

## CHAPTER 91

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

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

1. Section 1 of P.L.2013, c.197 (C.56:12-87) is amended to read as follows:

C.56:12-87 Definitions.

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 P.L.2013, c.197 (C.56:12-91), 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.

"Division" means 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.

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

"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;

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

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

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

"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.

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

"Reimbursement insurance policy" means a policy of insurance issued to a regulated entity to either provide reimbursement to, or payment on behalf of, the regulated entity under the terms of the insured service contracts issued or sold by the regulated entity, or, in the event of the non-performance of a regulated entity, to provide or pay for, on behalf of the regulated entity, all covered contractual obligations incurred by the regulated entity.

"Regulated entity" means a provider or an administrator.

"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.

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

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

3. A regulated entity that provides or administers service contracts in this State, shall not use in its name, products, descriptions of products, advertisements, or any other materials the words "insurance," "casualty," "surety," "mutual" or any other word descriptive of the insurance, casualty, or surety business, and shall not use a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other regulated entity registered pursuant to section 4 of P.L.2013, c.197 (C.56:12-90) except that nothing in this section shall prevent a regulated entity that provides or administers service contracts in this State, from using the terms to indicate that service contracts do not constitute insurance, guaranties, warranties or extended warranties. A regulated entity that provides or administers service contracts in this State may use in its name, products, descriptions of products, advertisements or any other materials the terms "guaranty" or "warranty," but only if the regulated entity clearly and conspicuously makes the following disclosure in any consumer contract or agreement, any product description made available to a consumer, and any advertisements and related

materials in which that term is used: "The product being offered is a service contract and is separate and distinct from any product or service warranty which may be provided by the manufacturer, importer, or seller," or, if the service contract is in the nature of a home warranty, "The product being offered is a service contract and is separate and distinct from any product or service warranty which may be provided by the home builder or manufacturer." A regulated entity that provides or administers service contracts in this State may use in its name, products, descriptions of products, advertisements or any other materials the term "extended warranty," but only if the regulated entity clearly and conspicuously makes the following disclosure in any consumer contract or agreement, any product description made available to a consumer, and any advertisements and related materials in which that term is used: "The product being offered is a service contract and is separate and distinct from any product or service warranty which may be provided by the manufacturer, importer, or seller, and does not extend the term of any original product or service warranty that the manufacturer, importer, or seller may have provided," or, if the service contract is in the nature of an extended home warranty, "The product being offered is a service contract and is separate and distinct from any product or service warranty which may be provided by the home builder or manufacturer, and does not extend the term of any original product or service warranty that the manufacturer, importer, or seller may have provided."

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

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

4. a. Except as otherwise provided in subsection d. of this section, a person shall not provide or administer service contracts in this State unless the person 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 P.L.2013, c.197 (C.56:12-92);

(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 P.L.2013, c.197 (C.56:12-96); 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 with respect to a provider that complies with paragraph (1) or (3) of subsection a. of this section or with respect to an insurer that the Commissioner of Banking and Insurance has determined meets financial solvency standards established under Title 17 of the New Jersey Statutes, in addition to the requirements set forth in subsection a. of this section, the provider shall maintain a bond, having a value of not less than five percent of the gross consideration received per annum, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than \$25,000, in order to provide service contracts in this State. The provider shall name the

division as a party on the bond, and shall notify the division, in writing, in the event of the cancellation or non-renewal of the bond.

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 provides or administers 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 non-compliant contract or under the terms of any service contract issued at a time when the provider of the contract is non-compliant.

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

#### C.56:12-95.1 Regulated entity, disclosure of information, certain.

4. A regulated entity shall disclose, in a manner and form prescribed by the director the following:

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

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

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

#### C.56:12-95.2 Service contract not offered by public entity, disclosure of information, certain.

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

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

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

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

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

(4) that the communication is an advertisement; and

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

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

#### C.56:12-95.3 Service contract, requirement for registering with division, renewal.

6. a. A person shall not provide or administer a service contract in this State, unless the person has registered with the division.

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

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

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

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

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

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

e. The director may refuse to issue or renew, and may revoke or suspend, any registration for failure to comply with, or violation of, the provisions of P.L.2022, c.91 (C.56:12-95.1 et al.) or any regulation promulgated pursuant thereto, or the provisions of P.L.1960, c.39 (C.56:8-1 et seq.). A refusal, revocation, or suspension shall not be made except upon reasonable notice to, and opportunity to be heard, by the applicant registrant.

C.56:12-95.4 Publication of non-confidential information, regulated entity registered, required to register.

7. The division may publish any non-confidential information regarding any regulated entity registered, or required to be registered, under section 6 of P.L.2022, c.91 (C.56:12-95.3) on a publicly accessible webpage operated by the division.

C.56:12-95.5 Written, electronic notification of automatic renewal provision.

8. a. A provider that provides any service to a consumer pursuant to a service contract the term of which is a specified period of 12 months or longer and that automatically renews for a specified period of more than one month, unless the consumer cancels the contract, shall provide the consumer with written or electronic notification of the automatic renewal provision. Notification shall be provided to the consumer not less than 30 days nor more than 60 days before the cancellation deadline pursuant to the automatic renewal provision. This notification shall disclose clearly and conspicuously:

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

(2) methods by which the consumer may obtain details of the automatic renewal provision and cancellation procedure, whether by contacting the provider at a specified telephone number or address, by referring to the contract, or by any other method. At a minimum, such methods shall include, for each consumer:

(a) an online method for the consumer to cancel the contract and a mailing address to which written cancellation requests may be addressed; or

(b) a telephone number that the consumer may call to cancel the contract.

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

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

d. All cancellation requests are required to be acknowledged within five business days of receipt and honored within 10 business days of receipt, and applied as of the date of receipt or, if permitted by the service contract, applied at the end of the holder's monthly billing cycle. If a cancellation request is honored within five business days of receipt, the acknowledgement requirement of this subsection shall be deemed to have been satisfied.

e. Nothing in this section shall be construed to prevent a contract holder from recovering on a claim that would be valid and covered had the regulated entity acted in compliance with P.L.2022, c.91 (C.56:12-95.1 et al.).

9. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety may promulgate rules and regulations, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the purposes of P.L.2022, c.91 (C.56:12-95.1 et al.).

10. This act shall take effect on the first day of the twelfth month following enactment.

Approved August 5, 2022.