

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1436 Session of  
2010

INTRODUCED BY GREENLEAF, WASHINGTON, BAKER, O'PAKE, FARNESE AND  
BOSCOLA, JULY 2, 2010

REFERRED TO BANKING AND INSURANCE, JULY 2, 2010

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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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 Service  
7 Contract Act.

8 Section 2. Legislative intent.

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

13 Section 3. Definitions.

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

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

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

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

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

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

1 repair or replacement.

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

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

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

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

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

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

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

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

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

30 "Person." An individual, partnership, corporation,

1 incorporated or unincorporated association, joint stock company,  
2 reciprocal, syndicate or any similar entity or combination of  
3 entities acting in concert.

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

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

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

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

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

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

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

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

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

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

#### 12 Section 4. Exemptions.

13 The following agreements are exempt from this act:

14 (1) Warranties.

15 (2) Maintenance agreements.

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

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

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

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

#### 27 Section 5. Limited exemption.

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

1 and 12, as applicable.

2 Section 6. Requirements.

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

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

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

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

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

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

29 (1) Insure all service contracts under a reimbursement  
30 insurance policy issued by an insurer licensed, registered or

1 otherwise authorized to do business in this Commonwealth and  
2 either:

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

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

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

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

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

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

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

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

1 the sale of the service contract for all in-force  
2 contracts. The reserve account shall be subject to  
3 examination and review by the commissioner.

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

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

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

14 (C) Cash.

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

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

19 (3) (i) Maintain or, together with its parent company  
20 maintain, a net worth or stockholders' equity of  
21 \$100,000,000.

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



1 are filed to meet the provider's financial stability  
2 requirement, then the parent company shall agree to  
3 guarantee the obligations of the provider relating to  
4 service contracts sold by the provider in this  
5 Commonwealth.

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

10 (f) Return.--

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

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

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

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

1 the service contract to the provider.

2 (g) Premium taxes.--

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

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

7 (h) Licensing requirement exemption.--Except for the  
8 registration requirements in subsection (c), providers and  
9 related service contract sellers, administrators and other  
10 persons marketing, selling or offering to sell service contracts  
11 are exempt from any licensing requirements of this Commonwealth.

12 (i) Exemption from insurance law.--

13 (1) Service contracts are not insurance contracts in  
14 this Commonwealth or otherwise regulated under provisions of  
15 law regarding the sale of insurance.

16 (2) Except as may be provided in this act, the  
17 marketing, sale, offering for sale, issuance, making,  
18 proposing to make and administration of service contracts by  
19 providers and related service contract sellers,  
20 administrators and other persons shall be exempt from  
21 provisions of law of this Commonwealth pertaining to  
22 insurance.

23 Section 7. Reimbursement insurance policies.

24 (a) Requirements.--Reimbursement insurance policies insuring  
25 service contracts issued, sold or offered for sale in this  
26 Commonwealth shall state that the insurer that issued the  
27 reimbursement insurance policy shall either reimburse or pay on  
28 behalf of the provider any covered sums the provider is legally  
29 obligated to pay or, in the event of the provider's  
30 nonperformance, shall provide the service which the provider is

1 legally obligated to perform according to the provider's  
2 contractual obligations under the service contracts issued or  
3 sold by the provider.

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

9 Section 8. Required disclosures.

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

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

22 (c) Uninsured service contracts.--Service contracts not  
23 insured under a reimbursement insurance policy pursuant to  
24 section 6(d)(1) shall contain a statement in substantially the  
25 following form: Obligations of the provider under this service  
26 contract are backed by the full faith and credit of the  
27 provider.

28 (d) Name and address.--Service contracts shall state the  
29 name and address of the provider and shall identify any  
30 administrator if different from the provider, the service

1 contract seller and the contractholder to the extent that the  
2 name of the contractholder has been furnished by the  
3 contractholder. The identities of such parties are not required  
4 to be preprinted on the service contract and may be added to the  
5 service contract at the time of sale.

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

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

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

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

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

22 (j) Cancellation.--

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

28 (ii) The provider of the service contract shall mail  
29 a written notice to the contractholder at the last known  
30 address of the contractholder contained in the records of

1 the provider at least 20 days prior to cancellation by  
2 the provider.

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

5 (i) Nonpayment of the provider fee.

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

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

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

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

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

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

30 Section 9. Prohibitions.

1 (a) Descriptions.--

2 (1) A provider shall not use in its name the words  
3 "insurance," "casualty," "surety," "mutual" or any other  
4 words descriptive of the insurance, casualty or surety  
5 business; or a name deceptively similar to the name or  
6 description of any insurance or surety corporation or to the  
7 name of any other provider. The word "guaranty" or similar  
8 word may be used by a provider.

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

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

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

23 Section 10. Recordkeeping.

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

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

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

30 (2) The name and address of each contractholder to the

1 extent that the name and address have been furnished by the  
2 contractholder.

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

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

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

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

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

22 Section 11. Cancellation of reimbursement insurance policy.

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

1 Section 12. Obligation of reimbursement insurance policy  
2 insurers.

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

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

15 Section 13. Enforcement.

16 (a) Examination.--

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

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

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

30 (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 pursuant to 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

1 restitution on behalf of persons aggrieved by a violation of  
2 this act or orders or regulations of the commissioner.

3 (h) Penalty.--

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

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

14 Section 14. Applicability.

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

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

27 Section 15. Effective date.

28 This act shall take effect in 60 days.