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Derek Hall - For The Star-Ledger, 'Laws aim to protect consumers from financial predators', Star-Ledger, The (online),6 Aug 2022 003

end

§§4-8
C.56:12-95.1
to 56:12-95.5
§10
Note

P.L. 2022, CHAPTER 91, *approved August 5, 2022*
Senate, No. 902 (*Third Reprint*)

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,

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.

²Assembly ACO committee amendments adopted May 9, 2022.

³Assembly floor amendments adopted May 26, 2022.

1 windshield cracks or chips, missing interior or exterior parts or
2 excess mileage that results in a lease-end charge, or any other
3 charge for damage that is deemed as excess wear and use by a
4 lessor under a motor vehicle lease.

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

8 "Motor vehicle ancillary protection product" means a contract or
9 agreement between a provider and a consumer for a specific
10 duration, for a provider fee or other separately stated consideration,
11 to perform one or more of the following with respect to a motor
12 vehicle:

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

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

21 (3) the repair of small motor vehicle windshield chips or cracks
22 which may include replacement of the windshield for chips or
23 cracks that cannot be repaired;

24 (4) the replacement of a motor vehicle key or key-fob in the
25 event that the key or key-fob becomes inoperable or is lost or
26 stolen;

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

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

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

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

36 "Premium" means the consideration paid to an insurer for a
37 reimbursement insurance policy, and is subject to any applicable
38 premium tax.

39 "Provider" means a person who is contractually obligated to the
40 service contract holder under the terms of the service contract¹,
41 and an administrator¹.

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

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

46 "Reimbursement insurance policy" means a policy of insurance
47 issued to a ¹provider regulated entity¹ to either provide
48 reimbursement to, or payment on behalf of, the ¹provider

1 regulated entity¹ under the terms of the insured service contracts
2 issued or sold by the ¹**【provider】** regulated entity¹, or, in the event
3 of the ¹**【provider's】**¹ non-performance ¹of a regulated entity¹, to
4 provide or pay for, on behalf of the ¹**【provider】** regulated entity¹,
5 all covered contractual obligations incurred by the ¹**【provider】**
6 regulated entity¹.

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

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

29 "Service contract holder" or "contract holder" means a consumer
30 who is the purchaser of a service contract or is entitled to the
31 contractual benefits under the terms of the contract.

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

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

41

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

44 3. A provider ¹or administrator¹ of service contracts issued,
45 offered for sale, ¹**【or】**¹ sold¹, or administered¹ in this State, shall
46 not use in its name, products, descriptions of products,
47 advertisements or any other materials the words "insurance,"

1 "casualty," "surety," "mutual" or any other word descriptive of the
2 insurance, casualty, or surety business, **[or]** and shall not use
3 a name deceptively similar to the name or description of any
4 insurance or surety corporation, or to the name of any other
5 **¹[provider] regulated entity¹** registered pursuant to section 4 of
6 **[this act, but may use the word "guaranty" or similar word]**
7 P.L.2013, c.197 (C.56:12-90) except that nothing in this section
8 shall prevent a provider ¹or administrator¹ of service contracts
9 issued, offered for sale, ¹[or]¹ sold¹, or administered¹ in this State,
10 from using the terms to indicate that service contracts do not
11 constitute insurance, guaranties, or warranties. A provider ¹or
12 administrator¹ of service contracts issued, offered for sale, ¹[or]¹
13 sold¹, or administered¹ in this State may use in its name, products,
14 descriptions of products, advertisements or any other materials the
15 words "guaranty" or "warranty," but only if when using that term
16 the provider ¹or administrator¹ clearly and conspicuously discloses
17 that the service contract issued, offered for sale ¹[or]¹ sold¹, or
18 administered¹ is not in the nature of a guaranty or warranty as that
19 term is legally defined and commonly understood. Nothing in this
20 section shall prevent the use of the term "extended warranty" to
21 describe a product issued, offered for sale, ¹[or]¹ sold¹, or
22 administered¹ in this State if the product ¹[accurately] at a
23 minimum substantially¹ extends the ¹[identical]¹ coverages of an
24 original ¹[equipment manufacturer]¹ warranty and the provider ¹or
25 administrator¹ accurately sets forth the terms and source of the
26 original ¹[equipment manufacturer]¹ warranty upon which the
27 product is based ¹, clearly and conspicuously identifies any
28 deviations from the original warranty¹ and clearly and
29 conspicuously discloses that the product is a service contract
30 offered under P.L.2013, c.197 (C.56:12-87 et al.).
31 (cf: P.L.2013, c.197, s.3)**]²**

32

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

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

1 a regulated entity that provides or administers service contracts in
2 this State, from using the terms to indicate that service contracts do
3 not constitute insurance, guaranties, warranties or extended
4 warranties. A regulated entity that provides or administers service
5 contracts in this State may use in its name, products, descriptions of
6 products, advertisements or any other materials the ³**[words]** terms³
7 “guaranty” or “warranty,” but only if ³**[when using that term]**³ the
8 regulated entity clearly and conspicuously makes the following
9 disclosure ³in any consumer contract or agreement, any product
10 description made available to a consumer, and any advertisements
11 and related materials in which that term is used³ : “The product
12 being offered is a service contract and is separate and distinct from
13 any product or service warranty which may be provided by the
14 manufacturer, importer, or seller ³,” or, if the service contract is in
15 the nature of a home warranty, “The product being offered is a
16 service contract and is separate and distinct from any product or
17 service warranty which may be provided by the home builder or
18 manufacturer³.” A regulated entity that provides or administers
19 service contracts in this State may use in its name, products,
20 descriptions of products, advertisements or any other materials the
21 term “extended warranty,” but only if ³**[when using that term]**³ the
22 regulated entity clearly and conspicuously makes the following
23 disclosure ³in any consumer contract or agreement, any product
24 description made available to a consumer, and any advertisements
25 and related materials in which that term is used³ : “The product
26 being offered is a service contract and is separate and distinct from
27 any product or service warranty which may be provided by the
28 manufacturer, importer, or seller, and does not extend the term of
29 any original product or service warranty that the manufacturer,
30 importer, or seller may have provided ³,” or, if the service contract
31 is in the nature of an extended home warranty, “The product being
32 offered is a service contract and is separate and distinct from any
33 product or service warranty which may be provided by the home
34 builder or manufacturer, and does not extend the term of any
35 original product or service warranty that the manufacturer,
36 importer, or seller may have provided³ .”²
37 (cf: P.L.2013, c.197, s.3)

38
39 ²**[3.** Section 4 of P.L.2013, c.197 (C.56:12-90) is amended to
40 read as follows:

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

45 (1) each service contract shall be insured under a
46 reimbursement insurance policy issued by an insurer licensed,
47 registered, or otherwise authorized to transact the business of

1 insurance in this State, and which complies with the provisions of
2 section 6 of **[this act]** P.L.2013, c.197 (C.56:12-92);

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

12 (3) alone or together with the provider's parent or other
13 affiliated corporation, the provider shall maintain a net worth or
14 stockholders' equity of not less than \$100,000,000. Upon request by
15 the director, the provider shall provide the director with a copy of
16 the provider's or its parent's or other affiliated corporation's most
17 recent Form 10-K or Form 20-F, or successor form containing
18 substantially the same information, filed with the Securities and
19 Exchange Commission within the last 12-month period, or if the
20 provider, or parent or other affiliated corporation, does not file this
21 form with the Securities and Exchange Commission, a copy of the
22 entity's audited financial statements, which show a net worth of the
23 provider, or parent or other affiliated corporation, of not less than
24 \$100,000,000. If the provider's parent's or other affiliated
25 corporation's form or financial statements are filed to meet the
26 provider's means of assuring faithful performance to its contract
27 holders, the parent or other affiliated corporation shall agree to
28 guarantee the obligations of the provider.

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

44 c. In addition to any applicable damages and penalties pursuant
45 to subsection a. of section 10 of P.L.2013, c.197 (C.56:12-96), a
46 person who **[sells]** provides or administers a service contract that is
47 not in compliance with P.L.2013, c.197 (C.56:12-87 et al.) or that is

1 issued by a provider that is not in compliance with P.L.2013, c.197
2 (C.56:12-87 et al.) shall be jointly and severally liable for all
3 covered contractual obligations arising under the terms of such
4 'non-compliant' contract or 'under the terms of' any service
5 contract **【sold】** issued at a time when the provider of the contract is
6 non-compliant.

7 'd. (1) A person shall not administer service contracts in this
8 State that do not meet the requirements of subsection a. of this
9 section.

10 (2) A person shall not administer service contracts in this State
11 unless that person complies with one or more of the means of
12 assuring faithful performance to its contract holders set forth in
13 subsection a. of this section or the means of assuring faithful
14 performance of a service contract set forth in subsection a. of this
15 section adopted by the provider of the service contract applied to
16 indemnify that person's conduct with respect to administering the
17 service contract.¹

18 (cf: P.L.2013, c.197, s.4)**】**²

19

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

22 4. a. **【A】** Except as otherwise provided in subsection d. of this
23 section, a person shall not **【issue, offer to sell, or sell】** provide or
24 administer service contracts in this State unless the **【provider】**
25 person complies with one or more of the following means of
26 assuring faithful performance to its contract holders:

27 (1) each service contract shall be insured under a
28 reimbursement insurance policy issued by an insurer licensed,
29 registered, or otherwise authorized to transact the business of
30 insurance in this State, and which complies with the provisions of
31 section 6 of **【this act】** P.L.2013, c.197 (C.56:12-92);

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

41 (3) alone or together with the provider's parent or other
42 affiliated corporation, the provider shall maintain a net worth or
43 stockholders' equity of not less than \$100,000,000. Upon request by
44 the director, the provider shall provide the director with a copy of
45 the provider's or its parent's or other affiliated corporation's most
46 recent Form 10-K or Form 20-F, or successor form containing
47 substantially the same information, filed with the Securities and

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

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

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

35 d. A person who administers service contracts in this State is
36 required to comply with one or more means of assuring faithful
37 performance as set forth in paragraph (1) through (3) of subsection
38 a. of this section; or the means of assuring faithful performance of a
39 service contract set forth in subsection a. of this section adopted by
40 the provider of the service contract shall apply to indemnify that
41 person's conduct with respect to administering the service
42 contract.²

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

44
45 ²【4. (New section) A ¹【provider】 regulated entity¹ shall disclose,
46 in a manner and form prescribed by the director the following:

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

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

8 c. information concerning the provider's business operations,
9 which shall include the total amounts collected in providers fees
10 and the total amounts paid out in claims or charges for services
11 provided under the contract.²

12
13 ²4. (New section) A regulated entity shall disclose, in a manner
14 and form prescribed by the director the following:

15 a. the identities of all of the principals of the regulated entity
16 and, if applicable, of any parent company or other affiliated entity
17 that provides or administers service contracts in the United States;

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

22 c. information concerning the regulated entity's business
23 operations, which shall include the total amounts collected in
24 provider's fees and the total amounts paid out in claims or charges
25 for services provided under the contract.²

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

32 b. An advertisement for a service contract that is offered by an
33 entity other than a public utility in a manner that uses a public
34 utility's trade name or other identifying information²**[,]**² shall
35 clearly and prominently disclose:

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

40 (2) the name of the provider that offers the service contract
41 and, if applicable, the name of the administrator¹;

42 (3) the provider's contact information ¹and, if applicable, ²**[the**
43 name of]² the administrator's contact information¹;

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

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

1 ¹c. Nothing in this act shall be construed to impose liability on
2 news media for accepting or publishing advertising that may fall
3 within the scope of this section.¹
4

5 ²6. (New section) a. No ¹[provider] person¹ shall issue,
6 ¹[sell, or]¹ offer to sell¹, sell, or administer¹ a service contract in
7 this State, unless the ¹[provider] person¹ has registered with the
8 division.

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

11 (1) disclose the address, ownership, and nature of business of
12 the ¹[provider] regulated entity¹;

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

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

17 c. A registration application or registration renewal shall not be
18 considered filed until all required information and fees are received
19 by the division.

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

29 e. The director may refuse to issue or renew, and may revoke
30 or suspend, any registration for failure to comply with, or violation
31 of, the provisions of P.L. c. (C.) (pending before the
32 Legislature as this bill) or any regulation promulgated pursuant
33 thereto, or the provisions of P.L.1960, c.39 (C.56:8-1 et seq.). A
34 refusal, revocation, or suspension shall not be made except upon
35 reasonable notice to, and opportunity to be heard by the applicant
36 registrant.]²
37

38 ²6. (New section) a. A person shall not provide or administer a
39 service contract in this State, unless the person has registered with
40 the division.

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

43 (1) disclose the address, ownership, and nature of business of
44 the regulated entity;

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

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

3 c. A registration application or registration renewal shall not be
4 considered filed until all required information and fees are received
5 by the division.

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

15 e. The director may refuse to issue or renew, and may revoke
16 or suspend, any registration for failure to comply with, or violation
17 of, the provisions of P.L. c. (C.) (pending before the
18 Legislature as this bill) or any regulation promulgated pursuant
19 thereto, or the provisions of P.L.1960, c.39 (C.56:8-1 et seq.). A
20 refusal, revocation, or suspension shall not be made except upon
21 reasonable notice to, and opportunity to be heard, by the applicant
22 registrant.²

23

24 7. (New section) The division may publish any non-
25 confidential information regarding any ¹**[provider]** regulated
26 entity¹ registered, or required to be registered, under section 6 of
27 P.L. , c. (C.) (pending before the Legislature as this bill) on a
28 publicly accessible webpage operated by the division.

29

30 8. (New section) a. ²**[Any]** A² provider that ²**[sells or offers**
31 **to sell]** provides² any service to a consumer pursuant to a service
32 contract the term of which is a specified period of 12 months or
33 longer and that automatically renews for a specified period of more
34 than one month, unless the consumer cancels the contract, shall
35 provide the consumer with written or electronic notification of the
36 automatic renewal provision. Notification shall be provided to the
37 consumer not less than 30 days nor more than 60 days before the
38 cancellation deadline pursuant to the automatic renewal provision.
39 This notification shall disclose clearly and conspicuously:

40 (1) that unless the consumer cancels the contract^{2,2} the contract
41 will automatically renew; and

42 (2) methods by which the consumer may obtain details of the
43 automatic renewal provision and cancellation procedure, whether by
44 contacting the provider at a specified telephone number or address,
45 by referring to the contract, or by any other method. ¹**[Such]** At a
46 minimum, such¹ methods shall include, for each consumer¹**[**, at
47 least one**]** ;

1 (a) an online method for the consumer to cancel the contract and
 2 a mailing¹ address to which written cancellation requests may be
 3 addressed¹ [, one phone] ; or

4 (b) a telephone¹ number that ¹[consumers] the consumer¹ may
 5 call to cancel¹ [, and one online method of cancellation] the
 6 contract¹.

7 b. As part of the provider's routine business practice, where the
 8 business has failed for any reason to comply with the provisions of
 9 this section, the contract holder may cancel the contract and receive
 10 the unearned portion of the contract subject to the automatic
 11 renewal provision ²less the amount of claims paid during that
 12 automatic renewal period², which amount shall be refunded as of
 13 the date on which the provider is notified of the error.

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

18 d. All cancellation requests ²[will] are required to² be
 19 acknowledged within five business days of receipt and honored
 20 within 10 business days of receipt, and applied as of the date of
 21 receipt or, if permitted by the service contract, applied at the end of
 22 the holder's monthly billing cycle. ²If a cancellation request is
 23 honored within five business days of receipt, the acknowledgement
 24 requirement of this subsection shall be deemed to have been
 25 satisfied.²

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

30
 31 9. (New section) The Director of the Division of Consumer
 32 Affairs in the Department of Law and Public Safety may
 33 promulgate rules and regulations, pursuant to the "Administrative
 34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to
 35 effectuate the purposes of P.L. , (C.) (pending before the
 36 Legislature as this bill).

37
 38 10. This act shall take effect on the first day of the ²[ninth]
 39 twelfth² month following enactment.

40
 41
 42
 43
 44 Imposes certain consumer protection requirements on service
 45 contract providers.

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.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 902

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 10, 2022

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 902.

As amended, this bill establishes certain consumer protection requirements upon service contract providers, or companies that offer contracts purporting to cover repairs to a consumer's home, car, or other goods.

In particular, the bill clarifies that legal requirements pertaining to service contracts apply to administrators, as well as persons contractually obligated to provide services under a contract, as provided under current law. The bill requires providers to meet certain bond requirements and provides that service contract providers are to clearly and conspicuously disclose automatic renewal provisions, provide notice prior to the cancellation deadline, and provide certain minimum methods for a consumer to cancel a contract.

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

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

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

(2) the name of the provider that offers the service contract and, if applicable, the name of the administrator;

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

(4) that the communication is an advertisement; and

(5) if applicable, that the billing for the services to be provided will be conducted through a public utility and that the public utility is an entity other than the provider.

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

COMMITTEE AMENDMENTS

The committee amended the bill to

(1) remove administrators of service contracts from the definition of “provider” and add a definition of “regulated entity” that means a provider or an administrator;

(2) stipulate that certain provisions of the bill apply to administrators in addition to providers;

(3) change the conditions under which the use of the term “extended warranty” may be used;

(4) require an advertisement for a service contract offered by an entity other than a public utility in a manner that uses a public utility’s trade name or other identifying information to clearly and prominently disclose certain information relative to the administrator of the service contract in addition to the provide that offers the service contract;

(5) stipulate that nothing in the bill is to be construed to impose liability on news media for accepting or publishing advertising that may fall within the scope of the bill; and

(6) make certain technical corrections.

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 902

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 9, 2022

The Assembly Consumer Affairs Committee reports favorably and with committee amendments Senate Bill No. 902 (1R).

As amended by the committee, this bill establishes certain consumer protection requirements upon service contract providers and administrators, or companies that offer contracts purporting to cover repairs to a consumer's home, car, or other goods.

In particular, the bill clarifies that legal requirements pertaining to service contracts apply to administrators, as well as persons contractually obligated to provide services under a contract, as provided under current law. The bill requires providers to meet certain bond requirements and provides that service contract providers are to clearly and conspicuously disclose automatic renewal provisions, provide notice prior to the cancellation deadline, and provide certain minimum methods for a consumer to cancel a contract.

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

The bill requires providers and, if applicable, administrators who use a public utility's trade name or identifying information to clearly and prominently disclose:

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

(2) the name of the provider that offers the service contract and, if applicable, the name of the administrator;

(3) the provider's contact information and, if applicable, the administrator's contact information;

(4) that the communication is an advertisement; and

(5) if applicable, that the billing for the services to be provided will be conducted through a public utility and that the public utility is an entity other than the provider.

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

As reported by the committee, this bill is identical to Assembly Bill No. 1559 (ACS), which was reported by the committee on this same date.

COMMITTEE AMENDMENTS

The committee amended the bill to:

(1) change the definition of “provider” under the bill;

(2) allow a provider of service contracts issued, offered for sale, or sold in New Jersey to use in its name, products, descriptions of products, advertisements or any other materials the words “guaranty” and “warranty” under certain circumstances;

(3) exempt certain providers and insurers from bond maintenance requirements under the bill;

(4) update the information providers are required to disclose;

(5) remove a requirement that the provider registration application be accompanied by an audited financial statement;

(6) stipulate that the division may publish on a publicly accessible webpage only non-confidential information concerning registered providers;

(7) provide that cancellation requests made to certain providers are to be acknowledged within five business days of receipt and honored within 10 business days of receipt, and applied as of the date of receipt or, if permitted by the service contract, applied at the end of the holder’s monthly billing cycle;

(8) require certain disclosures by a regulated entity when using the words “guarantee” or “warranty” in an advertisement or in any other material;

(9) stipulate that if a provider fails to comply with certain provisions of this bill, the contract holder may cancel the contract and receive the unearned portion of the contract subject to the automatic renewal provision less the amount of claims paid during that automatic renewal period;

(10) make various clarifying and technical changes; and

(11) make the bill effective on the first day of the twelfth month following enactment.

STATEMENT TO
[Second Reprint]
SENATE, No. 902

with Assembly Floor Amendments
(Proposed by Assemblyman MORIARTY)

ADOPTED: MAY 26, 2022

Senate Bill No. 902 (2R) imposes certain consumer protection requirements on service contract providers.

These Assembly amendments provide that a regulated entity may use the terms “guaranty,” “warranty,” or “extended warranty” in any consumer contract or agreement, any product description made available to a consumer, and any advertisements and related materials in which that term is used. However, when the service contract is in the nature of a home warranty or extended warranty, the regulated entity is required to additionally disclose that the product being offered is separate from any product, service warranty, or extended warranty which may be provided by the home builder or manufacturer and, when using the term extended warranty, that the product does not extend the term of any original product or service warranty that the manufacturer, importer, or seller may have provided.

ASSEMBLY, No. 1559

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblyman STERLEY S. STANLEY

District 18 (Middlesex)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

SYNOPSIS

Imposes certain consumer protection requirements on service contract providers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

1 AN ACT concerning service contracts and amending and
2 supplementing P.L.2013, c.197.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.2013, c.197 (C.56:12-87) is amended to
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 administers, issues, makes,
33 provides, sells or offers to sell a service contract, or who is
34 contractually obligated to the service contract holder under the
35 terms of the service contract.

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

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

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

47 "Service contract" means a contract or agreement between a
48 provider and a consumer for any duration, for a provider fee or

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

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

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

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

32

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

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

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

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

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

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

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

21 (3) alone or together with the provider's parent or other
22 affiliated corporation, the provider shall maintain a net worth or
23 stockholders' equity of not less than \$100,000,000. Upon request by
24 the director, the provider shall provide the director with a copy of
25 the provider's or its parent's or other affiliated corporation's most
26 recent Form 10-K or Form 20-F, or successor form containing
27 substantially the same information, filed with the Securities and
28 Exchange Commission within the last 12-month period, or if the
29 provider, or parent or other affiliated corporation, does not file this
30 form with the Securities and Exchange Commission, a copy of the
31 entity's audited financial statements, which show a net worth of the
32 provider, or parent or other affiliated corporation, of not less than
33 \$100,000,000. If the provider's parent's or other affiliated
34 corporation's form or financial statements are filed to meet the
35 provider's means of assuring faithful performance to its contract
36 holders, the parent or other affiliated corporation shall agree to
37 guarantee the obligations of the provider.

38 b. **[Except for]** In addition to the requirements set forth in
39 subsection a. of this section, the provider shall **[not be subject to**
40 **any additional financial security requirements by the director]**
41 maintain a bond, having a value of not less than five percent of the
42 gross consideration received per annum, less claims paid, on the
43 sale of the service contract for all service contracts issued and in
44 force, but not less than \$25,000, in order to issue, offer, or sell
45 service contracts in this State. The provider shall name the division
46 as a party on the policy, and shall notify the division, in writing, in
47 the event of the cancellation or non-renewal of the bond.

1 c. In addition to any applicable damages and penalties pursuant
2 to subsection a. of section 10 of P.L.2013, c.197 (C.56:12-96), a
3 person who sells a service contract that is not in compliance with
4 P.L.2013, c.197 (C.56:12-87 et al.) or that is issued by a provider
5 that is not in compliance with P.L.2013, c.197 (C.56:12-87 et al.)
6 shall be jointly and severally liable for all covered contractual
7 obligations arising under the terms of such contract or any service
8 contract sold at a time when the provider of the contract is non-
9 compliant.

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

11

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

14 a. the identities of all of the principals of the provider or its
15 parent or other affiliated corporation and the involvement of the
16 principals in past litigation or enforcement matters concerning
17 service contracts; and

18 b. information concerning the provider's business operations,
19 which shall include:

20 (1) the percentage of contract holders who have received a
21 benefit under the contract;

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

24 (3) the percentage of claims for services that are denied by the
25 provider.

26

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

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

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

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

41 (3) the provider's contact information;

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

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

- 1 6. (New section) a. No provider shall issue, sell, or offer to
2 sell a service contract in this State, unless the provider has
3 registered with the division.
- 4 b. The registration application and renewal shall be on a form
5 provided by the division and shall:
- 6 (1) disclose the address, ownership, and nature of business of
7 the provider;
- 8 (2) be renewed annually on July 1 or other date established by
9 the director;
- 10 (3) be accompanied by a fee of \$300 per registration and annual
11 renewal; and
- 12 (4) be accompanied by an audited financial statement per
13 registration and annual renewal that is prepared in accordance with,
14 at the election of the provider, generally accepted accounting
15 principles or statutory accounting principles.
- 16 c. A registration application or registration renewal shall not be
17 considered filed until all required information and fees are received
18 by the division.
- 19 d. Any provider that fails to register prior to the sale of a
20 service contract shall pay a late filing fee of \$100 for each 30-day
21 period, or portion thereof, that the registration is late. A provider
22 that fails to timely renew its registration shall pay a late fee of \$50
23 for each 30-day period, or portion thereof, that the annual renewal
24 filing fee is late. The late fees authorized by this subsection shall
25 be in addition to all other penalties authorized by law, including
26 civil penalties for the sale of any service contract while
27 unregistered.
- 28 e. The director may refuse to issue or renew, and may revoke
29 or suspend, any registration for failure to comply with, or violation
30 of, the provisions of P.L. c. (C.) (pending before the
31 Legislature as this bill) or any regulation promulgated pursuant
32 thereto, or the provisions of P.L.1960, c.39 (C.56:8-1 et seq.). A
33 refusal, revocation, or suspension shall not be made except upon
34 reasonable notice to, and opportunity to be heard by the applicant
35 registrant.
- 36
- 37 7. (New section) The division may publish any information
38 regarding any provider registered, or required to be registered,
39 under section 6 of P.L. , c. (C.)(pending before the
40 Legislature as this bill) on a publicly accessible webpage operated
41 by the division.
- 42
- 43 8. (New section) a. Any provider that sells or offers to sell
44 any service to a consumer pursuant to a service contract the term of
45 which is a specified period of 12 months or longer and that
46 automatically renews for a specified period of more than one
47 month, unless the consumer cancels the contract, shall provide the
48 consumer with written or electronic notification of the automatic

1 renewal provision. Notification shall be provided to the consumer
2 not less than 30 days nor more than 60 days before the cancellation
3 deadline pursuant to the automatic renewal provision. This
4 notification shall disclose clearly and conspicuously:

5 (1) that unless the consumer cancels the contract the contract
6 will automatically renew; and

7 (2) methods by which the consumer may obtain details of the
8 automatic renewal provision and cancellation procedure, whether by
9 contacting the provider at a specified telephone number or address,
10 by referring to the contract, or by any other method. Such methods
11 shall include, for each consumer, at least one address to which
12 written cancellation requests may be addressed, one phone number
13 that consumers may call to cancel, and one online method of
14 cancellation.

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

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

24 d. All cancellation requests will be acknowledged and honored
25 within 3 working days of receipt, and applied as of the date of
26 receipt.

27 e. Nothing in this section shall be construed to prevent a
28 consumer from recovering on a claim that would be valid and
29 covered had the provider acted in compliance with P.L. , c.
30 (C.) pending before the Legislature as this bill).

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

38
39 10. This act shall take effect on the first day of the fourth month
40 following enactment.

41
42

43 STATEMENT

44
45 This bill establishes certain consumer protection requirements
46 upon service contract providers, or companies that offer contracts
47 purporting to cover repairs to a consumer's home, car, or other
48 goods.

1 In particular, the bill clarifies that legal requirements pertaining
2 to service contracts apply to persons who administer, issue, make,
3 provide, sell, or offer to sell contracts, as well as persons
4 contractually obligated to provide services under a contract. The
5 bill prohibits service contract providers from using the terms
6 “guaranty” or “warranty” to describe their product and requires
7 providers to meet certain bond requirements. Moreover, service
8 contract providers are to clearly and conspicuously disclose
9 automatic renewal provisions and provide notice prior to the
10 cancellation deadline.

11 In addition, the bill requires disclosure of the identities of all
12 company principals and their involvement in past litigation or
13 enforcement matters as well as information about the percentage of
14 contract holders who have received a benefit, percentage of claims
15 denied, and comparison of the amounts collected in fees and
16 amounts paid out in benefits.

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

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

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

24 (3) the provider’s contact information;

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

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

29 Lastly, the bill requires providers to register with the Division of
30 Consumer Affairs and allows the division to post information about
31 a provider publicly on its website.

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1559

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 7, 2022

The Assembly Consumer Affairs Committee adopts amendments to Assembly Bill No. 1559.

As amended by the committee, this bill establishes certain consumer protection requirements upon service contract providers and administrators, or companies that offer contracts purporting to cover repairs to a consumer's home, car, or other goods.

In particular, the bill clarifies that legal requirements pertaining to service contracts apply to administrators, as well as persons contractually obligated to provide services under a contract, as provided under current law. The bill requires providers to meet certain bond requirements and provides that service contract providers are to clearly and conspicuously disclose automatic renewal provisions, provide notice prior to the cancellation deadline, and provide certain minimum methods for a consumer to cancel a contract.

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

The bill requires providers and, if applicable, administrators who use a public utility's trade name or identifying information to clearly and prominently disclose:

- (1) that the service contract is not being offered by the public utility but by a third party entity that is not part of the public utility, and that an entity other than the public utility will be responsible for performing the services advertised;
- (2) the name of the provider that offers the service contract and, if applicable, the name of the administrator;
- (3) the provider's contact information and, if applicable, the administrator's contact information;
- (4) that the communication is an advertisement; and

(5) if applicable, that the billing for the services to be provided will be conducted through a public utility and that the public utility is an entity other than the provider.

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

This bill was pre-filed for introduction in the 2022-2023 session pending technical review.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- (1) change the definition of “provider” under the bill;
- (2) remove administrators of service contracts from the definition of “provider” and include a definition of “regulated entity” that means a provider or an administrator;
- (3) stipulate that certain provisions of the bill apply to administrators in addition to providers;
- (4) allow a provider of service contracts issued, offered for sale, or sold in New Jersey to use in its name, products, descriptions of products, advertisements or any other materials the words “guaranty” and “warranty” under certain circumstances;
- (5) exempt certain providers and insurers from bond maintenance requirements under the bill;
- (6) update the information providers are required to disclose;
- (7) remove a requirement that the provider registration application be accompanied by an audited financial statement;
- (8) stipulate that the division may publish on a publicly accessible webpage only non-confidential information concerning registered providers;
- (9) provide that cancellation requests made to certain providers are to be acknowledged within five business days of receipt and honored within 10 business days of receipt, and applied as of the date of receipt or, if permitted by the service contract, applied at the end of the holder’s monthly billing cycle;
- (10) change the conditions under which the use of the term “extended warranty” may be used;
- (11) require an advertisement for a service contract offered by an entity other than a public utility in a manner that uses a public utility’s trade name or other identifying information to clearly and prominently disclose certain information relative to the administrator of the service contract in addition to the provider that offers the service contract;
- (12) stipulate that nothing in the bill is to be construed to impose liability on news media for accepting or publishing advertising that may fall within the scope of the bill;
- (13) stipulate that if a provider fails to comply with certain provisions of this bill, the contract holder may cancel the contract and

receive the unearned portion of the contract subject to the automatic renewal provision less the amount of claims paid during that automatic renewal period;

(14) make various clarifying and technical changes; and

(15) make the bill effective on the first day of the twelfth month following enactment.

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 1559

STATE OF NEW JERSEY

DATED: MAY 9, 2022

The Assembly Consumer Affairs Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 1559 (1R).

The committee substitute establishes certain consumer protection requirements upon service contract providers and administrators, or companies that offer contracts purporting to cover repairs to a consumer's home, car, or other goods.

In particular, the committee substitute clarifies that legal requirements pertaining to service contracts apply to administrators, as well as persons contractually obligated to provide services under a contract, as provided under current law. The committee substitute requires providers to meet certain bond requirements and provides that service contract providers are to clearly and conspicuously disclose certain information regarding the nature of the service contract and automatic renewal provisions, provide notice prior to the cancellation deadline, and provide certain minimum methods for a consumer to cancel a contract.

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

The committee substitute requires providers and, if applicable, administrators who use a public utility's trade name or identifying information to clearly and prominently disclose:

- (1) that the service contract is not being offered by the public utility but by a third party entity that is not part of the public utility, and that an entity other than the public utility will be responsible for performing the services advertised;
- (2) the name of the provider that offers the service contract and, if applicable, the name of the administrator;
- (3) the provider's contact information and, if applicable, the administrator's contact information;
- (4) that the communication is an advertisement; and

(5) if applicable, that the billing for the services to be provided will be conducted through a public utility and that the public utility is an entity other than the provider.

Lastly, the committee substitute requires providers and administrators to register with the Division of Consumer Affairs and allows the division to post non-confidential information about a provider or administrator publicly on its website.

As reported by the committee, this committee substitute is identical to the Senate Bill No. 902 (1R), which was reported by the committee on this same date.

STATEMENT TO

**ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1559**

with Assembly Floor Amendments
(Proposed by Assemblyman MORIARTY)

ADOPTED: MAY 26, 2022

Assembly Committee Substitute for Assembly Bill No. 1559 (1R) imposes certain consumer protection requirements on service contract providers.

These Assembly amendments provide that a regulated entity may use the terms “guaranty,” “warranty,” or “extended warranty” in any consumer contract or agreement, any product description made available to a consumer, and any advertisements and related materials in which that term is used. However, when the service contract is in the nature of a home warranty or extended warranty, the regulated entity is required to additionally disclose that the product being offered is separate from any product, service warranty, or extended warranty which may be provided by the home builder or manufacturer and, when using the term extended warranty, that the product does not extend the term of any original product or service warranty that the manufacturer, importer, or seller may have provided.

Governor Murphy Signs Package of Bills Targeting Predatory Financial Practices

08/5/2022

New Laws Include Measure that Will Toughen New Jersey's Antitrust Laws

TRENTON – Governor Phil Murphy today signed three bills, S-891/A-1557, S-902/A-1559, and A-1556/S-901, protecting New Jersey consumers from predatory financial practices. These new laws include measures that will toughen New Jersey's antitrust laws.

"New Jersey consumers are the heartbeat of our state's economy and it is imperative that we protect them from those who are looking to target their finances," **said Governor Murphy**. "These bills will set new standards for financial service providers to abide by, giving our consumers the protection they need from certain deceptive actors. Our communities of color will particularly benefit from this package of bills as they have experienced these unethical financial practices at a higher rate than others."

"The legislation signed by Governor Murphy today further enhances consumer protections in New Jersey and demonstrates the Administration's ongoing commitment to stand up for our State's residents, especially those most vulnerable to deceptive business practices," **said Acting Attorney General Matthew J. Platkin**. "These laws provide us more legal tools to hold accountable those who seek to take advantage of consumers in our State. And make no mistake, we will hold you accountable under the law."

"The protections signed into law today expand and strengthen the ability of the Division of Consumer Affairs to pursue action against those who violate the rights of consumers through unscrupulous business practices, deceptive service contracts, and predatory tax refund programs," **stated Cari Fais, Acting Director of the NJ Division of Consumer Affairs**. "I commend Governor Murphy and the Legislature for their commitment to protecting New Jersey consumers."

This legislation was initiated by the Division of Consumer Affairs in the Department of Law and Public Safety and will protect consumers from exploitive practices associated with tax preparation and refund services and service contracts by prohibiting misleading marketing and requiring clearer disclosures, as well as financial assurances for service contract providers. These protections are particularly important for socially vulnerable communities, including individuals with low and moderate income and limited English proficiency and people of color, who are often targeted by bad actors in the financial and services sectors.

The legislation will also enhance the ability of the Division and the Attorney General to take enforcement action to protect New Jersey consumers by making clear that abusive commercial practices and violations of federal consumer protection laws are violations of the Consumer Fraud Act, by requiring that private litigants provide notice to the Division of filings in consumer protection cases, and by amending state antitrust law to allow for claims to be brought by parties who are harmed indirectly by anticompetitive action.

The Governor signed the following bills:

S-891/A-1557 (Scutari, Pou/Moriarty, Stanley, Mukherji) - Prohibits tax preparers from engaging in certain practices involving refund anticipation checks and loans

S-902/A-1559 (Pou/Moriarty, Stanley, Benson) - Imposes certain consumer protection requirements on service contract providers

A-1556/S-901 (Moriarty, Stanley, Mukherji/Pou) - Updates notice requirements for actions alleging consumer fraud violations and adds indirect purchasers as parties who can receive damages for antitrust violations

Primary sponsors for the legislation include Senate President Nicholas Scutari, Senator Nellie Pou, Assemblyman Paul Moriarty, Assemblyman Sterley Stanley, Assemblyman Raj Mukherji, and Assemblyman Daniel Benson.

“Getting money sooner sounds good at the surface, but it almost always comes with a catch,” **said Senate President Nicholas Scutari**. “This legislation will prevent tax filing services from deceiving residents and taking money out of the pockets of people who need it the most.”

“Tax filing season represents a chance for relief for Americans who may face difficulty balancing their household budgets. Although these refunds provide a boost at just the right time for many families, the filing process can be difficult to navigate, and low-income families in need of assistance can find themselves exposed to consumer protection risks when working with tax preparation services,” **said Senator Nellie Pou**. “This law will put the onus on tax preparers to explain fully to clients what is involved in a refund anticipation check, and prohibit them from requiring clients to enter into such agreements.”

“Unscrupulous advertisements for “free” refund anticipation or loan services have misrepresented service fees for far too long. Residents, many times, are left with hundreds of dollars less in their tax refund checks. This is money out of their pockets and household budgets,” **said Assemblyman Raj Mukherji**. “With this new law, we will stop this deceptive practice and ensure consumers have all of the information they need to make the best decision at tax time.”

“Consumer protections benefit all New Jerseyans,” **said Assemblymen Dan Benson and Sterley Stanley**. “No one should be taken advantage of when going to get their taxes prepared or simply acquiring a service contract for their home. We must hold businesses accountable and ensure New Jersey residents are confident in carrying out their day-to-day purchases.”

“Consumers have every right to clear representation of any service offered by a company, especially when it applies to their tax refunds, one of the largest payments an individual receives each year,” **said Assemblyman Paul Moriarty**. “This legislation along with the other two measures maintains an even playing field for consumers and businesses. Addressing situations many New Jersey residents have faced, these measures are essential protection for New Jersey consumers.”