

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 150 Session of 2011

INTRODUCED BY GREENLEAF AND BOSCOLA, JANUARY 12, 2011

REFERRED TO BANKING AND INSURANCE, JANUARY 12, 2011

AN ACT

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

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

4 Section 1. Short title.

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

7 Section 2. Legislative intent.

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

12 Section 3. Definitions.

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

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

19 "Commissioner." The Insurance Commissioner of the  
20 Commonwealth.

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

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

28 "Maintenance agreement." A contract of limited duration that  
29 provides for scheduled maintenance only and does not provide for  
30 repair or replacement.

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

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

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

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

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

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

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

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

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

29 "Person." An individual, partnership, corporation,  
30 incorporated or unincorporated association, joint stock company,

1 reciprocal, syndicate or any similar entity or combination of  
2 entities acting in concert.

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

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

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

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

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

30 "Warranty." An agreement between the manufacturer, importer

1 or seller of property or services and the consumer that:

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

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

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

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

#### 11 Section 4. Exemptions.

12 The following agreements are exempt from this act:

13 (1) Warranties.

14 (2) Maintenance agreements.

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

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

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

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

#### 26 Section 5. Limited exemption.

27 Motor vehicle manufacturer's service contracts on the motor  
28 vehicle manufacturer's products need only comply with sections  
29 6(f), 8(a), (d), (e), (f), (g), (h), (i), (j), (k) and (l), 9  
30 and 12, as applicable.

1 Section 6. Requirements.

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

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

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

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

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

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

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

1       either:

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

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

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

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

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

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

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

26       (2)   (i)   Maintain a funded reserve account for its  
27      obligations under its contracts issued and outstanding in  
28      this Commonwealth. The reserves shall not be less than  
29      40% of gross consideration received, less claims paid, on  
30      the sale of the service contract for all in-force

1 contracts. The reserve account shall be subject to  
2 examination and review by the commissioner.

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

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

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

13 (C) Cash.

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

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

18 (3) (i) Maintain or, together with its parent company  
19 maintain, a net worth or stockholders' equity of  
20 \$100,000,000.

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



1 requirement, then the parent company shall agree to  
2 guarantee the obligations of the provider relating to  
3 service contracts sold by the provider in this  
4 Commonwealth.

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

9 (f) Return.--

10 (1) Service contracts shall require the provider to  
11 permit the contractholder to return the service contract  
12 within 20 days of the date the service contract was mailed to  
13 the contractholder or within ten days of delivery if the  
14 service contract is delivered to the contractholder at the  
15 time of sale or within a longer time period permitted under  
16 the service contract.

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

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

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

1 (g) Premium taxes.--

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

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

6 (h) Licensing requirement exemption.--Except for the  
7 registration requirements in subsection (c), providers and  
8 related service contract sellers, administrators and other  
9 persons marketing, selling or offering to sell service contracts  
10 are exempt from any licensing requirements of 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 contractholder, the contractholder is  
25 entitled to apply directly to the reimbursement insurance  
26 company.

27 Section 8. Required disclosures.

28 (a) General rule.--Service contracts marketed, sold, offered  
29 for sale, issued, made, proposed to be made or administered in  
30 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 pursuant to 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 pursuant to 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.

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

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

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

10 (j) Cancellation.--

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

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

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

23 (i) Nonpayment of the provider fee.

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

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

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

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

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

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

## 18 Section 9. Prohibitions.

### 19 (a) Descriptions.--

20 (1) A provider shall not use in its name the words  
21 "insurance," "casualty," "surety," "mutual" or any other  
22 words descriptive of the insurance, casualty or surety  
23 business; or a name deceptively similar to the name or  
24 description of any insurance or surety corporation or to the  
25 name of any other provider. The word "guaranty" or similar  
26 word may be used by a provider.

27 (2) This subsection shall not apply to a company that  
28 was using any of the prohibited language in its name prior to  
29 the effective date of this act. However, a company using the  
30 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.

#### 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 description 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

1 this act may be maintained on a computer disk or other  
2 recordkeeping technology. If the records are maintained in other  
3 than hard copy, the records shall be capable of duplication to  
4 legible hard copy at the request of the commissioner.

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

10 Section 11. Cancellation of reimbursement insurance policy.

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

19 Section 12. Obligation of reimbursement insurance policy  
20 insurers.

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

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

1 obligated to pay pursuant to the provisions of the service  
2 contract.

3 Section 13. Enforcement.

4 (a) Examination.--

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

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

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

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

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

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

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

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



1 is effective.

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

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

13 (g) Actions initiated by commissioner.--

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

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

21 (h) Penalty.--

22 (1) A person that is found to have violated this act or  
23 orders or regulations of the commissioner may be assessed a  
24 civil penalty in an amount determined by the commissioner of  
25 not more than \$1,000 per violation and no more than \$25,000  
26 in the aggregate for all violations of a similar nature.

27 (2) For purposes of this section, violations shall be of  
28 a similar nature if the violation consists of the same or  
29 similar course of conduct, action or practice, irrespective  
30 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 pursuant to 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.