

HOUSE No. 987

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to home service contracts..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Sections 149F through 149L, inclusive, of chapter 175 of the General Laws
2 are hereby repealed.

3 SECTION 2. Chapter 175 of the General Laws is hereby amended by inserting after
4 section 149L the following sections:-

5 Section 149M. As used in sections 149M to 149X, inclusive, the following words shall,
6 unless the context clearly requires otherwise, have the following meanings:-

7 “Administrator”, the person who is responsible for the administration of the service
8 contracts or the service contracts plan.

9 “Consumer”, an individual who purchases other than for purposes of resale tangible
10 personal property used for personal, family or household purposes.

11 “NAIC”, National Association of Insurance Commissioners.

12 “Person”, a natural person, corporation, association, partnership or other legal entity.

13 “Premium”, the consideration paid to an insurer for a reimbursement insurance policy.

14 “Provider”, a person who is contractually obligated to the service contract holder under
15 the terms of the service contract.

16 “Reimbursement insurance policy”, a policy of insurance issued to a provider to either
17 provide reimbursement to the provider under the terms of the insured service contracts issued or
18 sold by the provider or, in the event of the provider’s nonperformance, to pay on behalf of the
19 provider all covered contractual obligations incurred by the provider under the terms of the
20 insured service contracts issued or sold by the provider.

21 “Service contract”, a contract for a separately stated consideration and for a specific
22 duration to perform the service, repair, replacement, or maintenance of property or
23 indemnification for service, repair, replacement, or maintenance, for the operational or structural
24 failure due to a defect in materials or workmanship, or normal wear and tear, with or without
25 additional provision for incidental payment or indemnity under limited circumstances, for related
26 expenses, including, but not limited to, rental, and food spoilage. Service contracts may provide
27 for the service, repair, replacement or maintenance of property for damage resulting from power
28 surges and accidental damage from handling and may provide for leak or repair coverage to
29 roofing systems on residential dwellings.

30 “Service contract holder”, a consumer who is in possession of a service contract.

31 “Warranty”, a guarantee incidental to the sale of the product made solely by the
32 manufacturer, importer or seller of property or services without consideration that is not
33 negotiated or separated from the sale of the product that guarantees indemnity for defective parts,

34 mechanical or electrical breakdown, labor or other remedial measures, such as repair or
35 replacement of the property or repetition of services.

36 Section 149N. (a) A provider may appoint an administrator or other designee to be
37 responsible for the administration of service contracts executed pursuant to sections 149M to
38 149W.

39 (b) Service contracts shall not be issued, sold or offered for sale unless the provider has
40 provided: (1) a receipt for, or other written evidence of, the purchase of the service contract to
41 the contract holder; and (2) a copy of the service contract to the service contract holder within a
42 reasonable period of time from the date of purchase.

43 (c) A provider of service contracts shall file a registration with the commissioner which
44 shall include, without limitation, their name, address, phone and contact person and a designated
45 person in this state for service of process. Each provider shall pay to the commissioner a fee in
46 the amount of \$600 upon initial registration and every 3 years thereafter.

47 (d) In order to assure the faithful performance of a provider's obligations to its contract
48 holders, each provider shall: (1) insure all services contracts under a reimbursement insurance
49 policy issued by an insurer that is authorized, registered or otherwise permitted to transact
50 insurance in the commonwealth or a surplus lines insurer authorized to do business in the
51 commonwealth; provided, further, that the reimbursement insurance policy shall be obtained
52 from an insurer that: (i) at the time the policy is filed with the commissioner, and continuously
53 thereafter, maintains surplus as to contract holders and paid-in capital of at least \$15,000,000 and
54 annually file copies of the insurer's financial statements, its NAIC annual statement, and the
55 actuarial certification if required and filed in the insurer's state of domicile; or (ii) at the time the

56 policy is filed with the commissioner, and continuously thereafter, maintains surplus as to
57 policyholders and paid-in capital of less than \$15,000,000 but at least \$10,000,000, demonstrates
58 to the satisfaction of the commissioner that the insurer maintains a ratio of net written premiums,
59 wherever written, to surplus as to contract holders and paid-in capital of not greater than 3 to 1,
60 and annually files copies of the insurer's financial statements, its NAIC annual statement, and the
61 actuarial certification if required and filed in the insurer's state of domicile; (2) (i) maintain a
62 funded reserve account for its obligations under its contracts issued and outstanding in the
63 commonwealth. The reserve account shall not be less than 40 per cent of gross consideration
64 received, less claims paid, on the sale of the service contract for all in-force service contracts and
65 shall be subject to examination and review by the commissioner; and (ii) place in trust with the
66 commissioner a financial security deposit, having a value of not less than 5 per cent of the gross
67 consideration received, less claims paid, on the sale of the service contract for all service
68 contracts issued and in force, but not less than \$25,000, consisting of 1 of the following: a surety
69 bond issued by an authorized surety; securities of the type eligible for deposit by authorized
70 insurers in the commonwealth; cash; a letter of credit issued by a qualified financial institution;
71 or another form of security authorized by the commissioner; or (3) (i) maintain, or together with
72 its parent company maintain, a net worth or stockholders' equity of \$25,000,000; and (ii) upon
73 request, provide the commissioner with a copy of the provider's or the provider's parent
74 company's most recent Form 10-K or Form 20-F filed with the United States Securities and
75 Exchange Commission within the last calendar year, or if the company does not file with the
76 United States Securities and Exchange Commission, a copy of the company's financial
77 statements showing a net worth of the provider or its parent company of at least \$25,000,000. If
78 the provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet

79 the provider's financial stability requirement, then the parent company shall agree to guarantee
80 the obligations of the provider relating to service contracts sold by the provider in the
81 commonwealth.

82 (e) Except for the requirements specified in subsections (c) and (d) above, no other
83 registration submissions or financial security requirements shall be required by the commissioner
84 for service contract providers.

85 (f) Service contracts shall require the provider to permit the service contract holder to
86 return the service contract within 20 days of the date the service contract was mailed to the
87 service contract holder or within 10 days of delivery of the service contract to the service
88 contract holder if the service contract is delivered to the service contract holder at the time of
89 sale or within a longer time period permitted under the service contract. Upon return of the
90 service contract to the provider within the applicable time period, if no claim has been made
91 under the service contract prior to its return to the provider, the service contract shall be void and
92 the provider shall refund to the service contract holder, or credit the account of the service
93 contract holder or other payer of record, if different, the full purchase price of the service
94 contract. The right to void the service contract provided in this subsection shall not be
95 transferable and shall apply only to the original service contract purchaser if no claim has been
96 made prior to its return to the provider. A 10 per cent penalty per month shall be added to a
97 refund that is not paid or credited within 45 days after return of the service contract to the
98 provider.

99 (g) Provider fees collected on service contracts shall not be subject to section 9 of chapter
100 176L; provided, however, that premiums for reimbursement insurance policies shall be subject to
101 said section 9 of said chapter 176L and all other general or special laws.

102 (h) Except for the registration requirements pursuant to section (c), providers and related
103 service contracts sellers, administrators and other persons marketing, selling or offering to sell
104 service contracts shall not be required to hold any other form of license granted by the
105 commonwealth.

106 Section 149O. (a) Reimbursement insurance policies insuring service contracts issued,
107 sold or offered for sale in the commonwealth shall require the insurer that issued the
108 reimbursement insurance policy to reimburse or pay on behalf of the provider any covered sums
109 the provider is legally obligated to pay or, in the event of the provider's non-performance, shall
110 provide the service which the provider is legally obligated to perform according to the provider's
111 contractual obligations under the service contracts issued or sold by the provider.

112 (b) In the event covered service is not provided by the service contract provider within 60
113 days of proof of loss by the service contract holder, the contract holder may apply directly to the
114 reimbursement insurance company.

115 Section 149P. Service contracts shall be printed in clear and understandable language and
116 shall include: (1) a statement in substantially the following form: "Obligations of the provider
117 under this service contract are insured under a service contract reimbursement insurance policy",
118 or for service contracts not insured under a reimbursement insurance policy a statement in
119 substantially the following form: "Obligations of the provider under this service contract are
120 backed by the full faith and credit of the provider"; (2) the name and address of the insurer,

121 provider, any administrator if different from the provider, the service contract seller and the
122 service contract holder to the extent that the name of the service contract holder has been
123 furnished by the service contract seller; (3) the total purchase price and the terms under which
124 service contract was sold; (4) the existence of any deductible amount, if applicable; (5) the
125 property and services to be provided and any limitations, exceptions, or exclusions if applicable;
126 (6) any restrictions governing the transferability of the service contract, if applicable; (7) the
127 terms, restrictions or conditions governing cancellation of the service contract prior to the
128 termination or expiration date of the service contract by either the provider or the service
129 contract holder; provided, however, that the provider of the service contract shall mail a written
130 notice to the contract holder, including the effective date of the cancellation and the reason
131 therefore, at the last known address of the service contract holder contained in the records of the
132 provider at least 5 days prior to cancellation by the provider unless the reason for cancellation is
133 nonpayment of the provider, material misrepresentation or a substantial breach of duties by the
134 service contract holder relating to the covered product or its use; (8) all of the obligations and
135 duties of the service contract holder, such as the duty to protect against any further damage and
136 any requirements to follow owner's manual; (9) whether or not the service contract provides for
137 any preexisting conditions, if applicable.

138 Section 149Q. (a) A provider shall not use in its name the words insurance, casualty,
139 surety, mutual or any other words descriptive of the insurance, casualty or surety business; or a
140 name deceptively similar to the name or description of any insurance or surety corporation, or to
141 the name or any other provider; provided, however, that the words "guaranty", "warranty" or
142 other similar words may be used.

143 (b) A provider or its representative shall not permit or cause to be made any false or
144 misleading statement, or deliberately omit any material statement that would be considered
145 misleading if omitted.

146 (c) A person shall not require the purchase of a service contract as a condition of a loan or
147 a condition for the sale of any property, but may promote, endorse or recommend the purchase
148 unless otherwise prohibited by law.

149 Section 149R. (a) The provider shall keep accurate accounts, books, and records
150 concerning transactions regulated under sections 149M through 149W. which shall include: (i)
151 copies of each type of service contract sold; (ii) the name and address of each service contract
152 holder to the extent that the name and address have been furnished to the service contract
153 provider; and (iii) written or electronic claims files which shall contain the dates and description
154 of claims related to the service contract.

155 (b) Except as provided in section 149S(b), the provider shall retain all records required to
156 be maintained by section 7 for at least 1 year after the specified period of coverage has expired.

157 (c) Records required under sections 149M through 149W, inclusive, may be maintained
158 on a computer disk or other record keeping technology. If the records are maintained in a form
159 other than hard copy, the records shall be capable of duplication to legible hard copy at the
160 request of the commissioner.

161 (d) A provider discontinuing business in the commonwealth shall maintain its records
162 until it furnishes the commissioner satisfactory proof that it has discharged all obligations to
163 contact holders in the commonwealth.

164 Section 149S. An insurer issuing a reimbursement insurance policy shall not terminate
165 the policy until a notice of termination has been mailed or delivered to the commissioner. The
166 termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for
167 service contracts issued by providers prior to the date of the termination.

168 Section 149T. (a) An insurer issuing reimbursement insurance to providers shall be
169 considered to have received the premiums for such insurance upon the payment of provider fees
170 by consumers for service contracts issued by such insured providers.

171 (b) Sections 149M through 149W, inclusive, shall not prevent or limit the right of an
172 insurer which issued a reimbursement insurance policy to seek indemnification or subrogation
173 against a provider if the issuer pays or is obligated to pay the service contract holder sums that
174 the provider was obligated to pay pursuant to the provisions of the service contract.

175 Section 149U. (a) The commissioner may conduct examinations of providers,
176 administrators, insurers or other persons to enforce the provisions of sections 149M through
177 149V, inclusive, and protect service contract holders. Upon request of the commissioner, the
178 provider shall make all accounts, books, and records concerning service contracts sold by the
179 provider available to the commissioner which are necessary to enable the commissioner to
180 reasonably determine compliance or noncompliance with sections 149M through 149W,
181 inclusive.

182 (b)(1) The commissioner may enforce the provisions of sections 149M through 149W,
183 inclusive. The commissioner may, without limitation, issue a cease and desist order to prevent
184 continuing violations of said sections; may issue an order prohibiting a service contract provider
185 from selling or offering for sale service contracts in violation of said sections; or may issue an

186 order imposing a civil penalty on that provider or any combination of the foregoing, as
187 applicable.

188 (2) A person aggrieved by an order issued under this paragraph may request a hearing
189 before the commissioner. Said request shall be filed with the commissioner within 20 days of the
190 commissioner's order. If a hearing is requested, an order issued by the commissioner under this
191 section shall be suspended from the original effective date of the order until completion of the
192 hearing and final decision of the commissioner. At the hearing, the burden shall be on the
193 commissioner to show why the order issued pursuant to this paragraph is justified.

194 (3) The commissioner may bring an action in any court of competent jurisdiction for an
195 injunction or other appropriate relief to enjoin threatened or existing violations of sections 149M
196 through 149W, inclusive. An action filed under this paragraph may also seek restitution on
197 behalf of persons aggrieved by a violation of said sections or orders or regulations of the
198 commissioner.

199 (4) A person who is found to have violated sections 149M through 149W, inclusive, or
200 orders or regulation of the commissioner may be assessed a civil penalty in an amount
201 determined by the commissioner of not more than \$500 per violation and not more than \$10,000
202 in the aggregate for all violations of a similar nature. For purposes of this section, violations shall
203 be of a similar nature if the violation consists of the same or similar course of conduct, action or
204 practice, irrespective of the number of times the act, conduct or practice which is determined to
205 be a violation of said sections occurred.

206 Section 149W. The following shall be exempt from sections 149M to 149W, inclusive:

207 (a) warranties, service contracts or maintenance agreements provided by public utilities,

208 regulated by the department of telecommunications and cable or federal communications
209 commission, or by an affiliate of such entity, covering customer wiring, transmission devices
210 serviced by such public utility, or warranting services provided by such public utility or its
211 affiliate; (b) mechanical breakdown insurance policies offered by insurers otherwise licensed and
212 regulated under the insurance laws and regulations of the commonwealth; and (c) warranties,
213 service contracts or other agreements regarding automobiles.

214 Section 149X. The commissioner may promulgate rules and regulations for the
215 administration and enforcement of this act.

216 SECTION 3. A person engaged in the service contract business, as a provider or
217 otherwise, on or before the effective date of this act, who submits an application for registration
218 as a provider pursuant to this act within 30 days after the commissioner makes the application
219 available, may continue to engage in business as a provider until final agency action is taken by
220 the commissioner regarding the registration application and all rights to administrative judicial
221 review have been exhausted or expired. This act shall govern all service contracts issued after the
222 effective date of this act. Contracts in effect at the time of passage shall become covered upon
223 any renewal thereof.

224 SECTION 4. Notwithstanding any general or special law to the contrary, the marketing,
225 sale, offering for sale, issuance, making, proposing to make and administration of service
226 contracts by providers and related service contract sellers, administrators and other persons
227 pursuant to sections 149M through 149W, inclusive, of chapter 175 of the General Laws shall
228 not be considered insurance for any purpose, including, but not limited to, a service contract

229 holder's claim against a service contract provider for failure to comply with the provisions of the
230 service contract.

231 SECTION 5. Notwithstanding any general or special law to the contrary, section 149R of
232 chapter 175 of the General Laws shall not apply to a company using any of the prohibited
233 language in its name prior to the effective date of said sections 149R; provided, however, that a
234 company using such prohibited language in its name shall include in its service contracts a
235 statement in substantially the following form: "This agreement is not an insurance contract."