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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 86

Session of 2017

INTRODUCED BY GREENLEAF, SCHWANK AND BOSCOLA, JANUARY 13, 2017

REFERRED TO BANKING AND INSURANCE, JANUARY 13, 2017

AN ACT

Providing for the regulation of service contracts and for powers and duties of the Insurance Commissioner; and imposing a civil penalty.

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Section 15. Effective date.

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

Section 1. Short title.

This act shall be known and may be cited as the Service Contract Act.

Section 2. Legislative intent.

The purpose of this act is to create a legal framework within which service contracts may be marketed, sold, offered for sale, issued, made, proposed to be made and administered in this Commonwealth.

Section 3. Definitions.

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

"Administrator." The person that is responsible for the administration of service contracts or the service contracts plan or is responsible for any submission required by this act.

"Commissioner." The Insurance Commissioner of the Commonwealth.

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

"Contractholder." A person that is the purchaser or holder of a service contract.

"Maintenance agreement." A contract of limited duration that provides for scheduled maintenance only.

"Motor vehicle." A motorized device designed to transport up to 15 passengers. The term includes a self-propelled motor home or recreational vehicle, non-self-propelled camping and recreational trailer, off-road vehicle and trailer designed to transport an off-road vehicle. The term also includes any motorized watercraft and non-self-propelled trailer used to transport such watercraft on land.

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

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

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

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

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

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

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

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

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

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

"Provider." A person that is contractually obligated to the contractholder under the terms of the service contract.

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

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

"Service contract." A contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement or maintenance of property or indemnification for repair, replacement or maintenance, for the operational or structural failure of any motor vehicle or residential or other property due to a defect in materials, workmanship, inherent defect or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental and emergency road service and road hazard protection. The term includes contracts that provide for the repair, replacement or maintenance of property for damage resulting from power surges or interruption and accidental damage from handling. The term also includes a contract or agreement sold for a separately stated consideration for a specific duration that provides for any of the following:

(1) the repair or replacement or indemnification for the repair or replacement of a motor vehicle for the operational or structural failure of one or more parts or systems of the motor vehicle brought about by the failure of an additive product to perform as represented;

(2) 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;

(3) 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; or

(4) the repair of small motor vehicle windshield chips or cracks, but not the replacement of the entire windshield.

"Warranty." An agreement between the manufacturer, importer or seller of property or services and the consumer that:

(1) Is made solely by the manufacturer, importer or seller of property or services without consideration.

(2) Is not negotiated or separated from the sale of the product.

(3) Is incidental to the sale of the product.

(4) Guarantees indemnity for defective parts, mechanical or electrical breakdown, labor or other remedial measures, such as repair or replacement of the property or repetition of services.

Section 4. Exemptions.

The following agreements are exempt from this act:

(1) Warranties.

(2) Maintenance agreements.

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

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

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

(6) Mechanical breakdown insurance policies issued by a licensed insurer.

Section 5. Limited exemption.

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

Section 6. Requirements.

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

(1) Provided a receipt for or other written evidence of the purchase of the service contract to the contractholder.

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

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

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

(d) Performance of obligations.--In order to assure the faithful performance of a provider's obligations to its contractholders, each provider shall satisfy one of the following requirements:

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

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

(A) maintain surplus as to policyholders and paid-in capital of at least $15,000,000; and

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

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

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

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

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

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

(ii) Place in trust with the commissioner a financial security deposit, having a value of not less than 5% of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force in this Commonwealth, but not less than $25,000, consisting of one of the following:

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

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

(C) Cash.

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

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

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

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

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

(f) Return.--

(1) Service contracts shall require the provider to

permit the contractholder to return the service contract within 20 days of the date the service contract was mailed to the contractholder or within 10 days of delivery if the service contract is delivered to the contractholder at the time of sale or within a longer time period permitted under the service contract.

(2) (i) Upon return of the service contract to the provider within the applicable time period, if no claim has been made under the service contract prior to its return to the provider, the service contract is void and the provider shall refund the contractholder or credit the account of the contractholder the full purchase price of the service contract.

(ii) If a claim has been made under the service contract within that time period, a service contractholder may cancel the service contract and the provider shall refund the contractholder 100% of the unearned pro rata provider fee, less any claims paid. A reasonable administrative fee may be charged by the provider not to exceed 10% of the gross provider fee paid by the service contractholder.

(3) The right to void the service contract provided in this subsection is not transferable and shall apply only to the original service contract purchaser and only if no claim has been made prior to its return to the provider.

(4) A 10% penalty per month shall be added to a refund that is not paid or credited within 45 days after return of the service contract to the provider.

(g) Premium taxes.--

(1) Provider fees collected on service contracts shall

not be subject to premium taxes.

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

(h) Licensing requirement exemption.--

(1) Except for the registration requirements in subsection (c), providers and related service contract sellers, administrators and other persons marketing, selling or offering to sell service contracts are exempt from any licensing requirements of this Commonwealth.

(2) The marketing, sale, offering for sale, issuance, making, proposing to make and administration of service contracts by providers and related service contract sellers, administrators and other persons shall be exempt from provisions of law of this Commonwealth pertaining to insurance.

(i) Sample copy.--A provider shall provide a consumer with a complete sample copy of the service contract terms and conditions prior to the time of sale upon a request for the same by the consumer. A provider may comply with this provision by providing the consumer with a complete sample copy of the terms and conditions or by directing the consumer to an Internet website containing a complete sample copy of the terms and conditions of the service contract.

Section 7. Reimbursement insurance policies.

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

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

Section 8. Required disclosures.

(a) General rule.--Service contracts marketed, sold, offered for sale, issued, made, proposed to be made or administered in this Commonwealth shall be written, printed or typed in clear, understandable language and shall disclose the requirements set forth in this section, as applicable.

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

(c) Uninsured service contracts.--Service contracts not insured under a reimbursement insurance policy under section 6(d)(1) shall contain a 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.

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

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

(f) Deductible amounts.--Service contracts shall state the existence of any deductible amount, if applicable.

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

(h) Nonoriginal manufacturer's parts.--Service contracts covering motor vehicles shall state whether the use of the nonoriginal manufacturer's parts is allowed.

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

(j) Cancellation.--

(1) (i) Service contracts shall state the terms, restrictions or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the provider or the contractholder.

(ii) The provider of the service contract shall mail a written notice to the contractholder at the last known address of the contractholder contained in the records of the provider at least 20 days prior to cancellation by the provider.

(2) Prior notice is not required if the reason for cancellation is any of the following:

(i) Nonpayment of the provider fee.

(ii) A material misrepresentation by the contractholder to the provider.

(iii) A substantial breach of duties by the contractholder relating to the covered product or its use.

(3) The notice shall state the effective date of the cancellation and the reason for the cancellation.

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

(l) Consequential damages.--Service contracts shall state whether or not the service contract provides for or excludes consequential damages, if applicable. Service contracts shall also state whether the agreement accounts for preexisting conditions. Service contracts may, but are not required to, cover damage resulting from rust, corrosion or damage caused by a noncovered part or system.

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

Section 9. Prohibitions.

(a) Descriptions.--

(1) A provider shall not use in its name the words "insurance," "casualty," "surety," "mutual" or any other words 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. The word "guaranty" or similar word may be used by a provider.

(2) This subsection shall not apply to a company that was using any of the prohibited language in its name prior to the effective date of this act. However, a company using the prohibited language in its name shall include in its service contracts a statement in substantially the following form: This agreement is not an insurance contract.

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

(c) Purchase not required.--A person shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.

(d) Motor vehicle service contract.--A motor vehicle service contract provider or its representative shall not, directly or indirectly, represent in any manner, whether by written solicitation or telemarketing, a false, deceptive or misleading statement with respect to:

(1) the provider's affiliation with a motor vehicle manufacturer;

(2) the provider's possession of information regarding a

motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;

(3) the expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty; or

(4) a requirement that a motor vehicle owner register for a new motor vehicle service contract with the provider in order to maintain coverage under the motor vehicle owner's current motor vehicle service contract or manufacturer's original equipment warranty.

Section 10. Recordkeeping.

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

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

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

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

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

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

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

(d) Recordkeeping technology.--The records required under this act may be maintained on a computer disk or other recordkeeping technology. If the records are maintained in other than hard copy, the records shall be capable of duplication to legible hard copy at the request of the commissioner.

(e) Providers discontinuing business.--A provider discontinuing business in this Commonwealth shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to contractholders in this Commonwealth.

Section 11. Cancellation of reimbursement insurance policy.

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

Section 12. Obligation of reimbursement insurance policy insurers.

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

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

Section 13. Enforcement.

(a) Examination.--

(1) The commissioner may conduct examinations of providers, administrators, insurers or other persons to enforce the provisions of this act and protect contractholders in this Commonwealth.

(2) Upon request of the commissioner, the provider shall make all accounts, books and records concerning service contracts sold by the provider available to the commissioner which are necessary to enable the commissioner to reasonably determine compliance or noncompliance with this act.

(b) Other action.--The commissioner may take action authorized by law which is necessary or appropriate to enforce this act and the commissioner's regulations and orders and to protect contractholders in this Commonwealth.

(c) Orders.--The commissioner may issue any of the following orders to a provider that violates this act or the commissioner's regulations or orders:

(1) An order to cease and desist from committing violations of this act or the commissioner's regulations or orders.

(2) An order prohibiting the provider from selling or offering for sale service contracts in violation of this act.

(3) An order imposing a civil penalty on the provider.

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

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

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

(g) Actions initiated by commissioner.--

(1) The commissioner may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of this act or of the commissioner's orders or regulations.

(2) An action filed under this subsection may also seek restitution on behalf of persons aggrieved by a violation of this act or orders or regulations of the commissioner.

(h) Penalty.--

(1) A person that is found to have violated this act or orders or regulations of the commissioner may be assessed a civil penalty in an amount determined by the commissioner of not more than $500 per violation and no more than $10,000 in the aggregate for all violations of a similar nature.

(2) For purposes of this section, violations shall be of a similar nature if the violation consists of the same or similar course of conduct, action or practice, irrespective of the number of times the act, conduct or practice which is determined to be a violation of this act occurred.

Section 14. Applicability.

(a) General rule.--This act shall apply to service contracts issued on or after the effective date of this section.

(b) Limited grandfather provision.--A person engaged in the service contract business, as a provider or otherwise, in this Commonwealth on or before the effective date of this section, that submits an application for registration as a provider under this act within 30 days after the commissioner makes the application available, may continue to engage in business as a provider in this Commonwealth until final agency action is taken by the commissioner regarding the registration application and all rights to administrative and judicial review related to that final agency action have been exhausted or have expired.

Section 15. Effective date.

This act shall take effect in 60 days.