

[First Reprint]

**ASSEMBLY, No. 1559**

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**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

**Sponsored by:**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblyman STERLEY S. STANLEY**

**District 18 (Middlesex)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Imposes certain consumer protection requirements on service contract providers.

**CURRENT VERSION OF TEXT**

As amended but not reported by the Assembly Consumer Affairs Committee on March 7, 2022.



(Sponsorship Updated As Of: 2/14/2022)

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:

<sup>1</sup>AssemblyACO committee amendments adopted March 7, 2022.

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 <sup>1</sup>administers, issues, makes,  
28 provides, sells or offers to sell a service contract, or who<sup>1</sup> is  
29 contractually obligated to the service contract holder under the terms  
30 of the service contract.

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 <sup>1</sup>provider regulated entity<sup>1</sup> to either provide  
37 reimbursement to, or payment on behalf of, the <sup>1</sup>provider regulated  
38 entity<sup>1</sup> under the terms of the insured service contracts issued or sold  
39 by the <sup>1</sup>provider regulated entity<sup>1</sup>, or, in the event of the  
40 <sup>1</sup>provider's<sup>1</sup> non-performance <sup>1</sup>of a regulated entity<sup>1</sup>, to provide or  
41 pay for, on behalf of the <sup>1</sup>provider regulated entity<sup>1</sup>, all covered  
42 contractual obligations incurred by the <sup>1</sup>provider regulated entity<sup>1</sup>.

43 <sup>1</sup>"Regulated entity" means a provider or an administrator.<sup>1</sup>

44 "Service contract" means a contract or agreement between a  
45 provider and a consumer for any duration, for a provider fee or other  
46 separately stated consideration, to perform, or to provide  
47 indemnification for the performance of, the maintenance, repair,  
48 replacement, or service of property for the operational or structural

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

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

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

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

28

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

31 3. A <sup>1</sup>**provider of** regulated entity that provides or  
32 administers<sup>1</sup>service contracts <sup>1</sup>**issued, offered for sale, or sold**<sup>1</sup> in  
33 this State, shall not use in its name, products, descriptions of products,  
34 advertisements or any other materials the words "insurance,"  
35 "casualty," "surety," <sup>1</sup>**guaranty,** <sup>1</sup>**warranty,**<sup>1</sup> "mutual" or any  
36 other word descriptive of the insurance, casualty, or surety business,  
37 **or** and shall not use a name deceptively similar to the name or  
38 description of any insurance or surety corporation, or to the name of  
39 any other <sup>1</sup>**provider** regulated entity<sup>1</sup> registered pursuant to section 4  
40 of **this act, but may use the word "guaranty" or similar word**  
41 P.L.2013, c.197 (C.56:12-90) except that nothing in this section shall  
42 prevent a <sup>1</sup>**provider of** regulated entity that provides or administers<sup>1</sup>  
43 service contracts <sup>1</sup>**issued, offered for sale, or sold,**<sup>1</sup> in this State,  
44 from using the terms to indicate that service contracts do not constitute  
45 insurance, guaranties, or warranties. <sup>1</sup>A regulated entity that provides  
46 or administers service contracts in this State may use in its name,  
47 products, descriptions of products, advertisements or any other  
48 materials the words "guaranty" or "warranty," but only if when using

1 that term the regulated entity clearly and conspicuously makes the  
2 following disclosure: “The product being offered is a service contract  
3 and is separate and distinct from any product or service warranty  
4 which may be provided by the manufacturer, importer, or seller.”  
5 Nothing in this section shall prevent the use of the term “extended  
6 warranty” to describe a product provided or administered in this State  
7 if the product accurately sets forth the terms and source of the original  
8 warranty upon which the product is based, clearly and conspicuously  
9 identifies any deviations from the original warranty, and clearly and  
10 conspicuously discloses that the product is a service contract offered  
11 under P.L.2013, c.197 (C.56:12-87 et al.).<sup>1</sup>

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

13  
14 3. Section 4 of P.L.2013, c.197 (C.56:12-90) is amended to read  
15 as follows:

16 4. a. <sup>1</sup>**[A]** Except as otherwise provided in subsection d. of this  
17 section, a<sup>1</sup> person shall not <sup>1</sup>**[issue, offer to sell, or sell]** provide or  
18 administer<sup>1</sup> service contracts in this State unless the <sup>1</sup>**[provider]**  
19 person<sup>1</sup> complies with one or more of the following means of assuring  
20 faithful performance to its contract holders:

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

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

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

1 to its contract holders, the parent or other affiliated corporation shall  
2 agree to guarantee the obligations of the provider.

3 b. ~~【Except for】~~ <sup>1</sup>~~【In】~~ Except with respect to a provider that  
4 complies with paragraph (1) or (3) of subsection a. of this section or  
5 with respect to an insurer that the Commissioner of Banking and  
6 Insurance has determined meets financial solvency standards  
7 established under Title 17 of the New Jersey Statutes, in<sup>1</sup> addition to  
8 the requirements set forth in subsection a. of this section, the provider  
9 shall ~~【not be subject to any additional financial security requirements~~  
10 ~~by the director】~~ maintain a bond, having a value of not less than five  
11 percent of the gross consideration received per annum, less claims  
12 paid, on the sale of the service contract for all service contracts issued  
13 and in force, but not less than \$25,000, in order to <sup>1</sup>~~【issue, offer, or~~  
14 ~~sell】~~ provide<sup>1</sup> service contracts in this State. The provider shall name  
15 the division as a party on the <sup>1</sup>~~【policy】~~ bond<sup>1</sup>, and shall notify the  
16 division, in writing, in the event of the cancellation or non-renewal of  
17 the bond.

18 c. In addition to any applicable damages and penalties pursuant to  
19 subsection a. of section 10 of P.L.2013, c.197 (C.56:12-96), a person  
20 who <sup>1</sup>~~【sells】~~ provides or administers<sup>1</sup> a service contract that is not in  
21 compliance with P.L.2013, c.197 (C.56:12-87 et al.) or that is issued  
22 by a provider that is not in compliance with P.L.2013, c.197 (C.56:12-  
23 87 et al.) shall be jointly and severally liable for all covered  
24 contractual obligations arising under the terms of such <sup>1</sup>non-  
25 compliant<sup>1</sup> contract or <sup>1</sup>under the terms of<sup>1</sup> any service contract  
26 <sup>1</sup>~~【sold】~~ issued<sup>1</sup> at a time when the provider of the contract is non-  
27 compliant.

28 <sup>1</sup>d. A person who administers service contracts in this State is  
29 required to comply with one or more means of assuring faithful  
30 performance as set forth in paragraph (1) through (3) of subsection a.  
31 of this section; or the means of assuring faithful performance of a  
32 service contract set forth in subsection a. of this section adopted by the  
33 provider of the service contract shall apply to indemnify that person's  
34 conduct with respect to administering the service contract.<sup>1</sup>

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

36  
37 4. (New section) A <sup>1</sup>~~【provider】~~ regulated entity<sup>1</sup> shall disclose, in  
38 a manner and form prescribed by the director the following:

39 a. the identities of all of the principals of the <sup>1</sup>~~【provider or its~~  
40 ~~parent or other affiliated corporation and the involvement of the~~  
41 ~~principals in past litigation or enforcement matters concerning service~~  
42 ~~contracts】~~ regulated entity and, if applicable, of any parent company  
43 or other affiliated entity that provides or administer's service contracts  
44 in the United States<sup>1</sup>; and

45 b. <sup>1</sup>information regarding any litigation or enforcement matters  
46 concerning service contracts filed or prosecuted during the prior five

1 years in which a principal identified in subsection a. of this section  
2 was named or involved; and

3 c.<sup>1</sup> information concerning the <sup>1</sup>**["provider's"]** regulated entity's<sup>1</sup>  
4 business operations, which shall include <sup>1</sup>**["**:

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

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

9 (3) the percentage of claims for services that are denied by the  
10 provider<sup>1</sup> the total amounts collected in provider's fees and the total  
11 amounts paid out in claims or charges for services provided under the  
12 contract<sup>1</sup>.

13  
14 5. (New section) a. A service contract that is not offered by a  
15 public utility but which is advertised by any entity, including an entity  
16 affiliated with a public utility, using a public utility's trade name, or  
17 other identifying information, shall not qualify as exempt pursuant to  
18 section 2 of P.L.2013, c.197, s.2 (C.56:12-88).

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

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

27 (2) the name of the provider that offers the service contract <sup>1</sup>and, if  
28 applicable, the name of the administrator<sup>1</sup>;

29 (3) the provider's contact information <sup>1</sup>and, if applicable, the  
30 administrator's contact information<sup>1</sup>;

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

32 (5) if applicable, that the billing for the <sup>1</sup>**["provider's"]**<sup>1</sup> services <sup>1</sup>to  
33 be provided<sup>1</sup> will be conducted through a public utility and that the  
34 public utility is an entity other than the provider.

35 <sup>1</sup>c. Nothing in this act shall be construed to impose liability on  
36 news media for accepting or publishing advertising that may fall  
37 within the scope of this section.<sup>1</sup>

38  
39 6. (New section) a. <sup>1</sup>**["No provider"]** A person<sup>1</sup> shall <sup>1</sup>**["issue, sell,**  
40 **or offer to sell"]** not provide or administer<sup>1</sup> a service contract in this  
41 State, unless the <sup>1</sup>**["provider"]** person<sup>1</sup> has registered with the division.

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

44 (1) disclose the address, ownership, and nature of business of the  
45 <sup>1</sup>**["provider"]** regulated entity<sup>1</sup>;

46 (2) be renewed annually on July 1 or other date established by the  
47 director; <sup>1</sup>and<sup>1</sup>

1 (3) be accompanied by a fee of \$300 per registration and annual  
2 renewal <sup>1</sup>]; and

3 (4) be accompanied by an audited financial statement per  
4 registration and annual renewal that is prepared in accordance with, at  
5 the election of the provider, generally accepted accounting principles  
6 or statutory accounting principles<sup>1</sup>.

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

10 d. Any <sup>1</sup>[provider] regulated entity<sup>1</sup> that fails to register prior to  
11 the sale of a service contract shall pay a late filing fee of \$100 for each  
12 30-day period, or portion thereof, that the registration is late. A  
13 <sup>1</sup>[provider] regulated entity<sup>1</sup> that fails to timely renew its registration  
14 shall pay a late fee of \$50 for each 30-day period, or portion thereof,  
15 that the annual renewal filing fee is late. The late fees authorized by  
16 this subsection shall be in addition to all other penalties authorized by  
17 law, including civil penalties for the sale of any service contract while  
18 unregistered.

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

26  
27 7. (New section) The division may publish any <sup>1</sup>non-  
28 confidential<sup>1</sup> information regarding any <sup>1</sup>[provider] regulated entity<sup>1</sup>  
29 registered, or required to be registered, under section 6 of P.L. , c.  
30 (C. )(pending before the Legislature as this bill) on a publicly  
31 accessible webpage operated by the division.

32  
33 8. (New section) a. <sup>1</sup>[Any] A<sup>1</sup> provider that <sup>1</sup>[sells or offers to  
34 sell] provides<sup>1</sup> any service to a consumer pursuant to a service  
35 contract the term of which is a specified period of 12 months or longer  
36 and that automatically renews for a specified period of more than one  
37 month, unless the consumer cancels the contract, shall provide the  
38 consumer with written or electronic notification of the automatic  
39 renewal provision. Notification shall be provided to the consumer not  
40 less than 30 days nor more than 60 days before the cancellation  
41 deadline pursuant to the automatic renewal provision. This  
42 notification shall disclose clearly and conspicuously:

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

45 (2) methods by which the consumer may obtain details of the  
46 automatic renewal provision and cancellation procedure, whether by  
47 contacting the provider at a specified telephone number or address, by  
48 referring to the contract, or by any other method. <sup>1</sup>[Such] At a



1 minimum, such<sup>1</sup> methods shall include, for each consumer<sup>1</sup> ~~], at least~~  
2 ~~one~~ <sup>]</sup> :

3 (a) an online method for the consumer to cancel the contract and a  
4 mailing<sup>1</sup> address to which written cancellation requests may be  
5 addressed <sup>1</sup> ~~], one phone~~ <sup>]</sup> ; or

6 (b) a telephone<sup>1</sup> number that <sup>1</sup> ~~consumers~~ <sup>]</sup> the consumer<sup>1</sup> may  
7 call to cancel <sup>1</sup> ~~], and one online method of cancellation~~ <sup>]</sup> the contract<sup>1</sup>.

8 b. As part of the provider's routine business practice, where the  
9 business has failed for any reason to comply with the provisions of this  
10 section, the <sup>1</sup> contract holder may cancel the contract and receive the<sup>1</sup>  
11 unearned portion of the contract subject to the automatic renewal  
12 provision <sup>1</sup> less the amount of claims paid during that automatic  
13 renewal period, which amount<sup>1</sup> shall be refunded as of the date on  
14 which the provider is notified of the error.

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

19 d. All cancellation requests <sup>1</sup> ~~will~~ <sup>]</sup> are required to<sup>1</sup> be  
20 acknowledged <sup>1</sup> within five business days of receipt<sup>1</sup> and honored  
21 within <sup>1</sup> ~~3 working~~ <sup>]</sup> 10 business<sup>1</sup> days of receipt, and applied as of  
22 the date of receipt <sup>1</sup> or, if permitted by the service contract, applied at  
23 the end of the holder's monthly billing cycle. If a cancellation request  
24 is honored within five business days of receipt, the acknowledgement  
25 requirement of this subsection shall be deemed to have been satisfied<sup>1</sup>.

26 e. Nothing in this section shall be construed to prevent a  
27 <sup>1</sup> ~~consumer~~ <sup>]</sup> contract holder<sup>1</sup> from recovering on a claim that would  
28 be valid and covered had the <sup>1</sup> ~~provider~~ <sup>]</sup> regulated entity<sup>1</sup> acted in  
29 compliance with P.L. , c. (C. ) pending before the Legislature as  
30 this bill).

31  
32 9. (New section) The Director of the Division of Consumer  
33 Affairs in the Department of Law and Public Safety may  
34 promulgate rules and regulations, pursuant to the "Administrative  
35 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to  
36 effectuate the purposes of P.L. , (C. ) (pending before the  
37 Legislature as this bill).

38  
39 10. This act shall take effect on the first day of the <sup>1</sup> ~~fourth~~ <sup>]</sup>  
40 twelfth<sup>1</sup> month following enactment.