

SENATE, No. 902

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JANUARY 27, 2022

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

SYNOPSIS

Imposes consumer protection requirements on service contract providers.

CURRENT VERSION OF TEXT

As introduced.



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
8 read 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
17 and not for business or research purposes.

18 "Director" means the Director of the Division of Consumer
19 Affairs 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,
26 or assist evacuation in the event of an emergency, which emergency
27 could threaten life or property. Examples of these systems include
28 fire alarm, fire sprinkler, fire suppression, fire extinguisher,
29 security, gas detection, intrusion detection, access control, video
30 surveillance and recording, mass notification, public address,
31 emergency lighting, patient wandering, infant tagging, and nurse
32 call.

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

32 "Provider" means a person who is contractually obligated to the
33 service contract holder under the terms of the service contract, and
34 an administrator.

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

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

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

46 "Service contract" means a contract or agreement between a
47 provider and a consumer for any duration, for a provider fee or
48 other separately stated consideration, to perform, or to provide

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

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

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

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

31

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

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

1 materials the words “guaranty” or “warranty,” but only if when
2 using that term the provider clearly and conspicuously discloses
3 that the service contract issued, offered for sale or sold is not in the
4 nature of a guaranty or warranty as that term is legally defined and
5 commonly understood. Nothing in this section shall prevent the use
6 of the term “extended warranty” to describe a product issued,
7 offered for sale, or sold in this State if the product accurately
8 extends the identical coverages of an original equipment
9 manufacturer warranty and the provider accurately sets forth the
10 terms and source of the original equipment manufacturer warranty
11 upon which the product is based and clearly and conspicuously
12 discloses that the product is a service contract offered under
13 P.L.2013, c.197 (C.56:12-87 et al.).

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

15

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

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

22 (1) 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]** P.L.2013, c.197 (C.56:12-92);

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

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

1 corporation's form or financial statements are filed to meet the
2 provider's means of assuring faithful performance to its contract
3 holders, the parent or other affiliated corporation shall agree to
4 guarantee the obligations of the provider.

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

20 c. In addition to any applicable damages and penalties pursuant
21 to subsection a. of section 10 of P.L.2013, c.197 (C.56:12-96), a
22 person who **【sells】** provides or administers a service contract that is
23 not in compliance with P.L.2013, c.197 (C.56:12-87 et al.) or that is
24 issued by a provider that is not in compliance with P.L.2013, c.197
25 (C.56:12-87 et al.) shall be jointly and severally liable for all
26 covered contractual obligations arising under the terms of such
27 contract or any service contract **【sold】** issued at a time when the
28 provider of the contract is non-compliant.
29 (cf: P.L.2013, c.197, s.4)

30

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

33 4 a. the identities of all of the principals of the provider that
34 sell or provide service contracts in the United States; and

35 b. information regarding any litigation or enforcement matters
36 concerning service contracts filed or prosecuted during the prior
37 five years in which a principal identified in subsection a. of this
38 section was named or involved; and

39 c. information concerning the provider's business operations,
40 which shall include the total amounts collected in providers fees
41 and the total amounts paid out in claims or charges for services
42 provided under the contract.

43

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

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

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

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

10 (3) the provider's contact information;

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

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

15

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

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

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

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

25 (3) be accompanied by a fee of \$300 per registration and annual
26 renewal.

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

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

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

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

7 8. (New section) a. Any provider that sells or offers to sell
8 any 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 contract holder may cancel the contract and receive
30 the unearned portion of the contract subject to the automatic
31 renewal provision, which amount shall be refunded as of the date on
32 which the provider is notified of the error.

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

37 d. All cancellation requests will be acknowledged within five
38 business days of receipt and honored within 10 business days of
39 receipt, and applied as of the date of receipt or, if permitted by the
40 service contract, applied at the end of the holder's monthly billing
41 cycle.

42 e. Nothing in this section shall be construed to prevent a
43 contract holder from recovering on a claim that would be valid and
44 covered had the provider acted in compliance with P.L.,
45 c. (C.) pending before the Legislature as this bill).
46

47 9. (New section) The Director of the Division of Consumer
48 Affairs in the Department of Law and Public Safety may

1 promulgate rules and regulations, pursuant to the “Administrative
2 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to
3 effectuate the purposes of P.L. , (C.) (pending before the
4 Legislature as this bill).

5

6 10. This act shall take effect on the first day of the ninth month
7 following enactment.

8

9

10 STATEMENT

11

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

16 In particular, the bill clarifies that legal requirements pertaining
17 to service contracts apply to administrators, as well as persons
18 contractually obligated to provide services under a contract, as
19 provided under current law. The bill requires providers to meet
20 certain bond requirements and provides that service contract
21 providers are to clearly and conspicuously disclose automatic
22 renewal provisions and provide notice prior to the cancellation
23 deadline.

24 In addition, the bill requires disclosure of the identities of all
25 company principals, information regarding any litigation or
26 enforcement matters concerning service contracts filed or
27 prosecuted during the prior five years in which a principal was
28 named or involved, and information about the provider’s business
29 operations, including the total amounts collected in provider fees
30 and the total amounts paid out in claims or charges for services
31 provided under the contract.

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

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

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

39 (3) the provider’s contact information;

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

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

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