

CHAPTER 197

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

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

C.56:12-87 Definitions relative to service contracts.

1. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to, or payment on behalf of, the provider under the terms of the insured service contracts issued or sold by the provider, or, in the event of the provider's non-

performance, to provide or pay for, on behalf of the provider, all covered contractual obligations incurred by the provider.

"Service contract" means 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 the 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. 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. 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 a contract in writing related to the delivery of satellite television or broadband communication services.

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

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

C.56:12-88 Provisions for issuance of service contracts; exemptions.

2. a. Service contracts may be issued, offered for sale, or sold in this State only in accordance with the provisions of this act.

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

- (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 act;
- (7) service contracts on emergency, life safety, or property safety goods; and
- (8) service contracts issued, offered, or sold:
 - (a) by a public utility to the extent that the public utility is regulated by the Board of Public Utilities, or by a person providing central heating and air conditioning services, but only with respect to a service contract regarding the product sold to a consumer or installed or repaired for the consumer at the consumer's household by a utility, a subsidiary of a

utility, or a person providing central heating and air conditioning services; or

(b) to any person other than a consumer.

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

C.56:12-89 Permitted names for service contract providers.

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

C.56:12-90 Assurance of faithful performance required to sell service contracts.

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

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

(2) a funded reserve account shall be established and maintained 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. If those reserves fall below the minimum required, the provider has 90 days to come into compliance without violating this section. The reserve account shall be subject to examination and review by the director pursuant to section 10 of this act; or

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

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

c. In addition to any applicable damages and penalties pursuant to subsection a. of section 10 of P.L.2013, c.197 (C.56:12-96), a person who sells a service contract that is not

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

C.56:12-91 Appointment of administrator.

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

- a. maintaining the accounts, books, papers, documents, and other records concerning the provider's activities and transactions regulated under this act;
- b. performing or arranging the collection, maintenance, or disbursement of payments on behalf of the provider, related to any claim arising under the provider's contracts; or
- c. participating in the processing or adjustment of any claim arising under the provider's contracts.

C.56:12-92 Requirements for issuance of reimbursement insurance policy.

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

(1) be deemed to have received the premium for the insurance upon the payment of the provider fee by a consumer for a service contract issued by an insured provider;

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

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

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

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

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

C.56:12-93 Contents of service contract.

7. A service contract issued, offered for sale, or sold in this State shall be written in a simple, clear, understandable, and easily readable way and shall contain the requirements set forth in this section, as applicable:

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

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

c. the service contract holder's name and address, to the extent this information is furnished by the contract holder, provided, however, that a provider that bills a consumer for the provider fee on a periodic basis at a physical or electronic address provided by the

service contract holder shall be exempt from the requirement of this subsection;

d. the provider fee, or a reference to any other documentation which contains the provider fee and the terms under which the contract is sold;

e. the property subject to coverage by the service contract, the contractual obligations of the provider with respect to that property, 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;

f. the amount of any deductible or service fee, as applicable;

g. whether the provider's use of refurbished, reconditioned, or non-original manufacturer's parts is permitted;

h. whether the service contract provides for consequential damages or preexisting conditions;

i. the contractual obligations of the service contract holder, including, but not limited to, the duty of the contract holder to comply with the provisions of the owner's manual for the property and to protect the property against any further damage;

j. the conditions governing the transferability of the service contract;

k. the conditions governing the cancellation of the service contract by the service contract holder, which shall:

(1) permit the contract holder, if the contract holder makes no claim arising under the contract, to cancel the contract:

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

(b) within 20 days of the date the contract was sent to the contract holder, or a longer period specified in the contract, if not delivered at the time of purchase; and

(2) if cancelled within the time period specified in subparagraph (a) or (b) of paragraph (1) of this subsection, require the provider to provide the contract holder with the full purchase price or amount paid on the contract by refund or credit to the account of the contract holder, and to additionally pay the contract holder a 10% per month penalty, based upon the purchase price of the contract, if the refund or credit is not completed within 45 days of the cancellation of the contract;

l. the conditions governing cancellation of the service contract by the provider, prior to the expiration of the contract, which shall:

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

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

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

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

m. whether the service contract is insured by a reimbursement insurance policy, and:

(1) if insured, the contract shall contain:

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

(b) information concerning the procedure for the contract holder to present a claim

arising under the contract directly to the reimbursement insurance company, pursuant to the insurer's obligations set forth in section 6 of this act, in the event that the provider does not comply with any contractual obligation pursuant to the contract within 60 days of presentation of a valid claim by the contract holder; or

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

C.56:12-94 Receipt, copy of service contract.

8. A service contract shall not be issued, offered for sale, or sold in this State unless the provider or seller, if not the provider, presents:

a. a receipt for, or other written evidence of, the purchase of the service contract to the contract holder; and

b. a copy of the service contract to the service contract holder, which may be presented electronically or in writing, at the point of sale or within a reasonable period of time from the date of purchase.

C.56:12-95 Records kept by provider; contents.

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

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

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

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

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

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

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

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

C.56:12-96 Violations deemed unlawful practice.

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

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

director to reasonably determine compliance with this act.

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

C.56:12-1 Definitions.

1. As used in this act:

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

- a. Leases or licenses real or personal property;
- b. Obtains credit;
- c. Obtains insurance coverage, except insurance coverage contained in policies subject to the "Life and Health Insurance Policy Language Simplification Act," P.L.1979, c.167 (C.17B:17-17 et seq.);
- d. Borrows money;
- e. Purchases real or personal property;
- f. Contracts for services including professional services;
- g. Enters into a service contract, as defined in section 1 of P.L.2013, c.197 (C.56:12-87),

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

12. This act shall take effect on the 180th day following enactment.

Approved January 17, 2014.