

[First Reprint]

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 reported by the Senate Commerce Committee on December 16, 2021, with amendments.



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

3

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

6

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

9 1. As used in this act:

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

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

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

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

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

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

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

43 "Motor vehicle ancillary protection product" means a contract or
44 agreement between a provider and a consumer for a specific duration,

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted December 16, 2021.

1 for a provider fee or other separately stated consideration, to perform
2 one or more of the following with respect to a motor vehicle:

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

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

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

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

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

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

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

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

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

27 "Provider" means a person who ¹administers, issues, makes,
28 provides, sells or offers to sell a service contract, or who]¹ is
29 contractually obligated to the service contract holder under the terms
30 of the service contract ¹and an administrator¹.

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

33 "Public utility" means a public utility as defined in subsection a. of
34 R.S.48:2-13.

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

41 "Service contract" means a contract or agreement between a
42 provider and a consumer for any duration, for a provider fee or other
43 separately stated consideration, to perform, or to provide
44 indemnification for the performance of, the maintenance, repair,
45 replacement, or service of property for the operational or structural
46 failure of the property due to a defect in materials or workmanship or
47 due to normal wear and tear, and which may include additional
48 provisions for incidental payment of indemnity under limited

1 circumstances. In the case of a motor vehicle, such circumstances may
2 include towing, rental, and emergency road services, and other road
3 hazard protections. A service contract may provide for the
4 maintenance, repair, replacement, or service of the property for
5 damage resulting from power surges or interruption, or accidental
6 damage from handling. A service contract also includes a motor
7 vehicle ancillary protection product. Service contracts may provide
8 for leak or repair coverage to house roofing systems. A "service
9 contract" does not include a contract in writing to maintain structural
10 wiring associated with the delivery of cable, telephone, or other
11 broadband communication services or a contract in writing related to
12 the delivery of satellite television or broadband communication
13 services.

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

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

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

25

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

28 3. A provider of service contracts issued, offered for sale, or sold
29 in this State, shall not use in its name, products, descriptions of
30 products, advertisements or any other materials the words "insurance,"
31 "casualty," "surety," ¹["guaranty," "warranty,"]¹ "mutual" or any
32 other word descriptive of the insurance, casualty, or surety business,
33 [or] and shall not use a name deceptively similar to the name or
34 description of any insurance or surety corporation, or to the name of
35 any other provider registered pursuant to section 4 of [this act, but
36 may use the word "guaranty" or similar word] P.L.2013, c.197
37 (C.56:12-90) except that nothing in this section shall prevent a
38 provider of service contracts issued, offered for sale, or sold in this
39 State, from using the terms to indicate that service contracts do not
40 constitute insurance, guaranties, or warranties. ¹A provider of service
41 contracts issued, offered for sale, or sold in this State may use in its
42 name, products, descriptions of products, advertisements or any other
43 materials the words "guaranty" or "warranty," but only if when using
44 that term the provider clearly and conspicuously discloses that the
45 service contract issued, offered for sale or sold is not in the nature of a
46 guaranty or warranty as that term is legally defined and commonly
47 understood. Nothing in this section shall prevent the use of the term

1 “extended warranty” to describe a product issued, offered for sale, or
2 sold in this State if the product accurately extends the identical
3 coverages of an original equipment manufacturer warranty and the
4 provider accurately sets forth the terms and source of the original
5 equipment manufacturer warranty upon which the product is based and
6 clearly and conspicuously discloses that the product is a service
7 contract offered under P.L.2013, c.197 (C.56:12-87 et al.).¹
8 (cf: P.L.2013, c.197, s.3)

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

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

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

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

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

46 b. **【Except for】** ¹**【In addition to】** Except with respect to a
47 provider that complies with paragraph (1) or (3) of subsection a. of this
48 section or with respect to an insurer that the Commissioner of Banking

1 and Insurance has determined meets financial solvency standards
2 established under Title 17 of the New Jersey Statutes, in addition to¹
3 the requirements set forth in subsection a. of this section, the provider
4 shall [not be subject to any additional financial security requirements
5 by the director] maintain a bond, having a value of not less than five
6 percent of the gross consideration received per annum, less claims
7 paid, on the sale of the service contract for all service contracts issued
8 and in force, but not less than \$25,000, in order to issue, offer, or sell
9 service contracts in this State. The provider shall name the division as
10 a party on the policy, and shall notify the division, in writing, in the
11 event of the cancellation or non-renewal of the bond.

12 c. In addition to any applicable damages and penalties pursuant to
13 subsection a. of section 10 of P.L.2013, c.197 (C.56:12-96), a person
14 who ¹administers, issues, makes, provides,¹ sells ¹or offers to sell¹ a
15 service contract that is not in compliance with P.L.2013, c.197
16 (C.56:12-87 et al.) or that is issued by a provider that is not in
17 compliance with P.L.2013, c.197 (C.56:12-87 et al.) shall be jointly
18 and severally liable for all covered contractual obligations arising
19 under the terms of such contract or any service contract sold at a time
20 when the provider of the contract is non-compliant.
21 (cf: P.L.2013, c.197, s.4)

22
23 4. (New section) A provider shall disclose, in a manner and form
24 prescribed by the director the following:

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

29 b. information concerning the provider's business operations,
30 which shall include ¹**['**:

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

33 (2) the amount **]** a comparison of the total amounts¹ collected in
34 provider fees compared to the ¹total¹ amounts paid out ¹in claims or
35 charges for services provided¹ under the contract ¹, expressed as a
36 percentage of amounts paid out to amounts collected **]**; and

37 (3) the percentage of claims for services that are denied by the
38 provider **]**¹.

39
40 5. (New section) a. A service contract that is not offered by a
41 public utility but which is advertised by any entity, including an
42 entity affiliated with a public utility, using a public utility's trade
43 name, or other identifying information, shall not qualify as exempt
44 pursuant to section 2 of P.L.2013, c.197, s.2 (C.56:12-88).

45 b. An advertisement for a service contract that is offered by an
46 entity other than a public utility in a manner that uses a public

1 utility's trade name or other identifying information, shall clearly
2 and prominently disclose:

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

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

8 (3) the provider's contact information;

9 (4) that the communication is an advertisement; and

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

13

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

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

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

21 (2) be renewed annually on July 1 or other date established by
22 the director; ¹and¹

23 (3) be accompanied by a fee of \$300 per registration and annual
24 renewal ¹]; and

25 (4) be accompanied by an audited financial statement per
26 registration and annual renewal that is prepared in accordance with,
27 at the election of the provider, generally accepted accounting
28 principles or statutory accounting principles ¹].

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

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

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

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

7 8. (New section) a. Any provider that sells or offers to sell any
8 service to a consumer pursuant to a service contract the term of
9 which is a specified period of 12 months or longer and that
10 automatically renews for a specified period of more than one
11 month, unless the consumer cancels the contract, shall provide the
12 consumer with written or electronic notification of the automatic
13 renewal provision. Notification shall be provided to the consumer
14 not less than 30 days nor more than 60 days before the cancellation
15 deadline pursuant to the automatic renewal provision. This
16 notification shall disclose clearly and conspicuously:

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

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

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

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

36 d. All cancellation requests will be acknowledged ¹and
37 honored¹ within ¹["3 working"] 5 business¹ days of receipt ¹and
38 honored within 10 business days of receipt¹, and applied as of the
39 date of receipt.

40 e. Nothing in this section shall be construed to prevent a
41 consumer from recovering on a claim that would be valid and
42 covered had the provider acted in compliance with
43 P.L. , c. (C.) pending before the Legislature as this bill).
44

45 9. (New section) The Director of the Division of Consumer
46 Affairs in the Department of Law and Public Safety may
47 promulgate rules and regulations, pursuant to the "Administrative
48 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to

1 effectuate the purposes of P.L. , (C.) (pending before the
2 Legislature as this bill).
3
4 10. This act shall take effect on the first day of the **'[fourth]**
5 ninth¹ month following enactment.