

52:12-87 to 56:12-96
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2013 **CHAPTER:** 197

NJSA: 52:12-87 to 56:12-96 (Regulates certain service contracts to perform maintenance, repair, replacement, or service of property used for personal, family, or household purposes)

BILL NO: S854 (Substituted for A1740)

SPONSOR(S) Vitale and others

DATE INTRODUCED: January 10, 2012

COMMITTEE: **ASSEMBLY:** Regulated Professions
Budget

SENATE: Commerce

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 19, 2013

SENATE: January 9, 2014

DATE OF APPROVAL: January 17, 2014

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second reprint enacted)

S854

SPONSOR'S STATEMENT: (Begins on page 10 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: No

A1740

SPONSOR'S STATEMENT: (Begins on page 10 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes Consumer
Budget

SENATE: No

(continued)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/KR

P.L.2013, CHAPTER 197, *approved January 17, 2014*
Senate, No. 854 (*Second Reprint*)

1 AN ACT concerning service contracts, and supplementing and
2 amending P.L.1980, c.125.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. (New section) As used in this act:

8 "Administrator" means a person who performs the third-party
9 administration of a service contract, pursuant to the provisions of
10 section 5 of this act, on behalf of a provider.

11 "Consumer" means a natural person who buys other than for
12 purposes of resale any ¹**["tangible personal"]**¹ property that is
13 distributed in commerce and that is normally used for personal,
14 family, or household purposes and not for business or research
15 purposes.

16 ¹**["Commissioner"]** means the Commissioner of Banking and
17 Insurance.

18 "Department" means the Department of Banking and Insurance. **]**

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

21 "Emergency, life safety, or property safety goods" means any
22 goods provided for installation in, as part of, or for addition to, a
23 system designed to prevent, respond to, alert regarding, suppress,
24 control, or extinguish an emergency or the cause of an emergency,
25 or assist evacuation in the event of an emergency, which emergency
26 could threaten life or property. Examples of these systems include
27 fire alarm, fire sprinkler, fire suppression, fire extinguisher,
28 security, gas detection, intrusion detection, access control, video
29 surveillance and recording, mass notification, public address,
30 emergency lighting, patient wandering, infant tagging, and nurse
31 call.¹

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

35 ¹"Motor vehicle ancillary protection product" means a contract
36 or agreement between a provider and a consumer for a specific

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 June 13, 2013.

²Assembly ABU committee amendments adopted December 12, 2013.

1 duration, for a provider fee or other separately stated consideration,
 2 to perform one or more of the following with respect to a motor
 3 vehicle:

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

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

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

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

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

20 "Premium" means the consideration paid to an insurer for a
 21 reimbursement insurance policy, and is subject to any applicable
 22 premium tax.

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

25 "Provider fee" means the consideration paid ²by a consumer² for
 26 a service contract, and is not subject to any premium tax.

27 "Reimbursement insurance policy" means a policy of insurance
 28 issued to a provider to either provide reimbursement to, or payment
 29 on behalf of, the provider under the terms of the insured service
 30 contracts issued or sold by the provider, or, in the event of the
 31 provider's non-performance, to provide or pay for, on behalf of the
 32 provider, all covered contractual obligations incurred by the
 33 provider.

34 "Service contract" means a contract or agreement ¹between a
 35 provider and a consumer¹ for ¹[a specific] any¹ duration, for a
 36 provider fee or other separately stated consideration, to perform ^{2,2}
 37 or to provide indemnification for ²the² performance of,¹ the
 38 maintenance, repair, replacement, or service of ¹[a motor vehicle or
 39 other]¹ property ¹[,] or indemnification for maintenance, repair,
 40 replacement, or service¹ for the operational or structural failure of
 41 the ¹[motor vehicle, or residential or other]¹ property¹[,]¹ due to a
 42 defect in materials or workmanship ¹[,]¹ or ¹due to¹ normal wear
 43 and tear, and which may include additional provisions for incidental
 44 payment of indemnity under limited circumstances ¹[, including,
 45 but not limited to,] . In the case of a motor vehicle, such
 46 circumstances may include¹ towing, rental, and emergency road

1 services, and other road hazard protections. A service contract may
 2 provide for the maintenance, repair, replacement, or service of the
 3 ¹**motor vehicle or other**¹ property for damage resulting from
 4 power surges or interruption, or accidental damage from handling.
 5 ²**A service contract shall not be considered to be an insurance**
 6 **contract, and shall not be subject to regulation as insurance pursuant**
 7 **to Title 17 of the Revised Statutes.]² ¹A service contract also
 8 includes a motor vehicle ancillary protection product. Service
 9 contracts may provide for leak or repair coverage to house roofing
 10 systems.¹ ²A “service contract” does not include a contract in
 11 writing to maintain structural wiring associated with the delivery of
 12 cable, telephone, or other broadband communication services or a
 13 contract in writing related to the delivery of satellite television or
 14 broadband communication services.²**

15 "Service contract holder" or "contract holder" means a ¹**person**
 16 consumer¹ who is the purchaser of a service contract or is entitled
 17 to the contractual ¹**obligations** benefits¹ under the terms of the
 18 contract.

19 "Warranty" means a warranty made solely by the manufacturer,
 20 importer, or seller of property or services without ¹additional¹
 21 consideration, that is incidental to, and not negotiated or separated
 22 from, the sale of the property or services, that guarantees indemnity
 23 for defective materials, parts, mechanical or electrical breakdown,
 24 labor, or workmanship, or provides other remedial measures,
 25 including repair or replacement of the property or repetition of
 26 services.

27
 28 2. (New section) a. ¹**The purpose of this act is to create a legal**
 29 **framework within which service** Service¹ contracts may be issued,
 30 offered for sale, or sold in this State ¹only in accordance with the
 31 provisions of this act¹.

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

- 34 (1) warranties;
 35 (2) maintenance agreements;
 36 (3) service contracts on ¹**tangible**¹ property if the ¹**tangible**¹
 37 property for which the service contract is sold has a purchase price
 38 of \$250 or less, excluding sales tax;
 39 (4) mechanical breakdown insurance policies offered by
 40 licensed insurers pursuant to the insurance laws of this State;
 41 ¹**and**¹
 42 (5) motor club or association membership contracts that
 43 primarily provide for roadside assistance and towing services in
 44 situations that involve impairment of the operation of a member's
 45 motor vehicle, for reasons that include, but are not limited to,
 46 mechanical breakdown or adverse road conditions;

1 (6) newspapers that accept or publish advertising for items that
2 fall within the scope of this act;

3 (7) service contracts on emergency, life safety, or property safety
4 goods; and

5 (8)¹ service contracts issued, offered, or sold:

6 (a) by a public utility to the extent that the public utility is
7 regulated by the Board of Public Utilities, or by a person providing
8 central heating and air conditioning services, but only with respect
9 to a service contract regarding the product sold to a consumer ¹**[.]**¹
10 or installed or repaired for the consumer at the consumer's
11 household ¹**[.]**¹ by ¹**[the]** ¹a utility ¹, a subsidiary of a utility,¹ or
12 ¹**[by]**¹ a person providing central heating and air conditioning
13 services; or

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

15 c. ¹Service contracts are not insurance in this State or
16 otherwise regulated under Title 17 of the Revised Statutes.¹ The
17 making, proposing to make, issuing, marketing, offering, selling,
18 administering of, or providing contractual obligations for, a service
19 contract shall not be construed to be the business of insurance and
20 shall be exempt from regulation as insurance pursuant to Title 17 of
21 the Revised Statutes, however nothing in this act shall be construed
22 to exempt the making, issuing, marketing, offering, or selling of a
23 reimbursement insurance policy from any applicable provisions of
24 Title 17 of the Revised Statutes.

25
26 3. (New section) ¹**[a.]**¹ A provider of service contracts issued,
27 offered for sale, or sold in this State, shall not use in its name the
28 words "insurance," "casualty," "surety," "mutual" or any other
29 word descriptive of the insurance, casualty, or surety business, or a
30 name deceptively similar to the name or description of any
31 insurance or surety corporation, or to the name of any other
32 provider registered pursuant to section 4 of this act, but may use the
33 word "guaranty" or similar word.

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

36
37 4. (New section) a. A person shall not issue, offer to sell, or
38 sell service contracts in this State unless the provider ¹**[is]** registered
39 with the Department of Banking and Insurance. A provider of
40 service contracts issued, offered for sale, or sold in this State, shall
41 file a registration, to be updated within 30 days of any change in the
42 information included in or filed with the registration, and renewed
43 at least annually, with the department, which shall include: the
44 provider's name, which shall comply with the provisions of section
45 3 of this act; principal business address; name and telephone
46 number of an appropriate contact person; and name and address of
47 the provider's agent for service of process in this State, which may

1 be the commissioner, if the provider's principal business address is
2 not in this State.

3 b. The registration shall also include an attestation from an
4 owner, partner, proprietor, corporate officer or director, or member,
5 as appropriate to the organizational structure of the provider as to
6 the provider's compliance] complies¹ with ¹[at least]¹ one ¹or
7 more¹ of the following means of assuring faithful performance to its
8 contract holders:

9 (1) ¹[insuring]¹ each service contract ¹shall be insured¹ under a
10 reimbursement insurance policy issued by an insurer licensed,
11 registered, or otherwise authorized to transact the business of
12 insurance in this State, and which complies with the provisions of
13 section 6 of this act;

14 (2) ¹[maintaining]¹ a funded reserve account ¹shall be
15 established and maintained¹ for its obligations under each contract
16 issued and outstanding in this State, with reserves ¹calculated at¹
17 not less than ¹[20%] 40%¹ of gross consideration received, ¹then¹
18 less the amount of claims paid ¹[,]¹ under those contracts. ¹If those
19 reserves fall below the minimum required, the provider has 90 days
20 to come into compliance without violating this section.¹ The
21 reserve account shall be subject to examination and review by the
22 ¹[commissioner] director¹ pursuant to section 10 of this act; or

23 (3) ¹[maintaining,]¹ alone or together with the provider's parent
24 or other affiliated corporation, ¹the provider shall maintain¹ a net
25 worth or stockholders' equity of not less than \$100,000,000. ¹[At
26 the time of registration or any time upon] Upon¹ request by the
27 ¹[commissioner] director¹, the provider shall provide the
28 ¹[commissioner] director¹ with a copy of the provider's or its
29 parent's or other affiliated corporation's most recent Form 10-K or
30 Form 20-F, or successor form containing substantially the same
31 information, filed with the Securities and Exchange Commission
32 within the last 12-month period, or if the provider, or parent or
33 other affiliated corporation, does not file this form with the
34 Securities and Exchange Commission, a copy of the entity's audited
35 financial statements, which show a net worth of the provider, or
36 parent or other affiliated corporation, of not less than \$100,000,000.
37 If the provider's parent's or other affiliated corporation's form or
38 financial statements are filed to meet the provider's means of
39 assuring faithful performance to its contract holders, the parent or
40 other affiliated corporation shall agree to guarantee the obligations
41 of the provider.

42 ¹[c.] b.¹ Except for the requirements set forth in subsection
43 ¹[b.] a.¹ of this section, the provider shall not be subject to any
44 additional financial security requirements by the ¹[commissioner]
45 director¹ in order to issue, offer, or sell service contracts in this
46 State.

1 ¹[d. At the time of registration, and annually thereafter, the
2 provider shall pay a fee to the department in the amount of \$500,
3 which the commissioner may adjust pursuant to regulation to reflect
4 the actual costs of administering the provisions of this act.

5 e. (1) Upon acceptance and approval of the registration, the
6 commissioner shall make appropriate information from the
7 registration and any updates available to providers and sellers of
8 service contracts, as well as the public, by posting the information
9 on the department's official Internet website. The information shall
10 include the provider's name, principal business address, telephone
11 number, form of financial security as required pursuant to
12 subsection b. of this section, and any other appropriate information
13 as determined by the commissioner.

14 (2) If the provider fails to comply with any provision of this act
15 after the commissioner's posting of information from the initial
16 registration, the commissioner, upon notice to the provider and
17 opportunity for a hearing which concludes with a finding of
18 noncompliance, shall post on the website that the provider is
19 deemed noncompliant and that the provider or any other seller of
20 the provider's contracts shall no longer offer for sale or sell those
21 contracts until the provider's noncompliance is resolved.]

22 c. In addition to any applicable damages and penalties pursuant
23 to subsection a. of section 10 of ²[this act] P.L. , c. (C.)
24 (pending before the Legislature as this bill)², a person who sells a
25 service contract that is not in compliance with ²[this act] P.L. ,
26 c. (C.) (pending before the Legislature as this bill)² or that is
27 issued by a provider that is not in compliance with ²[this act]
28 P.L. , c. (C.) (pending before the Legislature as this bill)²
29 shall be jointly and severally liable for all covered contractual
30 obligations arising under the terms of ²[that service] such² contract
31 ²[that is not in compliance]² or any service contract sold at a time
32 when the provider of the contract is ²[not in compliance] non-
33 compliant² .¹

34
35 5. (New section) A provider of any service contract issued,
36 offered for sale, or sold in this State may appoint an administrator
37 to perform the third-party administration of any contract, which
38 shall include, but not be limited to:

39 a. ¹[arranging or submitting the information and materials
40 required for the provider's initial or updated registration pursuant to
41 section 4 of this act;

42 b.]¹ maintaining the accounts, books, papers, documents, and
43 other records concerning the provider's activities and transactions
44 regulated under this act;

45 ¹[c.] b.¹ performing or arranging the collection, maintenance, or
46 disbursement of payments on behalf of the provider, related to any

1 claim arising under the provider's contracts; or

2 ¹**[d.] c.**¹ participating in the processing or adjustment of any
3 claim arising under the provider's contracts.

4

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

8 (1) be deemed to have received the premium for the insurance
9 ¹**[policy:**

10 (a) upon payment of a provider fee to the provider for the
11 contract; or

12 (b) upon payment or other consideration to the provider by the
13 seller of the contract **]** upon the payment of the provider fee by a
14 consumer for a service contract issued by an insured provider¹;

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

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

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

24 (4) terminate or not renew the policy covering the contract only
25 after a notice of termination or nonrenewal is presented to the
26 ¹**[commissioner] director**¹, at least 10 days prior to the termination
27 or nonrenewal of the policy, which termination or nonrenewal shall
28 not reduce the insurer's responsibility for any insured contract
29 issued or sold prior to the date of termination or nonrenewal.

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

34

35 7. (New section) A service contract issued, offered for sale, or
36 sold in this State shall be written ¹**[, printed, or typed in clear and**
37 **understandable language,]** in a simple, clear, understandable, and
38 easily readable way¹ and shall contain the requirements set forth in
39 this section, as applicable:

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

42 b. ¹**[a statement accompanying the provider's name, if the**
43 name is exempt from any wording prohibitions pursuant to
44 subsection b. of section 3 of this act, in substantially the following
45 form: "This service contract is not an insurance contract.";

46 c. ¹**]**¹ the administrator's name, principal or other appropriate
47 business address, and telephone number;

1 ¹**[d.] c.**¹ the service contract holder's name and address, to the
 2 extent this information is furnished by the contract holder ¹,
 3 provided, however, that a provider that bills a consumer for the
 4 provider fee on a periodic basis at a physical or electronic address
 5 provided by the ²service² contract holder shall be exempt from the
 6 requirement of this subsection¹;

7 ¹**[e.] d.**¹ the provider fee, or a reference to any other
 8 documentation which contains the provider fee ¹and the terms under
 9 which the contract is sold¹;

10 ¹**[f.] e.**¹ the property subject to coverage by the service contract,
 11 ¹**[and]**¹ the contractual obligations of the provider with respect to
 12 that property ¹, any limitations, exceptions, and exclusions, a toll-
 13 free telephone number for claim service, and complete instructions
 14 for making a claim for service on or replacement of the property
 15 covered by the contract ², ² or for reimbursement for service on or
 16 replacement of the property¹;

17 ¹**[g.] f.**¹ the amount of any deductible or service fee, as
 18 applicable;

19 ¹**[h.] g.**¹ whether the provider's use of refurbished,
 20 reconditioned, or non-original manufacturer's parts is permitted;

21 ¹**[i.] h.**¹ whether the service contract provides for consequential
 22 damages or preexisting conditions;

23 ¹**[j.] i.**¹ the contractual obligations of the service contract holder,
 24 including, but not limited to, the duty of the contract holder to
 25 comply with the provisions of the owner's manual for the property
 26 and to protect the property against any further damage;

27 ¹**[k.] j.**¹ the conditions governing the transferability of the
 28 service contract;

29 ¹**[l.] k.**¹ the conditions governing the cancellation of the service
 30 contract by the service contract holder, which shall:

31 (1) permit the ¹**[contact] contract**¹ holder, if the contract holder
 32 makes no claim arising under the contract, to cancel the contract:

33 (a) within 10 days of receipt of the contract, or a longer period
 34 specified in the contract, if delivered at the time of purchase; or

35 (b) within 20 days of ²**[receipt of the contract]** the date the
 36 contract was sent to the contract holder² , or a longer period
 37 specified in the contract, if ²**[mailed]** not delivered at the time of
 38 purchase²; and

39 (2) ¹if cancelled within the time period specified in
 40 ²**[subparagraphs]** subparagraph² (a) or (b) of paragraph (1) of this
 41 subsection¹, require the provider ¹**[**¹:

42 (a)¹ to provide the contract holder with the full purchase price
 43 ¹**[of]** or amount paid on¹ the contract by ¹**[**¹:

44 (i)¹ refund ¹**[;**¹ or

45 ¹**[(ii)]**¹ credit to the account of the contract holder ¹**[;**¹ and

1 ¹**[(b)]**¹ to additionally pay the contract holder a 10% per month
2 penalty, based upon the purchase price of the contract, if the refund
3 or credit is not completed within 45 days of the cancellation of the
4 contract;

5 ¹**[m.]** 1¹ the conditions governing cancellation of the service
6 contract by the provider, prior to the expiration of the contract,
7 which shall:

8 (1) require, except as provided in paragraph (2) of this
9 subsection, that the provider mail a written notice to the contract
10 holder at the contract holder's last known address:

11 (a) which contains the reason for the cancellation and the
12 effective date of the cancellation; and

13 (b) is delivered at least five days prior to the effective date of
14 the cancellation; and

15 (2) explain that a written notice shall not be required if the
16 reason for cancellation is nonpayment of the provider fee, a material
17 misrepresentation or omission, or a substantial breach of contractual
18 obligations concerning the property or its use; and

19 ¹**[n.]** m.¹ whether the service contract is insured by a
20 reimbursement insurance policy, and:

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

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

27 (b) information concerning the procedure for the contract holder
28 to present a claim arising under the contract directly to the
29 reimbursement insurance company, pursuant to the insurer's
30 obligations set forth in section 6 of this act, in the event that the
31 provider does not comply with any contractual obligation pursuant
32 to the contract within 60 days of presentation of a valid claim by the
33 contract holder; or

34 (2) if not insured, the contract shall contain a conspicuous
35 statement in substantially the following form: "Obligations of the
36 provider under this service contract are backed by the full faith and
37 credit of the provider."
38

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

42 a. a receipt for, or other written evidence of, the purchase of
43 the service contract to the contract holder ¹**[**, which shall include
44 the provider's registration number¹]; and

45 b. a copy of the service contract to the service contract holder
46 ¹, which may be presented ²**[online]** electronically² or in writing, at
47 the point of sale or¹ within a reasonable period of time from the

1 date of purchase.

2

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

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

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

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

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

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

20 (2) A provider discontinuing business in this State shall
21 maintain the means of assuring faithful performance to its contract
22 holders as required by subsection ¹~~['b.']~~ a.¹ of section 4 of this act
23 and all records related to each contract issued or sold in this State
24 until the provider submits appropriate proof, satisfactory to the
25 ¹~~['commissioner']~~ director¹, that it discharged or transferred its
26 contractual obligations for all contracts so issued or sold.

27 d. The records required and maintained pursuant to this section
28 may be maintained electronically or through other record keeping
29 technology, but if maintained in a format other than by hard copy,
30 the records shall be capable of duplication to legible hard copy at
31 the request of the ¹~~['commissioner']~~ director¹.

32

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

36 b. In order to enforce the provisions of this act, the
37 ¹~~['commissioner']~~ director¹ may conduct examinations of any
38 provider, administrator, seller, or other person subject to the
39 provisions of this act. Upon request by the ¹~~['commissioner']~~
40 director¹, a provider, administrator, seller, or other person shall
41 make any accounts, books, papers, documents and other records
42 required and maintained pursuant to section 9 of this act available
43 to the ¹~~['commissioner']~~ director¹ for inspection which are necessary
44 to enable the ¹~~['commissioner']~~ director¹ to reasonably determine
45 compliance with this act.

46

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

1 as follows:

2 1. As used in this act:

3 "Consumer contract" means a written agreement in which an
4 individual:

5 a. Leases or licenses real or personal property;

6 b. Obtains credit;

7 c. Obtains insurance coverage, except insurance coverage
8 contained in policies subject to the "Life and Health Insurance
9 Policy Language Simplification Act," [(P.L.1979, c.167, C.17B:17-
10 17 et seq.)] P.L.1979, c.167 (C.17B:17-17 et seq.);

11 d. Borrows money;

12 e. Purchases real or personal property;

13 f. Contracts for services including professional services ;

14 g. Enters into a service contract, as defined in section 1 of
15 P.L. , c. (C.) (pending before the Legislature as this bill),

16 for cash or on credit and the money, property or services are
17 obtained for personal, family or household purposes. "Consumer
18 contract" includes writings required to complete the consumer
19 transaction. "Consumer contract" does not include a written
20 agreement involving a transaction in securities with a broker-dealer
21 registered with the Securities and Exchange Commission, or a
22 transaction in commodities with a futures commission merchant
23 registered with the [Commodities] Commodity Futures Trading
24 Commission.

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

26

27 12. This act shall take effect on the ¹[365th] 180th¹ day
28 following enactment ¹]; except that the department may take any
29 anticipatory administrative action in advance thereof as shall be
30 necessary for the implementation of this act, and the act shall
31 remain inoperative until the final adoption by the department of all
32 regulations necessary for the implementation of this act¹.

33

34

35

36

37 Regulates certain service contracts to perform maintenance,
38 repair, replacement, or service of property used for personal,
39 family, or household purposes.

SENATE, No. 854

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

Senator A.R.Bucco

SYNOPSIS

Regulates certain service contracts to perform maintenance, repair, replacement, or service of property used for personal, family, or household purposes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/4/2012)

1 AN ACT concerning service contracts, and supplementing and
2 amending P.L.1980, c.125.

3

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

6

7 1. (New section) As used in this act:

8 "Administrator" means a person who performs the third-party
9 administration of a service contract, pursuant to the provisions of
10 section 5 of this act, on behalf of a provider.

11 "Consumer" means a natural person who buys other than for
12 purposes of resale any tangible personal property that is distributed
13 in commerce and that is normally used for personal, family, or
14 household purposes and not for business or research purposes.

15 "Commissioner" means the Commissioner of Banking and
16 Insurance.

17 "Department" means the Department of Banking and Insurance.

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

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

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

26 "Premium" means the consideration paid to an insurer for a
27 reimbursement insurance policy, and is subject to any applicable
28 premium tax.

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

31 "Provider fee" means the consideration paid for a service
32 contract, and is not subject to any premium tax.

33 "Reimbursement insurance policy" means a policy of insurance
34 issued to a provider to either provide reimbursement to, or payment
35 on behalf of, the provider under the terms of the insured service
36 contracts issued or sold by the provider, or, in the event of the
37 provider's non-performance, to provide or pay for, on behalf of the
38 provider, all covered contractual obligations incurred by the
39 provider.

40 "Service contract" means a contract or agreement for a specific
41 duration, for a provider fee or other separately stated consideration,
42 to perform the maintenance, repair, replacement, or service of a
43 motor vehicle or other property, or indemnification for
44 maintenance, repair, replacement, or service for the operational or
45 structural failure of the motor vehicle, or residential or other

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

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

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

22

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

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

28 (1) warranties;

29 (2) maintenance agreements;

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

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

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

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

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

44 c. The making, proposing to make, issuing, marketing,
45 offering, selling, administering of, or providing contractual
46 obligations for, a service contract shall not be construed to be the
47 business of insurance and shall be exempt from regulation as
48 insurance pursuant to Title 17 of the Revised Statutes, however

1 nothing in this act shall be construed to exempt the making, issuing,
2 marketing, offering, or selling of a reimbursement insurance policy
3 from any applicable provisions of Title 17 of the Revised Statutes.
4

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

13 b. This section shall not apply to the name of a provider of
14 service contracts in effect prior to the effective date of this act.
15

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

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

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

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

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

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

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

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

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

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

40

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

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

48 b. maintaining the accounts, books, papers, documents, and

1 other records concerning the provider's activities and transactions
2 regulated under this act;

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

6 d. participating in the processing or adjustment of any claim
7 arising under the provider's contracts.
8

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

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

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

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

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

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

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

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

33 b. This section shall not be construed to limit the right of the
34 insurer to seek indemnification or subrogation against the provider
35 if the insurer provides or pays, or is obligated to provide or pay, for
36 any covered contractual obligation incurred by the provider.
37

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

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

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

48 c. the administrator's name, principal or other appropriate

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

- 1 obligations concerning the property or its use; and
- 2 n. whether the service contract is insured by a reimbursement
- 3 insurance policy, and:
- 4 (1) if insured, the contract shall contain:
- 5 (a) the insurer's name, principal or other appropriate business
- 6 address, and telephone number accompanied by a conspicuous
- 7 statement in substantially the following form: "Obligations of the
- 8 provider under this service contract are insured under a service
- 9 contract reimbursement insurance policy."; and
- 10 (b) information concerning the procedure for the contract holder
- 11 to present a claim arising under the contract directly to the
- 12 reimbursement insurance company, pursuant to the insurer's
- 13 obligations set forth in section 6 of this act, in the event that the
- 14 provider does not comply with any contractual obligation pursuant
- 15 to the contract within 60 days of presentation of a valid claim by the
- 16 contract holder; or
- 17 (2) if not insured, the contract shall contain a conspicuous
- 18 statement in substantially the following form: "Obligations of the
- 19 provider under this service contract are backed by the full faith and
- 20 credit of the provider."
- 21
- 22 8. (New section) A service contract shall not be issued, offered
- 23 for sale, or sold in this State unless the provider or seller, if not the
- 24 provider, presents:
- 25 a. a receipt for, or other written evidence of, the purchase of
- 26 the service contract to the contract holder, which shall include the
- 27 provider's registration number; and
- 28 b. a copy of the service contract to the service contract holder
- 29 within a reasonable period of time from the date of purchase.
- 30
- 31 9. (New section) a. A provider of any service contract issued,
- 32 offered for sale, or sold in this State shall keep accurate accounts,
- 33 books, papers, documents, and other records concerning the
- 34 activities and transactions regulated under this act.
- 35 b. The provider's accounts, books, papers, documents, and
- 36 other records shall include:
- 37 (1) a copy of each contract issued or sold;
- 38 (2) the name and address of each service contract holder, to the
- 39 extent this information is furnished by the contract holder; and
- 40 (3) information concerning any claim arising under each
- 41 contract, which shall include, but not be limited to, the date of claim
- 42 filing, claim description, and provider's response.
- 43 c. (1) Except as provided by paragraph (2) of this subsection,
- 44 the provider shall retain all records related to a contract required by
- 45 the provisions of this section for at least one year after the
- 46 expiration of all contractual obligations under the terms of the
- 47 contract.
- 48 (2) A provider discontinuing business in this State shall

1 maintain the means of assuring faithful performance to its contract
2 holders as required by subsection b. of section 4 of this act and all
3 records related to each contract issued or sold in this State until the
4 provider submits appropriate proof, satisfactory to the
5 commissioner, that it discharged or transferred its contractual
6 obligations for all contracts so issued or sold.

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

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

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

25
26 11. Section 1 of P.L.1980, c.125 (C.56:12-1) is amended to read
27 as follows:

28 1. As used in this act:
29 "Consumer contract" means a written agreement in which an
30 individual:

- 31 a. Leases or licenses real or personal property;
- 32 b. Obtains credit;
- 33 c. Obtains insurance coverage, except insurance coverage
34 contained in policies subject to the "Life and Health Insurance
35 Policy Language Simplification Act," [(P.L.1979, c.167, C.17B:17-
36 17 et seq.)] P.L.1979, c.167 (C.17B:17-17 et seq.);
- 37 d. Borrows money;
- 38 e. Purchases real or personal property;
- 39 f. Contracts for services including professional services ;
- 40 g. Enters into a service contract, as defined in section 1 of
41 P.L. , c. (C.) (pending before the Legislature as this bill),
42 for cash or on credit and the money, property or services are
43 obtained for personal, family or household purposes. "Consumer
44 contract" includes writings required to complete the consumer
45 transaction. "Consumer contract" does not include a written
46 agreement involving a transaction in securities with a broker-dealer
47 registered with the Securities and Exchange Commission, or a

1 transaction in commodities with a futures commission merchant
2 registered with the **【Commodities】** Commodity Futures Trading
3 Commission.

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

5

6 12. This act shall take effect on the 365th day following
7 enactment; except that the department may take any anticipatory
8 administrative action in advance thereof as shall be necessary for
9 the implementation of this act, and the act shall remain inoperative
10 until the final adoption by the department of all regulations
11 necessary for the implementation of this act.

12

13

14

STATEMENT

15

16 This bill regulates the sale and implementation of certain service
17 contracts for the repair, replacement, maintenance, or service of
18 property used for personal, family or household purposes.

19 As defined in the bill, a service contract is a contract or
20 agreement for a specific duration, for a provider fee or other
21 separately stated consideration, which covers repair, replacement,
22 maintenance, or service of a motor vehicle, or residential or other
23 property, due to defects or normal wear and tear, and may include
24 additional provisions concerning towing, rental, and emergency
25 road services, and other road hazard protections. The bill exempts
26 from its requirements: (1) warranties and maintenance agreements;
27 (2) service contracts on tangible property if the tangible property
28 for which the service contract is sold has a purchase price of \$250
29 or less, excluding sales tax; (3) mechanical breakdown insurance
30 policies offered by licensed insurers pursuant to the insurance laws
31 of this State; (4) service contracts offered or sold by public utilities
32 regulated by the Board of Public Utilities, or by a person providing
33 central heating and air conditioning services with respect to those
34 contracts which concern a product sold to a private consumer, or
35 installed or repaired at the consumer's household, by such utilities
36 or persons providing heating and air conditioning services; and (5)
37 service contracts offered or sold to persons other than private
38 consumers.

39 The bill prohibits any person from issuing, offering to sell, or
40 selling service contracts in this State unless the provider is
41 registered with the Department of Banking and Insurance.

42 The bill requires providers of service contracts, or sellers of such
43 contracts if not the actual providers, to provide contract purchasers
44 with receipts or other written evidence of such contracts, including
45 the provider's registration number, and to provide copies of such
46 contracts to the purchaser within a reasonable period of time
47 following the date of purchase. The bill establishes certain

1 specifications as to the form and contents of service contracts,
2 including requirements that service contracts be written in plain
3 language and provide disclosures concerning matters such as the
4 provider's permitted use of refurbished, reconditioned, or non-
5 original manufacturer's parts or coverage for preexisting conditions.
6 Additionally, providers shall provide contract holders with the right
7 to return a service contract within a period of no less than 10 days
8 from receipt of the contract, and obtain a full refund of the
9 contract's purchase price from that provider, so long as the contract
10 holder makes no claim arising under the contract.

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

29 The bill also places certain requirements on insurers issuing
30 reimbursement insurance policies in this State, including the
31 requirement that an insurer cannot terminate a reimbursement
32 insurance policy without notice to the department. In addition, the
33 bill provides a right to contract holders to apply directly to the
34 reimbursement insurance company in the event of non-performance
35 by a provider.

36 A violation of the bill's provisions constitutes an unlawful
37 practice pursuant to the consumer fraud act, P.L.1960, c.39 (C.56:8-
38 1 et seq.). Such an unlawful practice is punishable by a monetary
39 penalty of not more than \$10,000 for the first offense, and not more
40 than \$20,000 for the second and any subsequent offense. In
41 addition, a violation can result in cease and desist orders issued by
42 the Attorney General, the assessment of punitive damages, and the
43 awarding of treble damages and costs to an injured party.

44 The Department of Banking and Insurance shall oversee the
45 implementation and enforcement of the bill's provisions. The bill's
46 effective date is 365 days following its enactment into law,
47 however, the bill's provisions shall remain inoperative until the

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1 final adoption by the Department of Banking and Insurance of all
2 regulations necessary for the implementation of the bill. The intent
3 of the bill's delayed effective date, and inoperability in the absence
4 of finalized regulations, is to allow service contract providers to
5 continue to engage in their respective service contracting
6 businesses, including having their service contracts offered for sale
7 or sold by others, pursuant to current law, until the time that the
8 department can effectively regulate the operation of current service
9 contract providers and others under the bill's new provisions.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 854

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 13, 2013

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 854.

This bill regulates the sale and implementation of certain service contracts for the repair, replacement, maintenance, or service of property used for personal, family or household purposes.

As defined in the amended bill, a service contract is a contract or agreement between a provider and a consumer for any duration, for a provider fee or other separately stated consideration, to perform or to provide indemnification for performance of, the maintenance, repair, replacement, or service of property for the operational or structural failure of the property due to a defect in materials or workmanship or due to normal wear and tear, and which may include additional provisions for incidental payment of indemnity under limited circumstances. The bill provides that service contracts are not insurance or otherwise regulated pursuant to Title 17 of the Revised Statutes.

The bill, as amended, exempts from its requirements:

- (1) warranties and maintenance agreements;
- (2) service contracts on property if the property for which the service contract is sold has a purchase price of \$250 or less, excluding sales tax;
- (3) mechanical breakdown insurance policies offered by licensed insurers pursuant to the insurance laws of this State;
- (4) service contracts issued, offered, or sold by public utilities regulated by the Board of Public Utilities, or by a person providing central heating and air conditioning services with respect to those contracts which concern a product sold to a private consumer, or installed or repaired at the consumer's household, by utilities, a subsidiary of a utility, or persons providing heating and air conditioning services;
- (5) motor club or association membership contracts that primarily provide for roadside assistance and towing services in situations that involve impairment of the operation of a member's motor vehicle;
- (6) newspapers that accept or publish advertising for items that fall within the scope of the bill;

(7) service contracts on emergency, life safety, or property safety goods; and

(8) service contracts issued, offered, or sold to persons other than private consumers.

The bill requires providers of service contracts, or sellers of such contracts if not the actual providers, to provide contract purchasers with receipts or other written evidence of such contracts and to provide copies of contracts to the purchaser, online or in writing, at the point of sale or within a reasonable period of time following the date of purchase. The bill establishes certain specifications as to the form and contents of service contracts, including requirements that service contracts be written in a simple, clear, understandable, and easily readable way and provide disclosures concerning matters such as the provider's permitted use of refurbished, reconditioned, or non-original manufacturer's parts or coverage for preexisting conditions. Additionally, the bill provides contract holders with the right to cancel a service contract within a period of no less than 10 days from receipt of the contract, and obtain a full refund of the contract's purchase price from that provider, so long as the contract holder makes no claim arising under the contract.

Service contract providers shall also meet certain financial security requirements demonstrating the providers' ability to ensure the performance of providers' obligations to contract holders. In order to demonstrate this ability, providers shall comply with one or more of the following:

1) establish and maintain a funded reserve account for its obligations under each contract issued and outstanding in this State, with reserves calculated at not less than 40% of gross consideration received, then less the amount of claims paid under those contracts;

2) maintain, alone or together with the providers' parent or other affiliated corporation, a net worth or stockholders' equity of not less than \$100,000,000; or

3) insure each service contract under a reimbursement insurance policy, which reimburses a service provider upon fulfilling contract obligations, or pays others on behalf of a provider in the event of the provider's non-performance.

A provider discontinuing business in this State must maintain means of assuring faithful performance to its contract holders, and all records related to each contract issued or sold in the State, until the provider submits appropriate proof that it discharged or transferred all of its contractual obligations.

The bill also places certain requirements on insurers issuing reimbursement insurance policies in this State, including the requirement that an insurer cannot terminate a reimbursement insurance policy without notice to the director. In addition, the bill provides a right to contract holders to apply directly to the

reimbursement insurance company in the event of non-performance by a provider.

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

In addition to any applicable damages and penalties, a person who sells a service contract that is not in compliance with this act or that is issued by a provider that is not in compliance with this act shall be jointly and severally liable for all covered contractual obligations arising under the terms of that service contract that is not in compliance or any service contract sold at a time when the provider of the contract is not in compliance.

The Director of the Division of Consumer Affairs is to oversee the implementation and enforcement of the bill's provisions. The bill's effective date is 180 days following its enactment into law.

Committee Amendments

The committee amended the bill to provide that:

1) The Director of the Division of Consumer Affairs, instead of the Commissioner of Banking and Insurance, is to oversee the implementation and enforcement of the bill's provisions.

2) The definition of service contract is revised in several ways, clarifying that the contract may be for any duration and may be for indemnification of performance under the contract.

3) Certain contracts and entities are exempt from the provisions of the bill, including:

- motor club or association membership contracts that primarily provide for roadside assistance and towing services;
- newspapers that accept or publish advertising for items that fall within the scope of the bill;
- service contracts on emergency, life safety, or property safety goods, such as fire alarm, security, or public address systems; and
- subsidiaries of public utilities.

4) Certain contracts fall within the provisions of the bill, including:

- Motor vehicle ancillary protection products, including agreements to provide, in certain circumstances, for repair or replacement of tires or wheels, removal of dents, or repairs to cracked windshields; and
- Leak or repair coverage for house roofing systems.

5) Providers are no longer required to register with the Department of Banking and Insurance or to pay an annual registration

fee. Providers are still subject to requirements to assure faithful performance to contract holders. Providers must maintain insurance, reserve, or equity requirements, which, under the amendments, are subject to review by the Director of the Division of Consumer Affairs.

6) The reserve requirement which contract providers may maintain to assure performance is increased from 20% to 40% of gross consideration received, less the amount of claims paid under those contracts. If the reserves fall below the required amount, the provider has 90 days to come into compliance without violating the provisions of the bill.

7) As providers are no longer required to register, information based on the registration of providers and sellers of service contracts is no longer required to be posted on the Internet by the Department of Banking and Insurance.

8) An insurer issuing a reimbursement insurance policy to a provider is deemed to have received the premium for the insurance upon payment of the provider fee by a consumer for a service contract issued by an insured provider.

9) In addition to any applicable damages and penalties currently provided in the bill, a person who sells a service contract that is not in compliance with the bill, or that is issued by a provider that is not in compliance with the bill, is jointly and severally liable for all covered contractual obligations arising under the terms of the service contract that is not in compliance or any service contract sold when the provider is not in compliance.

10) Service contracts need not contain the service contract holder's name and address if the provider bills the consumer for the provider fee on a periodic basis at a physical or electronic address provided by the contract holder.

11) The prohibition on providers of service contracts using names including certain words, such as "insurance," "casualty," and "mutual" would also apply to the names of providers of services in effect prior to the effective date of the act.

12) Service contracts must contain any limitations, exceptions, and exclusions, a toll-free telephone number for claim service, and complete instructions for making a claim for service on or replacement of the property covered by the contract or for reimbursement for service on or replacement of the property.

13) In order to receive the full purchase price of the contract upon cancellation, the service contract holder must cancel within the time frame specified in the bill.

14) A copy of the service contract may be presented by the provider or seller of a service contract to the service contract holder either online or in writing.

15) The effective date of the bill is changed to the 180th day following enactment; the provisions providing for anticipatory administrative action are removed.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 854

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2013

The Assembly Budget Committee reports favorably Senate Bill No. 854 (1R), with committee amendments.

As amended, the bill regulates the sale and implementation of certain service contracts for the repair, replacement, maintenance, or service of property used for personal, family or household purposes.

The bill requires purchasers of certain service contracts to be provided receipts, or other documentation evidencing an agreement, as well as a copy the contract within a reasonable period of time following the date of purchase. The bill specifies the form and contents for certain service contracts, including requirements that service contracts be written in plain language and disclose matters such as the use of refurbished, reconditioned, or non-original manufacturer's parts or coverage for preexisting conditions. Additionally, the bill provides contract holders with the right to return a service contract within a period of no less than 10 days from receipt of the contract for a full refund of the purchase price, provided the holder makes no further claims under the contract. The bill further requires service contracts to include a toll-tree telephone number for making service claims along with instructions for submitting claims for service, replacement, reimbursement.

The bill also establishes financial security standards for contract providers to protect the viability of service performance. The bill requires a contract provider to engage in one or more of the following three safeguards: 1) insure each service contract under a reimbursement insurance policy; 2) maintain a reserve account funded at not less than 40% of gross consideration received, minus claims paid; or 3) maintain net worth of not less than \$100,000,000, measured via stockholders' equity in the provider, with or without corporate affiliates. For a contract provider discontinuing business in the State, the bill requires the provider to maintain compliance with the financial security standards, as well as all records related to in-State issued or sold contracts, until the provider discharges or transfers all of its

contractual obligations and submits appropriate proof thereof to the Director of the Division of Consumer Affairs.

For purposes of the bill's service contract safeguards, the bill defines a service contract as an agreement between a provider and a consumer, for consideration, to perform the maintenance, repair, replacement, or service of property, or indemnification for maintenance, repair, replacement, or service for the operational or structural failure of the property, due to a defect in materials or workmanship, or normal wear and tear, and which may include additional provisions for incidental payment of indemnity under limited circumstances. For a motor vehicle service contract, such limited circumstances may include towing, rental, and emergency road services, and other road hazard protections. The bill denotes that a service contract may also cover: the maintenance, repair, replacement, or service of the property for damages resulting from power surges or interruption, or accidental damage from handling; a motor vehicle ancillary protection product; and leak or repair coverage to house roofing systems. The bill specifies that a service contract does not include a contract in writing to: maintain structural wiring associated with the delivery of cable, telephone, or other broadband communication services; or deliver satellite television or broadband communication services.

The bill exempts the following contracts from the bill's service contract safeguards: (1) warranties; (2) maintenance agreements; (3) service contracts on property if the property for which the service contract is sold has a purchase price of \$250 or less, excluding sales tax; (4) mechanical breakdown insurance policies offered by licensed insurers pursuant to the insurance laws of this State; (5) motor club or association membership contracts that primarily provide for roadside assistance and towing services in situations that involve impairment of the operation of a member's motor vehicle, for reasons that include, but are not limited to, mechanical breakdown or adverse road conditions; (6) newspapers that accept or publish advertising for items that fall within the scope of this bill and service contracts on emergency, life safety, or property safety goods; (7) service contracts on emergency, life safety, or property safety good; (8) service contracts issued, offered, or sold by a Board of Public Utilities regulated public utility or a provider of central heating and air conditioning services, but only with respect to a service contract on the product sold to a consumer or installed or repaired for the consumer at the consumer's household by the regulated utility or provider of central heating and air conditioning services; and (9) service contracts issued, offered, or sold to any person other than a consumer.

In addition to regulating service contracts, the bill also installs safeguards for reimbursement insurance policies attached to service contracts issued or sold in this State. The bill forbids an insurer from terminating a reimbursement insurance policy without qualified notice

to the Division of Consumer Affairs. The bill further provides contract holders with the right to apply directly for reimbursement from reimbursement insurers in the event of non-performance by a service contract provider.

The bill specifies that a violation of its provisions constitutes an unlawful practice pursuant to the consumer fraud act. Such an unlawful practice is punishable by a monetary penalty of not more than \$10,000 for the first offense, and not more than \$20,000 for the second and any subsequent offense. In addition, a violation can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to an injured party.

The bill directs the Division of Consumer Affairs to oversee implementation and enforcement of the bill.

The bill is scheduled to take effect on the 180th day after the date of enactment.

The Committee amendments make this bill identical to Assembly No. 1740 (2R), as also amended and reported by the Committee.

FISCAL IMPACT:

The bill is not certified as requiring a fiscal estimate.

COMMITTEE AMENDMENTS:

The committee amendments denote that a service contract does not include a written contract to: (i) maintain structural wiring associated with the delivery of cable, telephone, or other broadband communication services; or (ii) deliver satellite television or broadband communication services. The amendments also contain technical changes. The amendments also contain technical changes.

ASSEMBLY, No. 1740

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Co-Sponsored by:

Assemblymen Diegnan and Singleton

SYNOPSIS

Regulates certain service contracts to perform maintenance, repair, replacement, or service of property used for personal, family, or household purposes.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



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

1 AN ACT concerning service contracts, and supplementing and
2 amending P.L.1980, c.125.

3

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

6

7 1. (New section) As used in this act:

8 "Administrator" means a person who performs the third-party
9 administration of a service contract, pursuant to the provisions of
10 section 5 of this act, on behalf of a provider.

11 "Consumer" means a natural person who buys other than for
12 purposes of resale any tangible personal property that is distributed
13 in commerce and that is normally used for personal, family, or
14 household purposes and not for business or research purposes.

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

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

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

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

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

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

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

32 "Provider fee" means the consideration paid for a service
33 contract, and is not subject to any premium tax.

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

41 "Service contract" means a contract or agreement for a specific
42 duration, for a provider fee or other separately stated consideration,
43 to perform the maintenance, repair, replacement, or service of a
44 motor vehicle or other property, or indemnification for
45 maintenance, repair, replacement, or service for the operational or

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

Matter underlined thus is new matter.

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

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

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

23

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

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

28 (1) warranties;

29 (2) maintenance agreements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39
40 5. (New section) A provider of any service contract issued,
41 offered for sale, or sold in this State may appoint an administrator
42 to perform the third-party administration of any contract, which
43 shall include, but not be limited to:

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

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

1 regulated under this act;

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

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

7

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

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

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

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

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

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

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

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

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

36

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

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

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

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

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

- 1 n. whether the service contract is insured by a reimbursement
2 insurance policy, and:
- 3 (1) if insured, the contract shall contain:
- 4 (a) the insurer's name, principal or other appropriate business
5 address, and telephone number accompanied by a conspicuous
6 statement in substantially the following form: "Obligations of the
7 provider under this service contract are insured under a service
8 contract reimbursement insurance policy."; and
- 9 (b) information concerning the procedure for the contract holder
10 to present a claim arising under the contract directly to the
11 reimbursement insurance company, pursuant to the insurer's
12 obligations set forth in section 6 of this act, in the event that the
13 provider does not comply with any contractual obligation pursuant
14 to the contract within 60 days of presentation of a valid claim by the
15 contract holder; or
- 16 (2) if not insured, the contract shall contain a conspicuous
17 statement in substantially the following form: "Obligations of the
18 provider under this service contract are backed by the full faith and
19 credit of the provider."
20
- 21 8. (New section) A service contract shall not be issued, offered
22 for sale, or sold in this State unless the provider or seller, if not the
23 provider, presents:
- 24 a. a receipt for, or other written evidence of, the purchase of the
25 service contract to the contract holder, which shall include the
26 provider's registration number; and
- 27 b. a copy of the service contract to the service contract holder
28 within a reasonable period of time from the date of purchase.
29
- 30 9. (New section) a. A provider of any service contract issued,
31 offered for sale, or sold in this State shall keep accurate accounts,
32 books, papers, documents, and other records concerning the
33 activities and transactions regulated under this act.
- 34 b. The provider's accounts, books, papers, documents, and other
35 records shall include:
- 36 (1) a copy of each contract issued or sold;
- 37 (2) the name and address of each service contract holder, to the
38 extent this information is furnished by the contract holder; and
- 39 (3) information concerning any claim arising under each
40 contract, which shall include, but not be limited to, the date of claim
41 filing, claim description, and provider's response.
- 42 c. (1) Except as provided by paragraph (2) of this subsection, the
43 provider shall retain all records related to a contract required by the
44 provisions of this section for at least one year after the expiration of
45 all contractual obligations under the terms of the contract.
- 46 (2) A provider discontinuing business in this State shall maintain
47 the means of assuring faithful performance to its contract holders as
48 required by subsection b. of section 4 of this act and all records

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

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

10

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

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

22

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

25 1. As used in this act:

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

28 a. Leases or licenses real or personal property;

29 b. Obtains credit;

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

34 d. Borrows money;

35 e. Purchases real or personal property;

36 f. Contracts for services including professional services ;

37 g. Enters into a service contract, as defined in section 1 of
38 P.L. , c. (C.) (pending before the Legislature as this bill),

39 for cash or on credit and the money, property or services are
40 obtained for personal, family or household purposes. "Consumer
41 contract" includes writings required to complete the consumer
42 transaction. "Consumer contract" does not include a written
43 agreement involving a transaction in securities with a broker-dealer
44 registered with the Securities and Exchange Commission, or a
45 transaction in commodities with a futures commission merchant
46 registered with the Commodities Futures Trading Commission.

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

1 12. This act shall take effect on the 365th day following
2 enactment; except that the director may take any anticipatory
3 administrative action in advance thereof as shall be necessary for
4 the implementation of this act, and the act shall remain inoperative
5 until the final adoption by the director of all regulations necessary
6 for the implementation of this act.
7
8

9 STATEMENT
10

11 This bill regulates the sale and implementation of certain service
12 contracts for the repair, replacement, maintenance, or service of
13 property used for personal, family or household purposes.

14 As defined in the bill, a service contract is a contract or
15 agreement for a specific duration, for a provider fee or other
16 separately stated consideration, which covers repair, replacement,
17 maintenance, or service of a motor vehicle, or residential or other
18 property, due to defects or normal wear and tear, and may include
19 additional provisions concerning towing, rental, and emergency
20 road services, and other road hazard protections. The bill exempts
21 from its requirements: (1) warranties and maintenance agreements;
22 (2) service contracts on tangible property if the tangible property
23 for which the service contract is sold has a purchase price of \$250
24 or less, excluding sales tax; (3) mechanical breakdown insurance
25 policies offered by licensed insurers pursuant to the insurance laws
26 of this State; (4) service contracts offered or sold by public utilities
27 regulated by the Board of Public Utilities, or by a person providing
28 central heating and air conditioning services with respect to those
29 contracts which concern a product sold to a private consumer, or
30 installed or repaired at the consumer's household, by such utilities
31 or persons providing heating and air conditioning services; and (5)
32 service contracts offered or sold to persons other than private
33 consumers.

34 The bill prohibits any person from issuing, offering to sell, or
35 selling service contracts in this State unless the provider is
36 registered with the Director of the Division of Consumer Affairs.

37 The bill requires providers of service contracts, or sellers of such
38 contracts if not the actual providers, to provide contract purchasers
39 with receipts or other written evidence of such contracts, including
40 the provider's registration number, and to provide copies of such
41 contracts to the purchaser within a reasonable period of time
42 following the date of purchase. The bill establishes certain
43 specifications as to the form and contents of service contracts,
44 including requirements that service contracts be written in plain
45 language and provide disclosures concerning matters such as the
46 provider's permitted use of refurbished, reconditioned, or non-
47 original manufacturer's parts or coverage for preexisting conditions.
48 Additionally, providers shall provide contract holders with the right

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

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

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

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

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

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1 offered for sale or sold by others, pursuant to current law, until the
2 time that the division can effectively regulate the operation of
3 current service contract providers and others under the bill's new
4 provisions.

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1740

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 6, 2013

The Assembly Consumer Affairs Committee reports favorably and with committee amendments Assembly Bill No. 1740.

This bill, as amended by committee, regulates the sale and implementation of certain service contracts for the repair, replacement, maintenance, or service of property used for personal, family or household purposes.

As amended by the committee, a service contract is defined to mean a contract or agreement between a provider and a consumer for any duration, for a provider fee or other separately stated consideration, to perform the maintenance, repair, replacement, or service of property, or indemnification for maintenance, repair, replacement, or service for the operational or structural failure of the property, due to a defect in materials or workmanship, or normal wear and tear, and which may include additional provisions for incidental payment of indemnity under limited circumstances. In the case of a motor vehicle, such circumstances may include towing, rental, and emergency road services, and other road hazard protections. A service contract may provide for the maintenance, repair, replacement, or service of the property for damage resulting from power surges or interruption, or accidental damage from handling. A service contract also includes a motor vehicle ancillary protection product. Service contracts may provide for leak or repair coverage to house roofing systems.

The bill exempts from its requirements: (1) warranties; (2) maintenance agreements; (3) service contracts on property if the property for which the service contract is sold has a purchase price of \$250 or less, excluding sales tax; (4) mechanical breakdown insurance policies offered by licensed insurers pursuant to the insurance laws of this State; (5) motor club or association membership contracts that primarily provide for roadside assistance and towing services in situations that involve impairment of the operation of a member's motor vehicle, for reasons that include, but are not limited to, mechanical breakdown or adverse road conditions; and (6) service contracts issued, offered, or sold by a public utility regulated by the

Board of Public Utilities, or by a public utility or its subsidiary providing central heating and air conditioning services with respect to a service contract regarding the product sold to a consumer, or installed or repaired at the consumer's household, by the utility or its subsidiary; and (7) service contracts issued, offered, or sold to any person other than a consumer.

The bill requires providers of service contracts, or sellers of such contracts if not the actual providers, to provide contract purchasers with receipts or other written evidence of such contracts, and to provide copies of such contracts to the purchaser within a reasonable period of time following the date of purchase. The bill establishes certain specifications as to the form and contents of service contracts, including requirements that service contracts be written in plain language and provide disclosures concerning matters such as the provider's permitted use of refurbished, reconditioned, or non-original manufacturer's parts or coverage for preexisting conditions. Additionally, providers shall provide contract holders with the right to return a service contract within a period of no less than 10 days from receipt of the contract, and obtain a full refund of the contract's purchase price from that provider, so long as the contract holder makes no claim arising under the contract.

Service contract providers shall also meet certain financial security requirements demonstrating the providers' ability to ensure the performance of providers' obligations to contract holders. In order to demonstrate this ability, providers may: 1) insure each service contract under a reimbursement insurance policy, which reimburses a service provider upon fulfilling contract obligations, or pays others on behalf of a provider in the event of the provider's non-performance; 2) establish and maintain a funded reserve account for any obligations, with reserves calculated at not less than 40% of gross consideration received, then less the amount of claims paid, for all in force contracts; or 3) maintain, alone or together with the providers' parent or other affiliated corporation, a net worth or stockholders' equity of not less than \$100,000,000. A provider discontinuing business in this State shall maintain these means of assuring faithful performance to its contract holders, and all records related to each contract issued or sold in the State, until the provider submits appropriate proof that it discharged or transferred all of its contractual obligations.

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

A violation of the bill's provisions constitutes an unlawful practice pursuant to the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.).

Such an unlawful practice is punishable by a monetary penalty of not more than \$10,000 for the first offense, and not more than \$20,000 for the second and any subsequent offense. In addition, a violation can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to an injured party.

The Division of Consumer Affairs shall oversee the implementation and enforcement of the bill's provisions.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

The committee amendments:

1) delete the requirement that a provider be registered with the Director of the Division of Consumer Affairs;

2) exempt motor club or association membership contracts that primarily provide for roadside assistance and towing services in certain situations from the bill's provisions;

3) change the exemption for providers of central heating and air conditioning services to include only those that are public utilities or their subsidiaries;

4) provide that service contracts are not insurance in this State or otherwise regulated under the insurance code;

5) change the minimum amount in a provider's reserve account for any obligations under each contract, to be calculated at not less than 40% of gross consideration received, instead of 20% of gross consideration received, and further provide that if reserves fall below the minimum required, the provider has 90 days to come into compliance;

6) provide that in addition to any other damages or penalties, a provider that is not in compliance with the provisions of the bill will be jointly and severally liable for all covered contractual obligations arising under the terms of the contract;

7) require that a service contract must additionally contain, in writing, any limitations, exceptions, and exclusions, a toll-free telephone number for claim service, and complete instructions for making a claim for service on or replacement of the property covered by the contract, or for reimbursement for service on or replacement of the property;

8) expand the definition of a "service contract";

9) change the effective date to the 180th day following enactment; and

10) make technical corrections.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1740

with Assembly Floor Amendments
(Proposed by Assemblyman PRIETO)

ADOPTED: SEPTEMBER 9, 2013

Assembly Bill No. 1740 (1R) regulates certain service contracts. These Assembly amendments expand the scope of exemptions under the bill to include newspapers that accept or publish advertising for items that fall within the scope of this bill and service contracts on emergency, life safety, or property safety goods. In addition to including a definition for “emergency, life safety, or property safety goods,” the amendments revise the definition of a “service contract” to specifically exclude a contract in writing to maintain structural wiring associated with the delivery of cable, telephone, or other broadband communication services.

These Assembly amendments also make technical corrections.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 1740

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2013

The Assembly Budget Committee reports favorably Assembly Bill No. 1740 (2R), with committee amendments.

As amended, the bill regulates the sale and implementation of certain service contracts for the repair, replacement, maintenance, or service of property used for personal, family or household purposes.

The bill requires purchasers of certain service contracts to be provided receipts, or other documentation evidencing an agreement, as well as a copy the contract within a reasonable period of time following the date of purchase. The bill specifies the form and contents for certain service contracts, including requirements that service contracts be written in plain language and disclose matters such as the use of refurbished, reconditioned, or non-original manufacturer's parts or coverage for preexisting conditions. Additionally, the bill provides contract holders with the right to return a service contract within a period of no less than 10 days from receipt of the contract for a full refund of the purchase price, provided the holder makes no further claims under the contract. The bill further requires service contracts to include a toll-tree telephone number for making service claims along with instructions for submitting claims for service, replacement, reimbursement.

The bill also establishes financial security standards for contract providers to protect the viability of service performance. The bill requires a contract provider to engage in one or more of the following three safeguards: 1) insure each service contract under a reimbursement insurance policy; 2) maintain a reserve account funded at not less than 40% of gross consideration received, minus claims paid; or 3) maintain net worth of not less than \$100,000,000, measured via stockholders' equity in the provider, with or without corporate affiliates. For a contract provider discontinuing business in the State, the bill requires the provider to maintain compliance with the financial security standards, as well as all records related to in-State issued or sold contracts, until the provider discharges or transfers all of its

contractual obligations and submits appropriate proof thereof to the Director of the Division of Consumer Affairs.

For purposes of the bill's service contract safeguards, the bill defines a service contract as an agreement between a provider and a consumer, for consideration, to perform the maintenance, repair, replacement, or service of property, or indemnification for maintenance, repair, replacement, or service for the operational or structural failure of the property, due to a defect in materials or workmanship, or normal wear and tear, and which may include additional provisions for incidental payment of indemnity under limited circumstances. For a motor vehicle service contract, such limited circumstances may include towing, rental, and emergency road services, and other road hazard protections. The bill denotes that a service contract may also cover: the maintenance, repair, replacement, or service of the property for damages resulting from power surges or interruption, or accidental damage from handling; a motor vehicle ancillary protection product; and leak or repair coverage to house roofing systems. The bill specifies that a service contract does not include a contract in writing to: maintain structural wiring associated with the delivery of cable, telephone, or other broadband communication services; or deliver satellite television or broadband communication services.

The bill exempts the following contracts from the bill's service contract safeguards: (1) warranties; (2) maintenance agreements; (3) service contracts on property if the property for which the service contract is sold has a purchase price of \$250 or less, excluding sales tax; (4) mechanical breakdown insurance policies offered by licensed insurers pursuant to the insurance laws of this State; (5) motor club or association membership contracts that primarily provide for roadside assistance and towing services in situations that involve impairment of the operation of a member's motor vehicle, for reasons that include, but are not limited to, mechanical breakdown or adverse road conditions; (6) newspapers that accept or publish advertising for items that fall within the scope of this bill and service contracts on emergency, life safety, or property safety goods; (7) service contracts on emergency, life safety, or property safety good; (8) service contracts issued, offered, or sold by a Board of Public Utilities regulated public utility or a provider of central heating and air conditioning services, but only with respect to a service contract on the product sold to a consumer or installed or repaired for the consumer at the consumer's household by the regulated utility or provider of central heating and air conditioning services; and (9) service contracts issued, offered, or sold to any person other than a consumer.

In addition to regulating service contracts, the bill also installs safeguards for reimbursement insurance policies attached to service contracts issued or sold in this State. The bill forbids an insurer from terminating a reimbursement insurance policy without qualified notice

to the Division of Consumer Affairs. The bill further provides contract holders with the right to apply directly for reimbursement from reimbursement insurers in the event of non-performance by a service contract provider.

The bill specifies that a violation of its provisions constitutes an unlawful practice pursuant to the consumer fraud act. Such an unlawful practice is punishable by a monetary penalty of not more than \$10,000 for the first offense, and not more than \$20,000 for the second and any subsequent offense. In addition, a violation can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to an injured party.

The bill directs the Division of Consumer Affairs to oversee implementation and enforcement of the bill.

The bill is scheduled to take effect on the 180th day after the date of enactment.

As amended and reported by the Committee, this bill identical to Senate No. 854 (1R), as also amended and reported by the Committee.

FISCAL IMPACT:

The bill is not certified as requiring as fiscal estimate.

COMMITTEE AMENDMENTS:

The committee amendments denote that a service contract does not include a written contract to deliver satellite television or broadband communication services. The amendments also contain technical changes.