SENATE, No. 4239

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED DECEMBER 2, 2021

Sponsored by:
Senator NELLIE POU
District 35 (Bergen and Passaic)

SYNOPSIS

Imposes certain consumer protection requirements on service contract providers.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning service contracts and amending and supplementing P.L.2013, c.197.

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

1. Section 1 of P.L.2013, c.197 (C.56:12-87) is amended to read as follows:

1. As used in this act:

"Administrator" means a person who performs the third-party administration of a service contract, pursuant to the provisions of section 5 of **[**this act**]** P.L.2013, c.197 (C.56:12-91), on behalf of a provider.

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

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

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

"Emergency, life safety, or property safety goods" means any goods provided for installation in, as part of, or for addition to, a system designed to prevent, respond to, alert regarding, suppress, control, or extinguish an emergency or the cause of an emergency, or assist evacuation in the event of an emergency, which emergency could threaten life or property. Examples of these systems include fire alarm, fire sprinkler, fire suppression, fire extinguisher, security, gas detection, intrusion detection, access control, video surveillance and recording, mass notification, public address, emergency lighting, patient wandering, infant tagging, and nurse call.

"Leased motor vehicle excess wear and use protection" means the repair, replacement, or maintenance of property, or indemnification for repair, replacement, or maintenance, due to excess wear and use, damage for items such as tires, paint cracks or chips, interior stains, rips or scratches, exterior dents or scratches, windshield cracks or chips, missing interior or exterior parts or excess mileage that results in a lease-end charge, or any other charge for damage that is deemed as excess wear and use by a lessor under a motor vehicle lease.

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

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.

"Motor vehicle ancillary protection product" means a contract or agreement between a provider and a consumer for a specific duration, for a provider fee or other separately stated consideration, to perform one or more of the following with respect to a motor vehicle:

(1) the repair or replacement of tires 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;

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

(3) the repair of small motor vehicle windshield chips or cracks which may include replacement of the windshield for chips or cracks that cannot be repaired;

(4) the replacement of a motor vehicle key or key-fob in the event that the key or key-fob becomes inoperable or is lost or stolen;

(5) leased motor vehicle excess wear and use protection; or

(6) other services which may be approved by the director, that are consistent with the provisions of P.L.2013, c.197 (C.56:12-87 et seq.).

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

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

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

"Provider" means a person who <u>administers, issues, makes, provides, sells or offers to sell a service contract, or who</u> is contractually obligated to the service contract holder under the terms of the service contract.

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

<u>“Public utility” means a public utility as defined in subsection a. of R.S.48:2-13.</u>

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

"Service contract" means a contract or agreement between a provider and a consumer for any duration, for a provider fee or

other separately stated consideration, to perform, or to provide indemnification for the performance of, the maintenance, repair, replacement, or service of property for the operational or structural failure of the property due to a defect in materials or workmanship or due to normal wear and tear, and which may include additional provisions for incidental payment of indemnity under limited circumstances. In the case of a motor vehicle, such circumstances may include towing, rental, and emergency road services, and other road hazard protections. A service contract may provide for the maintenance, repair, replacement, or service of the property for damage resulting from power surges or interruption, or accidental damage from handling. A service contract also includes a motor vehicle ancillary protection product. Service contracts may provide for leak or repair coverage to house roofing systems. A "service contract" does not include a contract in writing to maintain structural wiring associated with the delivery of cable, telephone, or other broadband communication services or a contract in writing related to the delivery of satellite television or broadband communication services.

"Service contract holder" or "contract holder" means a consumer who is the purchaser of a service contract or is entitled to the contractual benefits under the terms of the contract.

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

(cf: P.L.2020, c.86, s.1)

2. Section 3 of P.L.2013, c.197 (C.56:12-89) is amended to read as follows:

3. A provider of service contracts issued, offered for sale, or sold in this State, shall not use in its name, products, descriptions of products, advertisements or any other materials the words "insurance," "casualty," "surety," “guaranty,” “warranty,” "mutual" or any other word descriptive of the insurance, casualty, or surety business, **[**or**]** and shall not use a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other provider registered pursuant to section 4 of **[**this act, but may use the word "guaranty" or similar word**]** P.L.2013, c.197 (C.56:12-90) except that nothing in this section shall prevent a provider of service contracts issued, offered for sale, or sold in this State, from using the terms to indicate that service contracts do not constitute insurance, guaranties, or warranties.

(cf: P.L.2013, c.197, s.3)

3. Section 4 of P.L.2013, c.197 (C.56:12-90) is amended to read as follows:

4. a. A person shall not issue, offer to sell, or sell service contracts in this State unless the provider complies with one or more of the following means of assuring faithful performance to its contract holders:

(1) each service contract shall be insured under a reimbursement insurance policy issued by an insurer licensed, registered, or otherwise authorized to transact the business of insurance in this State, and which complies with the provisions of section 6 of **[**this act**]** P.L.2013, c.197 (C.56:12-92);

(2) a funded reserve account shall be established and maintained for its obligations under each contract issued and outstanding in this State, with reserves calculated at not less than 40% of gross consideration received, then less the amount of claims paid under those contracts. If those reserves fall below the minimum required, the provider has 90 days to come into compliance without violating this section. The reserve account shall be subject to examination and review by the director pursuant to section 10 of **[**this act**]** P.L.2013, c.197 (C.56:12-96); or

(3) alone or together with the provider's parent or other affiliated corporation, the provider shall maintain a net worth or stockholders' equity of not less than $100,000,000. Upon request by the director, the provider shall provide the director with a copy of the provider's or its parent's or other affiliated corporation's most recent Form 10-K or Form 20-F, or successor form containing substantially the same information, filed with the Securities and Exchange Commission within the last 12-month period, or if the provider, or parent or other affiliated corporation, does not file this form with the Securities and Exchange Commission, a copy of the entity's audited financial statements, which show a net worth of the provider, or parent or other affiliated corporation, of not less than $100,000,000. If the provider's parent's or other affiliated corporation's form or financial statements are filed to meet the provider's means of assuring faithful performance to its contract holders, the parent or other affiliated corporation shall agree to guarantee the obligations of the provider.

b. **[**Except for**]** In addition to the requirements set forth in subsection a. of this section, the provider shall **[**not be subject to any additional financial security requirements by the director**]** maintain a bond, having a value of not less than five percent of the gross consideration received per annum, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than $25,000, in order to issue, offer, or sell service contracts in this State. The provider shall name the division as a party on the policy, and shall notify the division, in writing, in the event of the cancellation or non-renewal of the bond.

c. In addition to any applicable damages and penalties pursuant to subsection a. of section 10 of P.L.2013, c.197 (C.56:12-96), a person who sells a service contract that is not in compliance with P.L.2013, c.197 (C.56:12-87 et al.) or that is issued by a provider that is not in compliance with P.L.2013, c.197 (C.56:12-87 et al.) shall be jointly and severally liable for all covered contractual obligations arising under the terms of such contract or any service contract sold at a time when the provider of the contract is non-compliant.

(cf: P.L.2013, c.197, s.4)

4. (New section) A provider shall disclose, in a manner and form prescribed by the director the following:

a. the identities of all of the principals of the provider or its parent or other affiliated corporation and the involvement of the principals in past litigation or enforcement matters concerning service contracts; and

b. information concerning the provider's business operations, which shall include:

(1) the percentage of contract holders who have received a benefit under the contract;

(2) the amount collected in provider fees compared to the amounts paid out under the contract; and

(3) the percentage of claims for services that are denied by the provider.

5. (New section) a. A service contract that is not offered by a public utility but which is advertised by any entity, including an entity affiliated with a public utility, using a public utility's trade name, or other identifying information, shall not qualify as exempt pursuant to section 2 of P.L.2013, c.197, s.2 (C.56:12-88).

b. An advertisement for a service contract that is offered by an entity other than a public utility in a manner that uses a public utility's trade name or other identifying information, shall clearly and prominently disclose:

(1) that the service contract is not being offered by the public utility but by a third party entity that is not part of the public utility, and that an entity other than the public utility will be responsible for performing the services advertised;

(2) the name of the provider that offers the service contract;

(3) the provider's contact information;

(4) that the communication is an advertisement; and

(5) if applicable, that the billing for the provider's services will be conducted through a public utility and that the public utility is an entity other than the provider.

6. (New section) a. No provider shall issue, sell, or offer to sell a service contract in this State, unless the provider has registered with the division.

b. The registration application and renewal shall be on a form provided by the division and shall:

(1) disclose the address, ownership, and nature of business of the provider;

(2) be renewed annually on July 1 or other date established by the director;

(3) be accompanied by a fee of $300 per registration and annual renewal; and

(4) be accompanied by an audited financial statement per registration and annual renewal that is prepared in accordance with, at the election of the provider, generally accepted accounting principles or statutory accounting principles.

c. A registration application or registration renewal shall not be considered filed until all required information and fees are received by the division.

d. Any provider that fails to register prior to the sale of a service contract shall pay a late filing fee of $100 for each 30-day period, or portion thereof, that the registration is late. A provider that fails to timely renew its registration shall pay a late fee of $50 for each 30-day period, or portion thereof, that the annual renewal filing fee is late. The late fees authorized by this subsection shall be in addition to all other penalties authorized by law, including civil penalties for the sale of any service contract while unregistered.

e. The director may refuse to issue or renew, and may revoke or suspend, any registration for failure to comply with, or violation of, the provisions of P.L. c. (C.) (pending before the Legislature as this bill) or any regulation promulgated pursuant thereto, or the provisions of P.L.1960, c.39 (C.56:8-1 et seq.). A refusal, revocation, or suspension shall not be made except upon reasonable notice to, and opportunity to be heard by the applicant registrant.

7. (New section) The division may publish any information regarding any provider registered, or required to be registered, under section 6 of P.L. , c. (C.)(pending before the Legislature as this bill) on a publicly accessible webpage operated by the division.

8. (New section) a. Any provider that sells or offers to sell any service to a consumer pursuant to a service contract the term of which is a specified period of 12 months or longer and that automatically renews for a specified period of more than one month, unless the consumer cancels the contract, shall provide the consumer with written or electronic notification of the automatic

renewal provision. Notification shall be provided to the consumer not less than 30 days nor more than 60 days before the cancellation deadline pursuant to the automatic renewal provision. This notification shall disclose clearly and conspicuously:

(1) that unless the consumer cancels the contract the contract will automatically renew; and

(2) methods by which the consumer may obtain details of the automatic renewal provision and cancellation procedure, whether by contacting the provider at a specified telephone number or address, by referring to the contract, or by any other method. Such methods shall include, for each consumer, at least one address to which written cancellation requests may be addressed, one phone number that consumers may call to cancel, and one online method of cancellation.

b. As part of the provider's routine business practice, where the business has failed for any reason to comply with the provisions of this section, the unearned portion of the contract subject to the automatic renewal provision shall be refunded as of the date on which the provider is notified of the error.

c. The provider shall provide written or electronic notification to the consumer not less than 30 days nor more than 60 days before any change in the procedures required of the consumer to cancel the automatic renewal provision.

d. All cancellation requests will be acknowledged and honored within 3 working days of receipt, and applied as of the date of receipt.

e. Nothing in this section shall be construed to prevent a consumer from recovering on a claim that would be valid and covered had the provider acted in compliance with P.L. , c. (C.) pending before the Legislature as this bill).

9. (New section) The Director of the Division of Consumer Affairs in the Department of Law and Public Safety may promulgate rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the purposes of P.L. , (C.) (pending before the Legislature as this bill).

10. This act shall take effect on the first day of the fourth month following enactment.

STATEMENT

This bill establishes certain consumer protection requirements upon service contract providers, or companies that offer contracts purporting to cover repairs to a consumer's home, car, or other goods.

In particular, the bill clarifies that legal requirements pertaining to service contracts apply to persons who administer, issue, make, provide, sell, or offer to sell contracts, as well as persons contractually obligated to provide services under a contract. The bill prohibits service contract providers from using the terms "guaranty" or "warranty" to describe their product and requires providers to meet certain bond requirements. Moreover, service contract providers are to clearly and conspicuously disclose automatic renewal provisions and provide notice prior to the cancellation deadline.

In addition, the bill requires disclosure of the identities of all company principals and their involvement in past litigation or enforcement matters as well as information about the percentage of contract holders who have received a benefit, percentage of claims denied, and comparison of the amounts collected in fees and amounts paid out in benefits.

The bill requires providers who use a public utility's trade name or identifying information to clearly and prominently disclose:

(1) that the service contract is not being offered by the public utility but by a third party entity that is not part of the public utility, and that an entity other than the public utility will be responsible for performing the services advertised;

(2) the name of the provider that offers the service contract;

(3) the provider's contact information;

(4) that the communication is an advertisement; and

(5) if applicable, that the billing for the provider's services will be conducted through a public utility and that the public utility is an entity other than the provider.

Lastly, the bill requires providers to register with the Division of Consumer Affairs and allows the division to post information about a provider publicly on its website.