
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2637 Session of
2006

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PARKER, SHAPIRO, SIPTROTH, SOLOBAY, STABACK AND YOUNGBLOOD,
APRIL 27, 2006

REFERRED TO COMMITTEE ON INSURANCE, APRIL 27, 2006

AN ACT

1 Providing for the regulation of service contracts and for the
2 powers and duties of the Insurance Commissioner.

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3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Services
7 Contracts Act.

8 Section 2. Legislative intent.

9 The purpose of this act is to create a legal framework within
10 which specific service contracts may be sold and are regulated
11 in this Commonwealth. This act declares that service contracts,
12 as defined, are not insurance and are not otherwise subject to
13 provisions regarding the sale of insurance. It adds significant
14 consumer protections and eliminates unnecessary administration.

15 Section 3. Definitions.

16 The following words and phrases when used in this act shall
17 have the meanings given to them in this section unless the
18 context clearly indicates otherwise:

19 "Administrator." The person who is responsible for the
20 administration of service contracts or the service contracts
21 plan or who is responsible for any submission required by this
22 act.

23 "Commissioner." The Insurance Commissioner of the
24 Commonwealth.

25 "Consumer." A natural person who buys other than for
26 purposes of resale any tangible personal property that is
27 distributed in commerce and that is normally used for personal,
28 family or household purposes and not for business or research
29 purposes.

30 "Maintenance agreement." A contract of limited duration that

1 provides for scheduled maintenance only and does not provide for
2 repair or replacement.

3 "Motor vehicle manufacturer." A person or entity that:

4 (1) manufactures or produces motor vehicles and sells
5 motor vehicles under its own name or label;

6 (2) is a wholly owned subsidiary of the person who
7 manufactures or produces motor vehicles;

8 (3) is a corporation which owns 100% of the person who
9 manufactures or produces motor vehicles;

10 (4) does not manufacture or produce motor vehicles but
11 sells motor vehicles under the trade name or label of another
12 person who manufactures or produces motor vehicles;

13 (5) manufactures or produces motor vehicles and sells
14 such motor vehicles under the trade name or label of another
15 person who manufactures or produces motor vehicles; or

16 (6) does not manufacture or produce motor vehicles but,
17 pursuant to a written contract, licenses the use of its trade
18 name or label to another person who manufactures or produces
19 motor vehicles that sells motor vehicles under the licensor's
20 trade name or label.

21 "Nonoriginal manufacturer's parts." Replacement parts not
22 made for or by the original manufacturer of the property,
23 commonly referred to as after-market parts.

24 "Person." An individual, partnership, corporation,
25 incorporated or unincorporated association, joint stock company,
26 reciprocal, syndicate or any similar entity or combination of
27 entities acting in concert.

28 "Premium." The consideration paid to an insurer for a
29 reimbursement insurance policy.

30 "Provider." A person who is contractually obligated to the

1 service contractholder under the terms of the service contract.

2 "Provider fee." The consideration paid for a service
3 contract.

4 "Reimbursement insurance policy." A policy of insurance
5 issued to a provider to either provide reimbursement to the
6 provider under the terms of the insured service contracts issued
7 or sold by the provider or, in the event of the provider's
8 nonperformance, to pay on behalf of the provider all covered
9 contractual obligations incurred by the provider under the terms
10 of the insured service contracts issued or sold by the provider.

11 "Service contract." A contract or agreement for a separately
12 stated consideration for a specific duration to perform the
13 repair, replacement or maintenance of property or
14 indemnification for repair, replacement or maintenance, for the
15 operational or structural failure of any motor vehicle,
16 residential or other property due to a defect in materials,
17 workmanship, inherent defect or normal wear and tear, with or
18 without additional provisions for incidental payment of
19 indemnity under limited circumstances, including, but not
20 limited to, towing, rental and emergency road service and road
21 hazard protection. Service contracts may provide for the repair,
22 replacement or maintenance of property for damage resulting from
23 power surges or interruption and accidental damage from
24 handling. Service contracts are not insurance in this
25 Commonwealth or otherwise regulated under provisions regarding
26 the sale of insurance.

27 "Service contractholder" or "contractholder." A person who
28 is the purchaser or holder of a service contract.

29 "Warranty." An agreement between the manufacturer, importer
30 or seller of property or services and the consumer. The

1 agreement is made solely by the manufacturer, importer or seller
2 of property or services without consideration and is not
3 negotiated or separated from the sale of the product and is
4 incidental to the sale of the product. The agreements guarantee
5 indemnity for defective parts, mechanical or electrical
6 breakdown, labor or other remedial measures, such as repair or
7 replacement of the property or repetition of services.

8 Section 4. Exemptions.

9 The following agreements are exempt from this act:

10 (1) Warranties.

11 (2) Maintenance agreements.

12 (3) Warranties, service contracts or maintenance
13 agreements offered by public utilities on their transmission
14 devices to the extent they are regulated by the Pennsylvania
15 Public Utility Commission.

16 (4) Service contracts sold or offered for sale to
17 persons other than consumers.

18 (5) Service contracts on tangible property where the
19 tangible property for which the service contract is sold has
20 a purchase price of \$100 or less, exclusive of sales tax.

21 Section 5. Limited exemption.

22 Motor vehicle manufacturer's service contracts on the motor
23 vehicle manufacturer's products need only comply with sections
24 6(f), 8(a), (d), (e), (f), (g), (h), (i), (j), (k) and (l), 9
25 and 12, as applicable.

26 Section 6. Requirements.

27 (a) Issuance or sale of service contracts.--Service
28 contracts shall not be issued, sold or offered for sale in this
29 Commonwealth unless the provider has:

30 (1) Provided a receipt for or other written evidence of

1 the purchase of the service contract to the contractholder.

2 (2) Provided a copy of the service contract to the
3 service contractholder within a reasonable period of time
4 from the date of purchase.

5 (b) Administrator.--A provider may, but is not required to,
6 appoint an administrator or other designee to be responsible for
7 any or all of the administration of service contracts and
8 compliance with this act.

9 (c) Registration of providers.--Each provider of service
10 contracts sold in this Commonwealth shall file a registration
11 with the commissioner consisting of the provider's full name,
12 full corporate address, telephone number and contact person and
13 any designated person located in this Commonwealth for service
14 of process. Each provider shall pay to the commissioner a fee in
15 the amount of \$600 upon initial registration and every two years
16 thereafter. The registration need only be updated by written
17 notification to the commissioner if material changes occur in
18 the registration on file.

19 (d) Provider's performance of obligations.--In order to
20 assure the faithful performance of a provider's obligations to
21 its contractholders, each provider shall be responsible for
22 complying with the requirements of one of the following three
23 requirements:

24 (1) Ensure all service contracts under a reimbursement
25 insurance policy issued by an insurer licensed, registered or
26 otherwise authorized to do business in this Commonwealth and
27 either:

28 (i) at the time the policy is filed with the
29 commissioner, and continuously thereafter,

30 (A) maintain surplus as to policyholders and

1 paid-in capital of at least \$15,000,000; and

2 (B) annually file copies of the insurer's
3 financial statements, its annual statement to the
4 National Association of Insurance Commissioners and
5 the actuarial certification required by and filed in
6 the insurer's state of domicile; or

7 (ii) at the time the policy is filed with the
8 commissioner, and continuously thereafter,

9 (A) maintain surplus as to policyholders and
10 paid-in capital of less than \$15,000,000 but at least
11 equal to \$10,000,000;

12 (B) demonstrate to the satisfaction of the
13 commissioner that the company maintains a ratio of
14 net written premiums, wherever written, to surplus as
15 to policyholders and paid-in capital of not greater
16 than 3 to 1; and

17 (C) annually file copies of the insurer's
18 audited financial statements, its annual statement to
19 the National Association of Insurance Commissioners
20 and actuarial certification required by and filed in
21 the insurer's state of domicile.

22 (2) (i) Maintain a funded reserve account for its
23 obligations under its contracts issued and outstanding in
24 this Commonwealth. The reserves shall not be less than
25 40% of gross consideration received, less claims paid, on
26 the sale of the service contract for all in-force
27 contracts. The reserve account shall be subject to
28 examination and review by the commissioner.

29 (ii) Place in trust with the commissioner a
30 financial security deposit, having a value of not less

1 than 5% of the gross consideration received, less claims
2 paid, on the sale of the service contract for all service
3 contracts issued and in force, but not less than \$25,000,
4 consisting of one of the following:

5 (A) A surety bond issued by an authorized
6 surety.

7 (B) Securities of the type eligible for deposit
8 by authorized insurers in this Commonwealth.

9 (C) Cash.

10 (D) A letter of credit issued by a qualified
11 financial institution.

12 (E) Another form of security prescribed by
13 regulations issued by the commissioner.

14 (3) (i) Maintain or, together with its parent company
15 maintain, a net worth or stockholders' equity of
16 \$100,000,000.

17 (ii) Upon request, provide the commissioner with a
18 copy of the provider's or the provider's parent company's
19 most recent Form 10-K or Form 20-F filed with the
20 Securities and Exchange Commission (SEC) within the last
21 calendar year or, if the company does not file with the
22 SEC, a copy of the company's financial statements which
23 shows a net worth of the provider or its parent company
24 of at least \$100,000,000. If the provider's parent
25 company's Form 10-K, Form 20-F or financial statements
26 are filed to meet the provider's financial stability
27 requirement, then the parent company shall agree to
28 guarantee the obligations of the provider relating to
29 service contracts sold by the provider in this
30 Commonwealth.

1 (e) Financial security requirements.--Except for the
2 requirements specified in section 6(c) and (d), no other
3 financial security requirements shall be required by the
4 commissioner for service contract providers.

5 (f) Return of service contract.--Service contracts shall
6 require the provider to permit the service contractholder to
7 return the service contract within 20 days of the date the
8 service contract was mailed to the service contractholder or
9 within ten days of delivery if the service contract is delivered
10 to the service contractholder at the time of sale or within a
11 longer time period permitted under the service contract. Upon
12 return of the service contract to the provider within the
13 applicable time period, if no claim has been made under the
14 service contract prior to its return to the provider, the
15 service contract is void and the provider shall refund to the
16 service contractholder, or credit the account of the service
17 contractholder, the full purchase price of the service contract.
18 The right to void the service contract provided in this
19 subsection is not transferable and shall apply only to the
20 original service contract purchaser and only if no claim has
21 been made prior to its return to the provider. A 10% penalty per
22 month shall be added to a refund that is not paid or credited
23 within 45 days after return of the service contract to the
24 provider.

25 (g) Premium taxes.--

26 (1) Provider fees collected on service contracts shall
27 not be subject to premium taxes.

28 (2) Premiums for reimbursement insurance policies shall
29 be subject to applicable taxes.

30 (h) Licensing requirement exemption.--Except for the

1 registration requirements in section 6(c), providers and related
2 service contract sellers, administrators and other persons
3 marketing, selling or offering to sell service contracts are
4 exempt from any licensing requirements of this Commonwealth.

5 (i) Exemption from insurance law.--The marketing, sale,
6 offering for sale, issuance, making, proposing to make and
7 administration of service contracts by providers and related
8 service contract sellers, administrators and other persons shall
9 be exempt from all other provisions of the laws pertaining to
10 insurance in this Commonwealth.

11 Section 7. Reimbursement insurance policies.

12 (a) Requirements.--Reimbursement insurance policies insuring
13 service contracts issued, sold or offered for sale in this
14 Commonwealth shall state that the insurer that issued the
15 reimbursement insurance policy shall either reimburse or pay on
16 behalf of the provider any covered sums the provider is legally
17 obligated to pay or, in the event of the provider's
18 nonperformance, shall provide the service which the provider is
19 legally obligated to perform according to the provider's
20 contractual obligations under the service contracts issued or
21 sold by the provider.

22 (b) Direct reimbursement.--In the event covered service is
23 not provided by the service contract provider within 60 days of
24 proof of loss by the service contractholder, the contractholder
25 is entitled to apply directly to the reimbursement insurance
26 company.

27 Section 8. Required disclosures for service contracts.

28 (a) Writing of contracts.--Service contracts marketed, sold,
29 offered for sale, issued, made, proposed to be made or
30 administered in this Commonwealth shall be written, printed or

1 typed in clear, understandable language that is easy to read and
2 shall disclose the requirements set forth in this section, as
3 applicable.

4 (b) Insured service contracts.--All service contracts shall
5 state the name and address of the insurer. Service contracts
6 insured under a reimbursement insurance policy pursuant to
7 section 6(d)(1) shall contain a statement in substantially the
8 following form: Obligations of the provider under this service
9 contract are insured under a service contract reimbursement
10 insurance policy.

11 (c) Uninsured service contracts.--Service contracts not
12 insured under a reimbursement insurance policy pursuant to
13 section 6(d)(1) shall contain a statement in substantially the
14 following form: Obligations of the provider under this service
15 contract are backed by the full faith and credit of the
16 provider.

17 (d) Name and address.--Service contracts shall state the
18 name and address of the provider and shall identify any
19 administrator if different from the provider, the service
20 contract seller and the service contractholder to the extent
21 that the name of the service contractholder has been furnished
22 by the service contractholder. The identities of such parties
23 are not required to be preprinted on the service contract and
24 may be added to the service contract at the time of sale.

25 (e) Total purchase price and terms.--Service contracts shall
26 state the total purchase price and the terms under which a
27 service contract is sold. The purchase price is not required to
28 be preprinted on the service contract and may be negotiated at
29 the time of sale with the service contractholder.

30 (f) Deductible amounts.--Service contracts shall state the

1 existence of any deductible amount, if applicable.

2 (g) Identification of merchandise and services.--Service
3 contracts shall specify the merchandise and services to be
4 provided and any limitations, exceptions or exclusions.

5 (h) Automobile service contracts.--Service contracts
6 covering automobiles shall state whether the use of the
7 nonoriginal manufacturer's parts is allowed.

8 (i) Transferability.--Service contracts shall state any
9 restrictions governing the transferability of the service
10 contract, if applicable.

11 (j) Cancellation.--Service contracts shall state the terms,
12 restrictions or conditions governing cancellation of the service
13 contract prior to the termination or expiration date of the
14 service contract by either the provider or the service
15 contractholder. The provider of the service contract shall mail
16 a written notice to the contractholder at the last known address
17 of the service contractholder contained in the records of the
18 provider at least 20 days prior to cancellation by the provider.
19 Prior notice is not required if the reason for cancellation is
20 nonpayment of the provider fee, a material misrepresentation by
21 the service contractholder to the provider or a substantial
22 breach of duties by the service contractholder relating to the
23 covered product or its use. The notice shall state the effective
24 date of the cancellation and the reason for the cancellation.

25 (k) Obligations and duties.--Service contracts shall set
26 forth all the obligations and duties of the service
27 contractholder, such as the duty to protect against any further
28 damage and any requirements to follow the owner's manual.

29 (l) Consequential damages.--Service contracts shall state
30 whether or not the service contract provides for or excludes

1 consequential damages, if applicable. Service contracts shall
2 also state whether the agreement accounts for preexisting
3 conditions. Service contracts may, but are not required to,
4 cover damage resulting from rust, corrosion or damage caused by
5 a noncovered part or system.

6 (m) Approval of repair work.--If prior approval of repair
7 work is required, a service contract shall state the procedure
8 for obtaining prior approval and for making a claim, including a
9 toll-free telephone number for claim service and a procedure for
10 obtaining emergency repairs performed outside normal business
11 hours.

12 Section 9. Prohibitions.

13 (a) Descriptions.--A provider shall not use in its name the
14 words "insurance," "casualty," "surety," "mutual" or any other
15 words descriptive of the insurance, casualty or surety business;
16 or a name deceptively similar to the name or description of any
17 insurance or surety corporation or to the name of any other
18 provider. The word "guaranty" or similar word may be used by a
19 provider. This section shall not apply to a company that was
20 using any of the prohibited language in its name prior to the
21 effective date of this act. However, a company using the
22 prohibited language in its name shall include in its service
23 contracts a statement in substantially the following form: This
24 agreement is not an insurance contract.

25 (b) False or misleading statements.--A provider or its
26 representative shall not in its service contracts or literature
27 make, permit or cause to be made any false or misleading
28 statement or deliberately omit any material statement that would
29 be considered misleading if omitted.

30 (c) Purchase not required.--A person, such as a bank,

1 savings and loan association, lending institution, manufacturer
2 or seller of any product, shall not require the purchase of a
3 service contract as a condition of a loan or a condition for the
4 sale of any property.

5 Section 10. Recordkeeping.

6 (a) Books and records.--The provider shall keep accurate
7 accounts, books and records concerning transactions regulated
8 under this act.

9 (b) Requirements.--The provider's accounts, books and
10 records shall include the following:

11 (1) Copies of each type of service contract sold.

12 (2) The name and address of each service contractholder
13 to the extent that the name and address have been furnished
14 by the service contractholder.

15 (3) A list of the locations where service contracts are
16 marketed, sold or offered for sale.

17 (4) Written claims files which shall contain at least
18 the dates and description of claims related to the service
19 contracts.

20 (c) Retaining records.--Except as provided in subsection
21 (d), the provider shall retain all records required to be
22 maintained by this section for at least two years after the
23 specified period of coverage has expired.

24 (d) Recordkeeping technology.--The records required under
25 this act may be, but are not required to be, maintained on a
26 computer disk or other recordkeeping technology. If the records
27 are maintained in other than hard copy, the records shall be
28 capable of duplication to legible hard copy at the request of
29 the commissioner.

30 (e) Providers discontinuing business.--A provider

1 discontinuing business in this Commonwealth shall maintain its
2 records until it furnishes the commissioner satisfactory proof
3 that it has discharged all obligations to contractholders in
4 this Commonwealth.

5 Section 11. Cancellation of reimbursement insurance policy.

6 As applicable, an insurer that issued a reimbursement
7 insurance policy shall not terminate the policy until a notice
8 of termination in accordance with 40 Pa.C.S. § 6124(c) (relating
9 to rates and contracts) has been mailed or delivered to the
10 commissioner. The termination of a reimbursement insurance
11 policy shall not reduce the issuer's responsibility for service
12 contracts issued by providers prior to the date of the
13 termination.

14 Section 12. Obligation of reimbursement insurance policy
15 insurers.

16 (a) Payment of provider fees.--Insurers issuing
17 reimbursement insurance to providers are deemed to have received
18 the premiums for such insurance upon the payment of provider
19 fees by consumers for service contracts issued by such insured
20 providers.

21 (b) Indemnification and subrogation.--This act shall not
22 prevent or limit the right of an insurer which issued a
23 reimbursement insurance policy to seek indemnification or
24 subrogation against a provider if the issuer pays or is
25 obligated to pay the service contractholder sums that the
26 provider was obligated to pay pursuant to the provisions of the
27 service contract.

28 Section 13. Enforcement provisions.

29 (a) Examination.--The commissioner may conduct examinations
30 of providers, administrators, insurers or other persons to

1 enforce the provisions of this act and protect service
2 contractholders in this Commonwealth. Upon request of the
3 commissioner, the provider shall make all accounts, books and
4 records concerning service contracts sold by the provider
5 available to the commissioner which are necessary to enable the
6 commissioner to reasonably determine compliance or noncompliance
7 with this act.

8 (b) Commissioner.--The commissioner may take action which is
9 necessary or appropriate to enforce the provisions of this act
10 and the commissioner's regulations and orders and to protect
11 service contractholders in this Commonwealth.

12 (c) Cease and desist orders.--If a provider has violated
13 this act or the commissioner's regulations or orders, the
14 commissioner may issue an order directed to that provider to
15 cease and desist from committing violations of this act or the
16 commissioner's regulations or orders, may issue an order
17 prohibiting a service contract provider from selling or offering
18 for sale service contracts in violation of this act or may issue
19 an order imposing a civil penalty on that provider, or any
20 combination of the foregoing, as applicable.

21 (d) Aggrieved persons.--A person aggrieved by an order
22 issued under this section may request a hearing before the
23 commissioner. The hearing request shall be filed with the
24 commissioner within 20 days of the date the commissioner's order
25 is effective.

26 (e) Order pending hearing outcome.--If a hearing is
27 requested under subsection (d), an order issued by the
28 commissioner under this section shall be suspended from the
29 original effective date of the order until completion of the
30 hearing and final decision of the commissioner.

1 (f) Justification of order.--At the hearing, the burden
2 shall be on the commissioner to show why the order issued
3 pursuant to this section is justified. The procedural provisions
4 of the act of May 17, 1921 (P.L.682, No.284), known as The
5 Insurance Company Law of 1921, shall apply to a hearing
6 requested under this section.

7 (g) Actions initiated by commissioner.--The commissioner may
8 bring an action in any court of competent jurisdiction for an
9 injunction or other appropriate relief to enjoin threatened or
10 existing violations of this act or of the commissioner's orders
11 or regulations. An action filed under this subsection may also
12 seek restitution on behalf of persons aggrieved by a violation
13 of this act or orders or regulations of the commissioner.

14 (h) Penalty.--A person who is found to have violated this
15 act or orders or regulations of the commissioner may be assessed
16 a civil penalty in an amount determined by the commissioner of
17 not more than \$1,000 per violation and no more than \$25,000 in
18 the aggregate for all violations of a similar nature. For
19 purposes of this section, violations shall be of a similar
20 nature if the violation consists of the same or similar course
21 of conduct, action or practice, irrespective of the number of
22 times the act, conduct or practice which is determined to be a
23 violation of this act occurred.

24 Section 14. Severability.

25 The provisions of this act are severable. If any provision of
26 this act or its application to any person or circumstance is
27 held invalid, the invalidity shall not affect other provisions
28 or applications of this act which can be given effect without
29 the invalid provision or application.

30 Section 15. Effective date.

1 This act shall take effect in 60 days.