

[First Reprint]

ASSEMBLY, No. 1740

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

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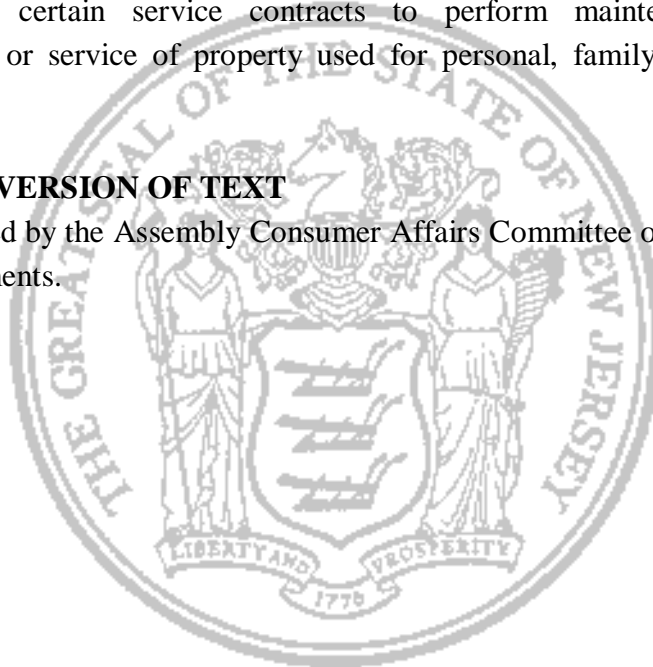
Assemblymen Diegnan and Singleton

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 reported by the Assembly Consumer Affairs Committee on June 6, 2013, with amendments.



(Sponsorship Updated As Of: 1/18/2012)

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]'¹ property that is
13 distributed in commerce and that is normally used for personal,
14 family, or household purposes and not for business or research
15 purposes.

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

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

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

23 ¹"Motor vehicle ancillary protection product" means a contract
24 or agreement between a provider and a consumer for a specific
25 duration, for a provider fee or other separately stated consideration,
26 to perform one or more of the following with respect to a motor
27 vehicle:

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

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

36 (3) the repair of small motor vehicle windshield chips or cracks
37 which may include replacement of the windshield for chips or
38 cracks that cannot be repaired.¹

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

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

44 "Premium" means the consideration paid to an insurer for a

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:

¹Assembly ACO committee amendments adopted June 6, 2013.

1 reimbursement insurance policy, and is subject to any applicable
2 premium tax.

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

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

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

14 "Service contract" means a contract or agreement 'between a
15 provider and a consumer' for '[a specific] any' duration, for a
16 provider fee or other separately stated consideration, to perform the
17 maintenance, repair, replacement, or service of '[a motor vehicle or
18 other]' property, or indemnification for maintenance, repair,
19 replacement, or service for the operational or structural failure of
20 the '[motor vehicle, or residential or other]' property, due to a
21 defect in materials or workmanship, or normal wear and tear, and
22 which may include additional provisions for incidental payment of
23 indemnity under limited circumstances '[, including, but not
24 limited to,] . In the case of a motor vehicle, such circumstances
25 may include' towing, rental, and emergency road services, and
26 other road hazard protections. A service contract may provide for
27 the maintenance, repair, replacement, or service of the '[motor
28 vehicle or other]' property for damage resulting from power surges
29 or interruption, or accidental damage from handling. A service
30 contract '[shall not be considered to be an insurance contract, and
31 shall not be subject to regulation as insurance pursuant to Title 17
32 of the Revised Statutes] also includes a motor vehicle ancillary
33 protection product. Service contracts may provide for leak or repair
34 coverage to house roofing systems' .

35 "Service contract holder" or "contract holder" means a '[person]
36 consumer' who is the purchaser of a service contract or is entitled
37 to the contractual '[obligations] benefits' under the terms of the
38 contract.

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

1 2. (New section) a. ~~'[The purpose of this act is to create a legal~~
2 framework within which service] Service¹ contracts may be issued,
3 offered for sale, or sold in this State 'only in accordance with the
4 provisions of this act¹ .

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

6 (1) warranties;

7 (2) maintenance agreements;

8 (3) service contracts on ~~'[tangible]~~¹ property if the ~~'[tangible]~~¹
9 property for which the service contract is sold has a purchase price
10 of \$250 or less, excluding sales tax;

11 (4) mechanical breakdown insurance policies offered by licensed
12 insurers pursuant to the insurance laws of this State; ~~'[and]~~¹

13 (5) 'motor club or association membership contracts that
14 primarily provide for roadside assistance and towing services in
15 situations that involve impairment of the operation of a member's
16 motor vehicle, for reasons that include, but are not limited to,
17 mechanical breakdown or adverse road conditions; and

18 ~~(6)~~¹ service contracts issued, offered, or sold:

19 (a) by a public utility to the extent that the public utility is
20 regulated by the Board of Public Utilities, or by a ~~'[person]~~ public
21 utility or its subsidiary¹ providing central heating and air
22 conditioning services, but only with respect to a service contract
23 regarding the product sold to a consumer, or installed or repaired
24 for the consumer at the consumer's household, by the utility or ~~'[by~~
25 a person providing central heating and air conditioning services] its
26 subsidiary¹; or

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

28 c. 'Service contracts are not insurance in this State or otherwise
29 regulated under the insurance code.¹ The making, proposing to
30 make, issuing, marketing, offering, selling, administering of, or
31 providing contractual obligations for, a service contract shall not be
32 construed to be the business of insurance and shall be exempt from
33 regulation as insurance pursuant to Title 17 of the Revised Statutes,
34 however nothing in this act shall be construed to exempt the
35 making, issuing, marketing, offering, or selling of a reimbursement
36 insurance policy from any applicable provisions of Title 17 of the
37 Revised Statutes.

38
39 3. (New section) ~~'[a.]~~¹ A provider of service contracts issued,
40 offered for sale, or sold in this State, shall not use in its name the
41 words "insurance," "casualty," "surety," "mutual" or any other
42 word descriptive of the insurance, casualty, or surety business, or a
43 name deceptively similar to the name or description of any
44 insurance or surety corporation, or to the name of any other
45 provider registered pursuant to section 4 of this act, but may use the
46 word "guaranty" or similar word.

1 **'[b.** This section shall not apply to the name of a provider of
2 service contracts in effect prior to the effective date of this act. **.]'**

3
4 4. (New section) a. A person shall not issue, offer to sell, or sell
5 service contracts in this State unless the provider **'[is** registered
6 with the director. A provider of service contracts issued, offered for
7 sale, or sold in this State, shall file a registration, to be updated
8 within 30 days of any change in the information included in or filed
9 with the registration, and renewed at least annually, with the
10 director, which shall include: the provider's name, which shall
11 comply with the provisions of section 3 of this act; principal
12 business address; name and telephone number of an appropriate
13 contact person; and name and address of the provider's agent for
14 service of process in this State, which may be the director, if the
15 provider's principal business address is not in this State.

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

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

27 (2) **'[maintaining]****'** a funded reserve account 'shall be
28 established and maintained' for its obligations under each contract
29 issued and outstanding in this State, with reserves 'calculated at'
30 not less than **'[20%] 40%'** of gross consideration received, 'then'
31 less the amount of claims paid **'[, under those] for all in force'**
32 contracts. The reserve account shall be subject to examination and
33 review by the director pursuant to section 10 of this act **'.** If said
34 reserves fall below the minimum required, the provider has 90 days
35 to come into compliance without violating this section' ; or

36 (3) **'[maintaining,]****'** alone or together with the provider's parent
37 or other affiliated corporation, 'the provider shall maintain' a net
38 worth or stockholders' equity of not less than \$100,000,000. **'[At**
39 **the time of registration or any time upon] Upon'** request by the
40 director, the provider shall provide the director with a copy of the
41 provider's or its parent's or other affiliated corporation's most
42 recent Form 10-K or Form 20-F, or successor form containing
43 substantially the same information, filed with the Securities and
44 Exchange Commission within the last 12-month period, or if the
45 provider, or parent or other affiliated corporation, does not file this
46 form with the Securities and Exchange Commission, a copy of the

1 entity's audited financial statements, which show a net worth of the
2 provider, or parent or other affiliated corporation, of not less than
3 \$100,000,000. If the provider's parent's or other affiliated
4 corporation's form or financial statements are filed to meet the
5 provider's means of assuring faithful performance to its contract
6 holders, the parent or other affiliated corporation shall agree to
7 guarantee the obligations of the provider.

8 '[c.] b.' Except for the requirements set forth in subsection
9 '[b.] a.' of this section, the provider shall not be subject to any
10 additional financial security requirements by the director in order to
11 issue, offer, or sell service contracts in this State.

12 '[d. At the time of registration, and annually thereafter, the
13 provider shall pay a fee to the director in the amount of \$500, which
14 the director may adjust pursuant to regulation to reflect the actual
15 costs of administering the provisions of this act.

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

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

33 c. In addition to any applicable damages and penalties pursuant
34 to subsection a. of section 10 of P.L. , c. (C.) (pending
35 before the Legislature as this bill), a person who sells a service
36 contract that is not in compliance with P.L. , c. (C.)
37 (pending before the Legislature as this bill) or that is issued by a
38 provider that is not in compliance with P.L. , c. (C.)
39 (pending before the Legislature as this bill) shall be jointly and
40 severally liable for all covered contractual obligations arising under
41 the terms of such contract or any service contract sold at a time
42 when the provider of the contract is non-compliant.¹

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

- 1 a. ¹~~['~~arranging or submitting the information and materials
2 required for the provider's initial or updated registration pursuant to
3 section 4 of this act;
- 4 b.]¹ maintaining the accounts, books, papers, documents, and
5 other records concerning the provider's activities and transactions
6 regulated under this act;
- 7 ¹~~['c.]~~ b.¹ performing or arranging the collection, maintenance,
8 or disbursement of payments on behalf of the provider, related to
9 any claim arising under the provider's contracts; or
- 10 ¹~~['d.]~~ c.¹ participating in the processing or adjustment of any
11 claim arising under the provider's contracts.
- 12
- 13 6. (New section) a. An insurer issuing a reimbursement
14 insurance policy to a provider for any service contract issued,
15 offered for sale, or sold in this State shall:
- 16 (1) be deemed to have received the premium for ¹~~['the]~~ such¹
17 insurance policy ¹~~['~~:
- 18 (a) upon payment of a provider fee to the provider for the
19 contract; or
- 20 (b) upon payment or other consideration to the provider by the
21 seller of the contract] upon the payment of the provider fee by a
22 consumer for a service contract issued by an insured provider¹ ;
- 23 (2) (a) provide reimbursement to, or payment on behalf of, the
24 provider under the terms of the contract; or
- 25 (b) in the event of the provider's non-performance, provide or
26 pay for, on behalf of the provider, all covered contractual
27 obligations incurred by the provider;
- 28 (3) accept a claim arising under the contract directly from a
29 contract holder, if the provider does not comply with any
30 contractual obligation pursuant to the contract within 60 days of
31 presentation of a valid claim by the contract holder; and
- 32 (4) terminate or not renew the policy covering the contract only
33 after a notice of termination or nonrenewal is presented to the
34 director, at least 10 days prior to the termination or nonrenewal of
35 the policy, which termination or nonrenewal shall not reduce the
36 insurer's responsibility for any insured contract issued or sold prior
37 to the date of termination or nonrenewal.
- 38 b. This section shall not be construed to limit the right of the
39 insurer to seek indemnification or subrogation against the provider
40 if the insurer provides or pays, or is obligated to provide or pay, for
41 any covered contractual obligation incurred by the provider.
- 42
- 43 7. (New section) A service contract issued, offered for sale, or
44 sold in this State shall be written ¹ ~~['~~, printed, or typed in clear and
45 understandable language,] in a simple, clear, understandable, and
46 easily readable way¹ and shall contain the requirements set forth in
47 this section, as applicable:

- 1 a. the provider's name, principal or other appropriate business
- 2 address, and telephone number;
- 3 b. ¹["a statement accompanying the provider's name, if the name
- 4 is exempt from any wording prohibitions pursuant to subsection b.
- 5 of section 3 of this act, in substantially the following form: "This
- 6 service contract is not an insurance contract."];
- 7 c.]¹ the administrator's name, principal or other appropriate
- 8 business address, and telephone number;
- 9 ¹["d.] c.¹ the service contract holder's name and address, to the
- 10 extent this information is furnished by the contract holder;
- 11 ¹["e.] d.¹ the provider fee, or a reference to any other
- 12 documentation which contains the provider fee ¹, and the terms
- 13 under which the contract is sold¹ ;
- 14 ¹["f.] e.¹ the property subject to coverage by the service
- 15 contract, ¹["and"]¹ the contractual obligations of the provider with
- 16 respect to that property ¹any limitations, exceptions, and exclusions,
- 17 a toll-tree telephone number for claim service, and complete
- 18 instructions for making a claim for service on or replacement of the
- 19 property covered by the contract, or for reimbursement for service
- 20 on or replacement of the property¹ ;
- 21 ¹["g.] f.¹ the amount of any deductible or service fee, as
- 22 applicable;
- 23 ¹["h.] g.¹ whether the provider's use of refurbished,
- 24 reconditioned, or non-original manufacturer's parts is permitted;
- 25 ¹["i.] h.¹ whether the service contract provides for
- 26 consequential damages or preexisting conditions;
- 27 ¹["j.] i.¹ the contractual obligations of the service contract
- 28 holder, including, but not limited to, the duty of the contract holder
- 29 to comply with the provisions of the owner's manual for the
- 30 property and to protect the property against any further damage;
- 31 ¹["k.] j.¹ the conditions governing the transferability of the
- 32 service contract;
- 33 ¹["l.] k.¹ the conditions governing the cancellation of the
- 34 service contract by the service contract holder, which shall:
- 35 (1) permit the ¹["contact"] contract¹ holder, if the contract holder
- 36 makes no claim arising under the contract, to cancel the contract:
- 37 (a) within 10 days of receipt of the contract, or a longer period
- 38 specified in the contract, if delivered at the time of purchase; or
- 39 (b) within 20 days of receipt of the contract, or a longer period
- 40 specified in the contract, if mailed; and
- 41 (2) ¹if cancelled within the time period specified in subparagraph
- 42 (a) or (b) of paragraph (1) of this subsection,¹ require the provider
- 43 ¹[":
- 44 (a)]¹ to provide the contract holder with the full purchase price
- 45 ¹["of"] or amount paid on¹ the contract by ¹[":

- 1 (i)]¹ refund '[;]¹ or
2 '[ii)]¹ credit to the account of the contract holder '[; and
3 (b)]¹ to additionally pay the contract holder a 10% per month
4 penalty, based upon the purchase price of the contract, if the refund
5 or credit is not completed within 45 days of the cancellation of the
6 contract;
7 '[m.] 1¹ the conditions governing cancellation of the service
8 contract by the provider, prior to the expiration of the contract,
9 which shall:
10 (1) require, except as provided in paragraph (2) of this
11 subsection, that the provider mail a written notice to the contract
12 holder at the contract holder's last known address:
13 (a) which contains the reason for the cancellation and the
14 effective date of the cancellation; and
15 (b) is delivered at least five days prior to the effective date of the
16 cancellation; and
17 (2) explain that a written notice shall not be required if the
18 reason for cancellation is nonpayment of the provider fee, a material
19 misrepresentation or omission, or a substantial breach of contractual
20 obligations concerning the property or its use; and
21 '[n.] m¹ whether the service contract is insured by a
22 reimbursement insurance policy, and:
23 (1) if insured, the contract shall contain:
24 (a) the insurer's name, principal or other appropriate business
25 address, and telephone number accompanied by a conspicuous
26 statement in substantially the following form: "Obligations of the
27 provider under this service contract are insured under a service
28 contract reimbursement insurance policy."; and
29 (b) information concerning the procedure for the contract holder
30 to present a claim arising under the contract directly to the
31 reimbursement insurance company, pursuant to the insurer's
32 obligations set forth in section 6 of this act, in the event that the
33 provider does not comply with any contractual obligation pursuant
34 to the contract within 60 days of presentation of a valid claim by the
35 contract holder; or
36 (2) if not insured, the contract shall contain a conspicuous
37 statement in substantially the following form: "Obligations of the
38 provider under this service contract are backed by the full faith and
39 credit of the provider."
40
41 8. (New section) A service contract shall not be issued, offered
42 for sale, or sold in this State unless the provider or seller, if not the
43 provider, presents:
44 a. a receipt for, or other written evidence of, the purchase of the
45 service contract to the contract holder '[; which shall include the
46 provider's registration number]¹ ; and
47 b. a copy of the service contract to the service contract holder

1 within a reasonable period of time from the date of purchase.

2

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

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

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

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

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

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

19 (2) A provider discontinuing business in this State shall maintain
20 the means of assuring faithful performance to its contract holders as
21 required by subsection '[b.] a.' of section 4 of this act and all
22 records related to each contract issued or sold in this State until the
23 provider submits appropriate proof, satisfactory to the director, that
24 it discharged or transferred its contractual obligations for all
25 contracts so issued or sold.

26 d. The records required and maintained pursuant to this section
27 may be maintained electronically or through other record keeping
28 technology, but if maintained in a format other than by hard copy,
29 the records shall be capable of duplication to legible hard copy at
30 the request of the director.

31

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

35 b. In order to enforce the provisions of this act, the director may
36 conduct examinations of any provider, administrator, seller, or other
37 person subject to the provisions of this act. Upon request by the
38 director, a provider, administrator, seller, or other person shall make
39 any accounts, books, papers, documents and other records required
40 and maintained pursuant to section 9 of this act available to the
41 director for inspection which are necessary to enable the director to
42 reasonably determine compliance with this act.

43

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

46 1. As used in this act:

47 "Consumer contract" means a written agreement in which an
48 individual:

- 1 a. Leases or licenses real or personal property;
- 2 b. Obtains credit;
- 3 c. Obtains insurance coverage, except insurance coverage
- 4 contained in policies subject to the "Life and Health Insurance
- 5 Policy Language Simplification Act," [(P.L.1979, c.167, C.17B:17-
- 6 17 et seq.)] P.L.1979, c.167 (C.17B:17-17 et seq.);
- 7 d. Borrows money;
- 8 e. Purchases real or personal property;
- 9 f. Contracts for services including professional services ;
- 10 g. Enters into a service contract, as defined in section 1 of
- 11 P.L. , c. (C.) (pending before the Legislature as this bill),
- 12 for cash or on credit and the money, property or services are
- 13 obtained for personal, family or household purposes. "Consumer
- 14 contract" includes writings required to complete the consumer
- 15 transaction. "Consumer contract" does not include a written
- 16 agreement involving a transaction in securities with a broker-dealer
- 17 registered with the Securities and Exchange Commission, or a
- 18 transaction in commodities with a futures commission merchant
- 19 registered with the Commodities Futures Trading Commission.
- 20 (cf: P.L.1982, c.195, s.1)
- 21
- 22 12. This act shall take effect on the '[365th] 180th¹ day
- 23 following enactment '[; except that the director may take any
- 24 anticipatory administrative action in advance thereof as shall be
- 25 necessary for the implementation of this act, and the act shall
- 26 remain inoperative until the final adoption by the director of all
- 27 regulations necessary for the implementation of this act]¹.