valid claim by the
2 contract holder; or

3 (2) if not insured, the contract shall contain a conspicuous
4 statement in substantially the following form: "Obligations of the
5 provider under this service contract are backed by the full faith and
6 credit of the provider."
7

8 8. (New section) A service contract shall not be issued, offered
9 for sale, or sold in this State unless the provider or seller, if not the
10 provider, presents:

11 a. a receipt for, or other written evidence of, the purchase of the
12 service contract to the contract holder; and

13 b. a copy of the service contract to the service contract holder
14 within a reasonable period of time from the date of purchase.
15

16 9. (New section) a. A provider of any service contract issued,
17 offered for sale, or sold in this State shall keep accurate accounts,
18 books, papers, documents, and other records concerning the
19 activities and transactions regulated under this act.

20 b. The provider's accounts, books, papers, documents, and other
21 records shall include:

22 (1) a copy of each contract issued or sold;

23 (2) the name and address of each service contract holder, to the
24 extent this information is furnished by the contract holder; and

25 (3) information concerning any claim arising under each
26 contract, which shall include, but not be limited to, the date of claim
27 filing, claim description, and provider's response.

28 c. (1) Except as provided by paragraph (2) of this subsection,
29 the provider shall retain all records related to a contract required by
30 the provisions of this section for at least one year after the
31 expiration of all contractual obligations under the terms of the
32 contract.

33 (2) A provider discontinuing business in this State shall
34 maintain all records related to each contract issued or sold in this
35 State until the provider submits appropriate proof, satisfactory to
36 the director, that it discharged or transferred its contractual
37 obligations for all contracts so issued or sold.

38 d. The records required and maintained pursuant to this section
39 may be maintained electronically or through other record keeping
40 technology, but if maintained in a format other than by hard copy,
41 the records shall be capable of duplication to legible hard copy at
42 the request of the director.
43

44 10. (New section) a. A violation of any of the provisions of this
45 act shall be an unlawful practice and a violation of P.L.1960, c.39
46 (C.56:8-1 et seq.).

47 b. In order to enforce the provisions of this act, the director may
48 conduct examinations of any provider, administrator, seller, or other

1 person subject to the provisions of this act. Upon request by the
2 director, a provider, administrator, seller, or other person shall make
3 any accounts, books, papers, documents and other records required
4 and maintained pursuant to section 9 of this act available to the
5 director for inspection which are necessary to enable the director to
6 reasonably determine compliance with this act.

7
8 11. Section 1 of P.L.1980, c.125 (C.56:12-1) is amended to read
9 as follows:

10 1. As used in this act:

11 "Consumer contract" means a written agreement in which an
12 individual:

13 a. Leases or licenses real or personal property;

14 b. Obtains credit;

15 c. Obtains insurance coverage, except insurance coverage
16 contained in policies subject to the "Life and Health Insurance
17 Policy Language Simplification Act," [(P.L.1979, c.167, C.17B:17-
18 17 et seq.)] P.L.1979, c.167 (C.17B:17-17 et seq.);

19 d. Borrows money;

20 e. Purchases real or personal property;

21 f. Contracts for services including professional services ;

22 g. Enters into a service contract, as defined in section 1 of
23 P.L. , c. (C.) (pending before the Legislature as this bill),
24 for cash or on credit and the money, property or services are
25 obtained for personal, family or household purposes. "Consumer
26 contract" includes writings required to complete the consumer
27 transaction. "Consumer contract" does not include a written
28 agreement involving a transaction in securities with a broker-dealer
29 registered with the Securities and Exchange Commission, or a
30 transaction in commodities with a futures commission merchant
31 registered with the Commodities Futures Trading Commission.

32 (cf: P.L.1982, c.195, s.1)

33
34 12. This act shall take effect on the 365th day following
35 enactment; except that the director may take any anticipatory
36 administrative action in advance thereof as shall be necessary for
37 the implementation of this act, and the act shall remain inoperative
38 until the final adoption by the director of all regulations necessary
39 for the implementation of this act.

40 41 42 STATEMENT

43
44 This bill regulates the sale and implementation of certain service
45 contracts for the repair, replacement, maintenance, or service of
46 property used for personal, family or household purposes.

47 As defined in the bill, a service contract is a contract or
48 agreement for a specific duration, for a provider fee or other

1 separately stated consideration, which covers repair, replacement,
2 maintenance, or service of a motor vehicle, or residential or other
3 property, due to defects or normal wear and tear, and may include
4 additional provisions concerning towing, rental, and emergency
5 road services, and other road hazard protections. The bill exempts
6 from its requirements: (1) warranties and maintenance agreements;
7 (2) service contracts offered or sold by public utilities regulated by
8 the Board of Public Utilities, with respect to those contracts which
9 concern a product sold to a private consumer, or installed or
10 serviced at the consumer's household, by such utilities; and (3)
11 service contracts offered or sold to persons other than private
12 consumers.

13 The bill requires providers of service contracts, or sellers of such
14 contracts if not the actual providers, to provide contract purchasers
15 with receipts or other written evidence of such contracts, and to
16 provide copies of such contracts to the purchaser within a
17 reasonable period of time following the date of purchase. The bill
18 establishes certain specifications as to the form and contents of
19 service contracts, including requirements that service contracts be
20 written in plain language and provide disclosures concerning
21 matters such as the provider's permitted use of non-original
22 manufacturer's parts or coverage for preexisting conditions.
23 Additionally, providers shall provide contract holders with the right
24 to return a service contract within a period of time of no less than
25 10 days from receipt of the contract, and obtain a full refund of the
26 contract's purchase price from that provider, so long as the contract
27 holder makes no claim arising under the contract.

28 Service contract providers shall also meet certain financial
29 security requirements demonstrating the providers' ability to ensure
30 the performance of providers' obligations to contract holders. In
31 order to demonstrate this ability, providers may: 1) maintain a
32 funded reserve account for any obligations, with reserves of not less
33 than 40% of gross consideration received, less the amount of claims
34 paid, under its service contracts; 2) maintain, alone or together with
35 the providers' parent or other affiliated corporation, a net worth or
36 stockholders' equity of not less than \$100,000,000; or 3) insure
37 each service contract under a reimbursement insurance policy,
38 which reimburses a service provider upon fulfilling contract
39 obligations, or pays others on behalf of a provider in the event of
40 the provider's non-performance.

41 The bill also places certain requirements on insurers issuing
42 reimbursement insurance policies in this State, including the
43 requirement that an insurer cannot terminate a reimbursement
44 insurance policy without notice to the division. In addition, the bill
45 provides a right to contract holders to apply directly to the
46 reimbursement insurance company in the event of non-performance
47 by a provider.

1 A violation of the bill's provisions constitutes an unlawful
2 practice pursuant to the consumer fraud act, P.L.1960, c.39 (C.56:8-
3 1 et seq.). Such an unlawful practice is punishable by a monetary
4 penalty of not more than \$10,000 for the first offense, and not more
5 than \$20,000 for the second and any subsequent offense. In
6 addition, a violation can result in cease and desist orders issued by
7 the Attorney General, the assessment of punitive damages, and the
8 awarding of treble damages and costs to an injured party.

9 The Division of Consumer Affairs shall oversee the
10 implementation and enforcement of the bill's provisions. The bill's
11 effective date is 365 days following its enactment into law,
12 however, the bill's provisions shall remain inoperative until the
13 final adoption by the Director of the Division of Consumer Affairs
14 of all regulations necessary for the implementation of the bill. The
15 intent of the bill's delayed effective date, and inoperability in the
16 absence of finalized regulations, is to allow service contract
17 providers to continue to engage in their respective service
18 contracting businesses, including having their service contracts
19 offered for sale or sold by others, pursuant to current law, until the
20 time that the division can effectively regulate the operation of
21 current service contract providers and others under the bill's new
22 provisions.