

ASSEMBLY, No. 2087

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED FEBRUARY 25, 2008

Sponsored by:

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblywoman CARIDAD RODRIGUEZ

District 33 (Hudson)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

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.



(Sponsorship Updated As Of: 5/8/2009)

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

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 structural failure of the motor vehicle, or residential or other
2 property, due to a defect in materials or workmanship, or normal
3 wear and tear, and which may include additional provisions for
4 incidental payment of indemnity under limited circumstances,
5 including, but not limited to, towing, rental, and emergency road
6 services, and other road hazard protections. A service contract may
7 provide for the maintenance, repair, replacement, or service of the
8 motor vehicle or other property for damage resulting from power
9 surges or interruption, or accidental damage from handling. A
10 service contract shall not be considered to be an insurance contract,
11 and shall not be subject to regulation as insurance pursuant to Title
12 17 of the Revised Statutes.

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

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

23

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

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

28 (1) warranties;

29 (2) maintenance agreements;

30 (3) service contracts on tangible property if the tangible property
31 for which the service contract is sold has a purchase price of \$250
32 or less, excluding sales tax;

33 (4) mechanical breakdown insurance policies offered by licensed
34 insurers pursuant to the insurance laws of this State; and

35 (5) service contracts issued, offered, or sold:

36 (a) by a public utility to the extent that the public utility is
37 regulated by the Board of Public Utilities, or by a person providing
38 central heating and air conditioning services, but only with respect
39 to a service contract regarding the product sold to a consumer, or
40 installed or repaired for the consumer at the consumer's household,
41 by the utility or by a person providing central heating and air
42 conditioning services; or

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

44 c. The making, proposing to make, issuing, marketing, offering,
45 selling, administering of, or providing contractual obligations for, a
46 service contract shall not be construed to be the business of
47 insurance and shall be exempt from regulation as insurance
48 pursuant to Title 17 of the Revised Statutes, however nothing in this

1 act shall be construed to exempt the making, issuing, marketing,
2 offering, or selling of a reimbursement insurance policy from any
3 applicable provisions of Title 17 of the Revised Statutes.

4
5 3. (New section) a. A provider of service contracts issued,
6 offered for sale, or sold in this State, shall not use in its name the
7 words “insurance,” “casualty,” “surety,” “mutual” or any other
8 word descriptive of the insurance, casualty, or surety business, or a
9 name deceptively similar to the name or description of any
10 insurance or surety corporation, or to the name of any other
11 provider registered pursuant to section 4 of this act, but may use the
12 word “guaranty” or similar word.

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

15
16 4. (New section) a. A person shall not issue, offer to sell, or
17 sell service contracts in this State unless the provider is registered
18 with the director. A provider of service contracts issued, offered for
19 sale, or sold in this State, shall file a registration, to be updated
20 within 30 days of any change in the information included in or filed
21 with the registration, and renewed at least annually, with the
22 director, which shall include: the provider’s name, which shall
23 comply with the provisions of section 3 of this act; principal
24 business address; name and telephone number of an appropriate
25 contact person; and name and address of the provider’s agent for
26 service of process in this State, which may be the director, if the
27 provider’s principal business address is not in this State.

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

33 (1) insuring each service contract under a reimbursement
34 insurance policy issued by an insurer licensed, registered, or
35 otherwise authorized to transact the business of insurance in this
36 State, and which complies with the provisions of section 6 of this
37 act;

38 (2) maintaining a funded reserve account for its obligations
39 under each contract issued and outstanding in this State, with
40 reserves not less than 20% of gross consideration received, less the
41 amount of claims paid, under those contracts. The reserve account
42 shall be subject to examination and review by the director pursuant
43 to section 10 of this act; or

44 (3) maintaining, alone or together with the provider’s parent or
45 other affiliated corporation, a net worth or stockholders’ equity of
46 not less than \$100,000,000. At the time of registration or any time
47 upon request by the director, the provider shall provide the director
48 with a copy of the provider’s or its parent’s or other affiliated

1 corporation's most recent Form 10-K or Form 20-F, or successor
2 form containing substantially the same information, filed with the
3 Securities and Exchange Commission within the last 12-month
4 period, or if the provider, or parent or other affiliated corporation,
5 does not file this form with the Securities and Exchange
6 Commission, a copy of the entity's audited financial statements,
7 which show a net worth of the provider, or parent or other affiliated
8 corporation, of not less than \$100,000,000. If the provider's
9 parent's or other affiliated corporation's form or financial
10 statements are filed to meet the provider's means of assuring
11 faithful performance to its contract holders, the parent or other
12 affiliated corporation shall agree to guarantee the obligations of the
13 provider.

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

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

22 e. (1) Upon acceptance and approval of the registration, the
23 director shall make appropriate information from the registration
24 and any updates available to providers and sellers of service
25 contracts, as well as the public, by posting the information on the
26 division's official Internet website. The information shall include
27 the provider's name, principal business address, telephone number,
28 form of financial security as required pursuant to subsection b. of
29 this section, and any other appropriate information as determined by
30 the director.

31 (2) If the provider fails to comply with any provision of this act
32 after the director's posting of information from the initial
33 registration, the director, upon notice to the provider and
34 opportunity for a hearing which concludes with a finding of
35 noncompliance, shall post on the website that the provider is
36 deemed noncompliant and that the provider or any other seller of
37 the provider's contracts shall no longer offer for sale or sell those
38 contracts until the provider's noncompliance is resolved.

39

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

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

47 b. maintaining the accounts, books, papers, documents, and
48 other records concerning the provider's activities and transactions

1 regulated under this act;

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

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

7

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

11 (1) be deemed to have received the premium for the insurance
12 policy:

13 (a) upon payment of a provider fee to the provider for the
14 contract; or

15 (b) upon payment or other consideration to the provider by the
16 seller of the contract;

17 (2) (a) provide reimbursement to, or payment on behalf of, the
18 provider under the terms of the contract; or

19 (b) in the event of the provider's non-performance, provide or
20 pay for, on behalf of the provider, all covered contractual
21 obligations incurred by the provider;

22 (3) accept a claim arising under the contract directly from a
23 contract holder, if the provider does not comply with any
24 contractual obligation pursuant to the contract within 60 days of
25 presentation of a valid claim by the contract holder; and

26 (4) terminate or not renew the policy covering the contract only
27 after a notice of termination or nonrenewal is presented to the
28 director, at least 10 days prior to the termination or nonrenewal of
29 the policy, which termination or nonrenewal shall not reduce the
30 insurer's responsibility for any insured contract issued or sold prior
31 to the date of termination or nonrenewal.

32 b. This section shall not be construed to limit the right of the
33 insurer to seek indemnification or subrogation against the provider
34 if the insurer provides or pays, or is obligated to provide or pay, for
35 any covered contractual obligation incurred by the provider.

36

37 7. (New section) A service contract issued, offered for sale, or
38 sold in this State shall be written, printed, or typed in clear and
39 understandable language, and shall contain the requirements set
40 forth in this section, as applicable:

41 a. the provider's name, principal or other appropriate business
42 address, and telephone number;

43 b. a statement accompanying the provider's name, if the name is
44 exempt from any wording prohibitions pursuant to subsection b. of
45 section 3 of this act, in substantially the following form: "This
46 service contract is not an insurance contract.";

47 c. the administrator's name, principal or other appropriate
48 business address, and telephone number;

- 1 d. the service contract holder's name and address, to the extent
- 2 this information is furnished by the contract holder;
- 3 e. the provider fee, or a reference to any other documentation
- 4 which contains the provider fee;
- 5 f. the property subject to coverage by the service contract, and
- 6 the contractual obligations of the provider with respect to that
- 7 property;
- 8 g. the amount of any deductible or service fee, as applicable;
- 9 h. whether the provider's use of refurbished, reconditioned, or
- 10 non-original manufacturer's parts is permitted;
- 11 i. whether the service contract provides for consequential
- 12 damages or preexisting conditions;
- 13 j. the contractual obligations of the service contract holder,
- 14 including, but not limited to, the duty of the contract holder to
- 15 comply with the provisions of the owner's manual for the property
- 16 and to protect the property against any further damage;
- 17 k. the conditions governing the transferability of the service
- 18 contract;
- 19 l. the conditions governing the cancellation of the service
- 20 contract by the service contract holder, which shall:
 - 21 (1) permit the contact holder, if the contract holder makes no
 - 22 claim arising under the contract, to cancel the contract:
 - 23 (a) within 10 days of receipt of the contract, or a longer period
 - 24 specified in the contract, if delivered at the time of purchase; or
 - 25 (b) within 20 days of receipt of the contract, or a longer period
 - 26 specified in the contract, if mailed; and
 - 27 (2) require the provider:
 - 28 (a) to provide the contract holder with the full purchase price of
 - 29 the contract by:
 - 30 (i) refund; or
 - 31 (ii) credit to the account of the contract holder; and
 - 32 (b) to additionally pay the contract holder a 10% per month
 - 33 penalty, based upon the purchase price of the contract, if the refund
 - 34 or credit is not completed within 45 days of the cancellation of the
 - 35 contract;
- 36 m. the conditions governing cancellation of the service contract
- 37 by the provider, prior to the expiration of the contract, which shall:
 - 38 (1) require, except as provided in paragraph (2) of this
 - 39 subsection, that the provider mail a written notice to the contract
 - 40 holder at the contract holder's last known address:
 - 41 (a) which contains the reason for the cancellation and the
 - 42 effective date of the cancellation; and
 - 43 (b) is delivered at least five days prior to the effective date of the
 - 44 cancellation; and
 - 45 (2) explain that a written notice shall not be required if the
 - 46 reason for cancellation is nonpayment of the provider fee, a material
 - 47 misrepresentation or omission, or a substantial breach of contractual
 - 48 obligations concerning the property or its use; and

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

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

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

9 (b) information concerning the procedure for the contract holder
10 to present a claim arising under the contract directly to the
11 reimbursement insurance company, pursuant to the insurer's
12 obligations set forth in section 6 of this act, in the event that the
13 provider does not comply with any contractual obligation pursuant
14 to the contract within 60 days of presentation of a valid claim by the
15 contract holder; or

16 (2) if not insured, the contract shall contain a conspicuous
17 statement in substantially the following form: "Obligations of the
18 provider under this service contract are backed by the full faith and
19 credit of the provider."
20

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

24 a. a receipt for, or other written evidence of, the purchase of the
25 service contract to the contract holder, which shall include the
26 provider's registration number; and

27 b. a copy of the service contract to the service contract holder
28 within a reasonable period of time from the date of purchase.
29

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

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

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

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

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

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

46 (2) A provider discontinuing business in this State shall maintain
47 the means of assuring faithful performance to its contract holders as
48 required by subsection b. of section 4 of this act and all records

1 related to each contract issued or sold in this State until the provider
2 submits appropriate proof, satisfactory to the director, that it
3 discharged or transferred its contractual obligations for all contracts
4 so issued or sold.

5 d. The records required and maintained pursuant to this section
6 may be maintained electronically or through other record keeping
7 technology, but if maintained in a format other than by hard copy,
8 the records shall be capable of duplication to legible hard copy at
9 the request of the director.

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

14 b. In order to enforce the provisions of this act, the director may
15 conduct examinations of any provider, administrator, seller, or other
16 person subject to the provisions of this act. Upon request by the
17 director, a provider, administrator, seller, or other person shall make
18 any accounts, books, papers, documents and other records required
19 and maintained pursuant to section 9 of this act available to the
20 director for inspection which are necessary to enable the director to
21 reasonably determine compliance with this act.

22
23 11. Section 1 of P.L.1980, c.125 (C.56:12-1) is amended to read
24 as follows:

25 1. As used in this act:

26 "Consumer contract" means a written agreement in which an
27 individual:

28 a. Leases or licenses real or personal property;

29 b. Obtains credit;

30 c. Obtains insurance coverage, except insurance coverage
31 contained in policies subject to the "Life and Health Insurance
32 Policy Language Simplification Act," [(P.L.1979, c.167, C.17B:17-
33 17 et seq.)] P.L.1979, c.167 (C.17B:17-17 et seq.);

34 d. Borrows money;

35 e. Purchases real or personal property;

36 f. Contracts for services including professional services ;

37 g. Enters into a service contract, as defined in section 1 of
38 P.L. , c. (C.) (pending before the Legislature as this bill),
39 for cash or on credit and the money, property or services are
40 obtained for personal, family or household purposes. "Consumer
41 contract" includes writings required to complete the consumer
42 transaction. "Consumer contract" does not include a written
43 agreement involving a transaction in securities with a broker-dealer
44 registered with the Securities and Exchange Commission, or a
45 transaction in commodities with a futures commission merchant
46 registered with the Commodities Futures Trading Commission.

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

1 to return a service contract within a period of no less than 10 days
2 from receipt of the contract, and obtain a full refund of the
3 contract's purchase price from that provider, so long as the contract
4 holder makes no claim arising under the contract.

5 Service contract providers shall also meet certain financial
6 security requirements demonstrating the providers' ability to ensure
7 the performance of providers' obligations to contract holders. In
8 order to demonstrate this ability, providers may: 1) maintain a
9 funded reserve account for any obligations, with reserves of not less
10 than 20% of gross consideration received, less the amount of claims
11 paid, under its service contracts; 2) maintain, alone or together with
12 the providers' parent or other affiliated corporation, a net worth or
13 stockholders' equity of not less than \$100,000,000; or 3) insure
14 each service contract under a reimbursement insurance policy,
15 which reimburses a service provider upon fulfilling contract
16 obligations, or pays others on behalf of a provider in the event of
17 the provider's non-performance. A provider discontinuing business
18 in this State shall maintain these means of assuring faithful
19 performance to its contract holders, and all records related to each
20 contract issued or sold in the State, until the provider submits
21 appropriate proof that it discharged or transferred all of its
22 contractual obligations.

23 The bill also places certain requirements on insurers issuing
24 reimbursement insurance policies in this State, including the
25 requirement that an insurer cannot terminate a reimbursement
26 insurance policy without notice to the division. In addition, the bill
27 provides a right to contract holders to apply directly to the
28 reimbursement insurance company in the event of non-performance
29 by a provider.

30 A violation of the bill's provisions constitutes an unlawful
31 practice pursuant to the consumer fraud act, P.L.1960, c.39 (C.56:8-
32 1 et seq.). Such an unlawful practice is punishable by a monetary
33 penalty of not more than \$10,000 for the first offense, and not more
34 than \$20,000 for the second and any subsequent offense. In
35 addition, a violation can result in cease and desist orders issued by
36 the Attorney General, the assessment of punitive damages, and the
37 awarding of treble damages and costs to an injured party.

38 The Division of Consumer Affairs shall oversee the
39 implementation and enforcement of the bill's provisions. The bill's
40 effective date is 365 days following its enactment into law,
41 however, the bill's provisions shall remain inoperative until the
42 final adoption by the Director of the Division of Consumer Affairs
43 of all regulations necessary for the implementation of the bill. The
44 intent of the bill's delayed effective date, and inoperability in the
45 absence of finalized regulations, is to allow service contract
46 providers to continue to engage in their respective service
47 contracting businesses, including having their service contracts
48 offered for sale or sold by others, pursuant to current law, until the

1 time that the division can effectively regulate the operation of
2 current service contract providers and others under the bill's new
3 provisions.