

[First Reprint]

SENATE, No. 902

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JANUARY 27, 2022

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Co-Sponsored by:

Senator Greenstein

SYNOPSIS

Imposes consumer protection requirements on service contract providers.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on February 10, 2022, with amendments.



(Sponsorship Updated As Of: 3/3/2022)

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
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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted February 10, 2022.

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 contract¹,
34 and an administrator¹.

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 ¹【provider】 regulated entity¹ to either provide
41 reimbursement to, or payment on behalf of, the ¹【provider】
42 regulated entity¹ under the terms of the insured service contracts
43 issued or sold by the ¹【provider】 regulated entity¹, or, in the event
44 of the ¹【provider's】¹ non-performance ¹of a regulated entity¹, to
45 provide or pay for, on behalf of the ¹【provider】 regulated entity¹,
46 all covered contractual obligations incurred by the ¹【provider】
47 regulated entity¹.

1 ¹“Regulated entity” means a provider or an administrator.¹

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

23 "Service contract holder" or "contract holder" means a consumer
24 who is the purchaser of a service contract or is entitled to the
25 contractual benefits under the terms of the contract.

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

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

35

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

38 3. A provider ¹or administrator¹ of service contracts issued,
39 offered for sale, ¹**[or]**¹ sold¹, or administered¹ in this State, shall
40 not use in its name, products, descriptions of products,
41 advertisements or any other materials the words "insurance,"
42 "casualty," "surety," "mutual" or any other word descriptive of the
43 insurance, casualty, or surety business, **[or]** and shall not use
44 a name deceptively similar to the name or description of any
45 insurance or surety corporation, or to the name of any other
46 ¹**[provider]** regulated entity¹ registered pursuant to section 4 of
47 **[this act, but may use the word "guaranty" or similar word]**

1 P.L.2013, c.197 (C.56:12-90) except that nothing in this section
2 shall prevent a provider ¹or administrator¹ of service contracts
3 issued, offered for sale, ¹**[or]**¹ sold¹, or administered¹ in this State,
4 from using the terms to indicate that service contracts do not
5 constitute insurance, guaranties, or warranties. A provider ¹or
6 administrator¹ of service contracts issued, offered for sale, ¹**[or]**¹
7 sold¹, or administered¹ in this State may use in its name, products,
8 descriptions of products, advertisements or any other materials the
9 words “guaranty” or “warranty,” but only if when using that term
10 the provider ¹or administrator¹ clearly and conspicuously discloses
11 that the service contract issued, offered for sale ¹**[or]**¹ sold¹, or
12 administered¹ is not in the nature of a guaranty or warranty as that
13 term is legally defined and commonly understood. Nothing in this
14 section shall prevent the use of the term “extended warranty” to
15 describe a product issued, offered for sale, ¹**[or]**¹ sold¹, or
16 administered¹ in this State if the product ¹**[accurately]** at a
17 minimum substantially¹ extends the ¹**[identical]**¹ coverages of an
18 original ¹**[equipment manufacturer]**¹ warranty and the provider ¹or
19 administrator¹ accurately sets forth the terms and source of the
20 original ¹**[equipment manufacturer]**¹ warranty upon which the
21 product is based ¹, clearly and conspicuously identifies any
22 deviations from the original warranty¹ and clearly and
23 conspicuously discloses that the product is a service contract
24 offered under P.L.2013, c.197 (C.56:12-87 et al.).
25 (cf: P.L.2013, c.197, s.3)

26
27 3. Section 4 of P.L.2013, c.197 (C.56:12-90) is amended to
28 read as follows:

29 4. a. A person shall not issue, offer to sell, ¹**[or]**¹ sell¹, or
30 administer¹ service contracts in this State unless the provider
31 complies with one or more of the following means of assuring
32 faithful performance to its contract holders:

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

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

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

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

33 c. In addition to any applicable damages and penalties pursuant
34 to subsection a. of section 10 of P.L.2013, c.197 (C.56:12-96), a
35 person who **sells** provides or administers a service contract that is
36 not in compliance with P.L.2013, c.197 (C.56:12-87 et al.) or that is
37 issued by a provider that is not in compliance with P.L.2013, c.197
38 (C.56:12-87 et al.) shall be jointly and severally liable for all
39 covered contractual obligations arising under the terms of such
40 ¹non-compliant contract or ¹under the terms of any service
41 contract **sold** issued at a time when the provider of the contract is
42 non-compliant.

43 ¹d. (1) A person shall not administer service contracts in this
44 State that do not meet the requirements of subsection a. of this
45 section.

46 (2) A person shall not administer service contracts in this State
47 unless that person complies with one or more of the means of

1 assuring faithful performance to its contract holders set forth in
2 subsection a. of this section or the means of assuring faithful
3 performance of a service contract set forth in subsection a. of this
4 section adopted by the provider of the service contract applied to
5 indemnify that person's conduct with respect to administering the
6 service contract.¹

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

8
9 4. (New section) A ¹**["provider"] regulated entity**¹ shall disclose,
10 in a manner and form prescribed by the director the following:

11 ¹**["4"]**¹ a. the identities of all of the principals of the ¹**["provider"]**
12 regulated entity¹ that ¹issue, offer for sale,¹ sell or ¹**["provide"]**
13 administer¹ service contracts in the United States; ¹**["and"]**¹

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

18 c. information concerning the provider's business operations,
19 which shall include the total amounts collected in providers fees
20 and the total amounts paid out in claims or charges for services
21 provided under the contract.

22
23 5. (New section) a. A service contract that is not offered by a
24 public utility but which is advertised by any entity, including an
25 entity affiliated with a public utility, using a public utility's trade
26 name, or other identifying information, shall not qualify as exempt
27 pursuant to section 2 of P.L.2013, c.197, s.2 (C.56:12-88).

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

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

36 (2) the name of the provider that offers the service contract
37 ¹and, if applicable, the name of the administrator¹;

38 (3) the provider's contact information ¹and, if applicable, the
39 name of the administrator's contact information¹;

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

41 (5) if applicable, that the billing for the ¹**["provider's"]**¹ services
42 ¹to be provided¹ will be conducted through a public utility and that
43 the public utility is an entity other than the provider.

44 ¹c. Nothing in this act shall be construed to impose liability on
45 news media for accepting or publishing advertising that may fall
46 within the scope of this section.¹

1 6. (New section) a. No **1** provider person¹ shall issue, **1** sell,
2 or¹ offer to sell¹, sell, or administer¹ a service contract in this
3 State, unless the **1** provider person¹ has registered with the
4 division.

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

7 (1) disclose the address, ownership, and nature of business of
8 the **1** provider regulated entity¹;

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

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

13 c. A registration application or registration renewal shall not be
14 considered filed until all required information and fees are received
15 by the division.

16 d. Any **1** provider regulated entity¹ that fails to register prior
17 to the sale of a service contract shall pay a late filing fee of \$100 for
18 each 30-day period, or portion thereof, that the registration is late.
19 A **1** provider regulated entity¹ that fails to timely renew its
20 registration shall pay a late fee of \$50 for each 30-day period, or
21 portion thereof, that the annual renewal filing fee is late. The late
22 fees authorized by this subsection shall be in addition to all other
23 penalties authorized by law, including civil penalties for the sale of
24 any service contract while unregistered.

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

33
34 7. (New section) The division may publish any non-
35 confidential information regarding any **1** provider regulated
36 entity¹ registered, or required to be registered, under section 6 of
37 P.L. , c. (C.) (pending before the Legislature as this bill) on a
38 publicly accessible webpage operated by the division.

39
40 8. (New section) a. Any provider that sells or offers to sell
41 any service to a consumer pursuant to a service contract the term of
42 which is a specified period of 12 months or longer and that
43 automatically renews for a specified period of more than one
44 month, unless the consumer cancels the contract, shall provide the
45 consumer with written or electronic notification of the automatic
46 renewal provision. Notification shall be provided to the consumer
47 not less than 30 days nor more than 60 days before the cancellation

1 deadline pursuant to the automatic renewal provision. This
2 notification shall disclose clearly and conspicuously:

3 (1) that unless the consumer cancels the contract the contract
4 will automatically renew; and

5 (2) methods by which the consumer may obtain details of the
6 automatic renewal provision and cancellation procedure, whether by
7 contacting the provider at a specified telephone number or address,
8 by referring to the contract, or by any other method. ¹**[Such]** At a
9 minimum, such¹ methods shall include, for each consumer¹**[**, at
10 least one¹ **]** :

11 (a) an online method for the consumer to cancel the contract and
12 a mailing¹ address to which written cancellation requests may be
13 addressed¹**[**, one phone¹ **]** ; or

14 (b) a telephone¹ number that ¹**[consumers]** the consumer¹ may
15 call to cancel¹**[** , and one online method of cancellation¹ **]** the
16 contract¹ .

17 b. As part of the provider's routine business practice, where the
18 business has failed for any reason to comply with the provisions of
19 this section, the contract holder may cancel the contract and receive
20 the unearned portion of the contract subject to the automatic
21 renewal provision, which amount shall be refunded as of the date on
22 which the provider is notified of the error.

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

27 d. All cancellation requests will be acknowledged within five
28 business days of receipt and honored within 10 business days of
29 receipt, and applied as of the date of receipt or, if permitted by the
30 service contract, applied at the end of the holder's monthly billing
31 cycle.

32 e. Nothing in this section shall be construed to prevent a
33 contract holder from recovering on a claim that would be valid and
34 covered had the ¹**[provider]** regulated entity¹ acted in compliance
35 with P.L., c. (C.) pending before the Legislature as this bill).

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

43
44 10. This act shall take effect on the first day of the ninth month
45 following enactment.