

SENATE No. 625

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to motor vehicle service contracts.

PETITION OF:

NAME:

Michael O. Moore

DISTRICT/ADDRESS:

Second Worcester

SENATE No. 625

By Mr. Moore, a petition (accompanied by bill, Senate, No. 625) of Michael O. Moore for legislation relative to motor vehicle service contracts. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 568 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to motor vehicle 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. Section 149M of chapter 175 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the definition of “consumer” the following
3 5 definitions:-

4 “Consumer product”, any tangible personal property that is distributed in commerce and
5 is normally used for personal, family or household purposes, including tangible personal
6 property intended to be attached to or installed in any real property without regard to whether it
7 is so attached or installed.

8 “Maintenance agreement”, a contract for regular maintenance.

9 “Motor vehicle manufacturer”, a person who: (i) manufactures, distributes or produces
10 motor vehicles under the person’s own name or label; (ii) is a subsidiary of the person who

11 manufactures, distributes or produces motor vehicles; (iii) is a corporation which owns 100 per
12 cent of the corporation, association, partnership or other legal entity who manufactures,
13 distributes or produces motor vehicles; or (iv) does not manufacture, distribute or produce motor
14 vehicles but, pursuant to a written contract, licenses the use of its trade name or label to another
15 person who manufactures, distributes or produces motor vehicles.

16 SECTION 2. Said section 149M of said chapter 175, as so appearing, is hereby further
17 amended by striking out the definition of “service contract” and inserting in place thereof the
18 following definition:-

19 “Service contract”, a contract for a separately stated consideration and for a specific
20 duration to perform the service, repair, replacement or maintenance of a consumer product,
21 including a motor vehicle, or indemnification for service, repair, replacement or maintenance for
22 the operational or structural failure due to a defect in materials or workmanship or normal wear
23 and tear, with or without additional provision for incidental payment or indemnity under limited
24 circumstances, for related expenses, including, but not limited to, rental and food spoilage;
25 provided, however, that a service contract shall also include a contract or agreement sold for a
26 separately stated consideration for a specific duration that provides for any of the following: (i)
27 the repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming
28 into contact with road hazards including, but not limited to, potholes, rocks, wood debris, metal
29 parts, glass, plastic, curbs or composite scraps; (ii) the removal of dents, dings or creases on a
30 motor vehicle that can be repaired using the process of paintless dent removal without affecting
31 the existing paint finish and without replacing vehicle body panels, sanding, bonding or painting;
32 or (iii) the repair of small motor vehicle windshield chips or cracks which may include the
33 replacement of the windshield for chips or cracks that cannot be repaired.

SECTION 3. Section 149N of said chapter 175, as so appearing, is hereby amended by striking out, in line 100, the words “tangible personal property” and inserting in place thereof the following words:- consumer products.

SECTION 4. Section 4 of said chapter 93B, as so appearing, is hereby amended by adding the following subsection:-

(c)(1) It shall be an unfair or deceptive act or practice for a motor vehicle manufacturer, distributor or franchisor representative to require, attempt to require, coerce, or attempt to coerce a motor vehicle dealer to sell exclusively an extended service contract, extended maintenance plan or similar products, including, but not limited to, guaranteed automobile protection or guaranteed asset protection products, offered, endorsed or sponsored by the motor vehicle manufacturer, distributor or franchisor representative by any of the following means: (i) a statement made by the motor vehicle manufacturer, distributor or franchisor representative that failure to sell exclusively an extended service contract, extended maintenance plan or similar products will substantially and adversely impact the dealer; (ii) a provision in a franchise agreement that the dealer sell exclusively an extended service contract, extended maintenance plan or similar product offered, endorsed or sponsored by the motor vehicle manufacturer, distributor or franchisor representative; (iii) measuring the dealer’s performance under the franchise based on the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the motor vehicle manufacturer, distributor or franchisor representative; or (iv) requiring the dealer to exclusively promote the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the motor vehicle manufacturer, distributor or franchisor representative.

(2) Nothing in this subsection shall prohibit a motor vehicle manufacturer, distributor or franchisor representative from providing incentives to a dealer that encourages a voluntary decision to sell exclusively an extended service contract, extended maintenance plan or similar product, including, but not limited to, guaranteed automobile protection or guaranteed asset protection products offered, endorsed or sponsored by the manufacturer, distributor or franchisor.

Nothing in this subsection shall require or prohibit a motor vehicle manufacturer, distributor or franchisor representative from enforcing a requirement that a dealer disclose to a customer that a product covered by this subsection is not provided or supported by the manufacturer, distributor or franchisor, if that is the case. In the case of a product that is a service contract which is not provided or supported by the manufacturer, distributor or franchisor, then the manufacturer, distributor or franchisor may require the franchisee to provide the following disclosure to the consumer:

The service contract you are purchasing is not provided or backed by the manufacturer of the vehicle you are purchasing. The manufacturer of this vehicle is not responsible for claims or repairs under this service contract.

(3) Nothing in this subsection shall require or prohibit a motor vehicle manufacturer, distributor, or franchisor representative from enforcing a requirement that a dealer from requiring a franchisee dealer to provide the following notice prior to the sale of the service contract if the service contract is not provided or backed by the motor vehicle manufacturer and the vehicle is of the franchised line-make:

Buyer/Lessee acknowledges that the dealer is selling her/him a service contract that is not backed by the vehicle manufacturer. Buyer/ Lessee understands that (i) the vehicle manufacturer

is not responsible for any claims under this service contract product and has no obligation in connection with the sale or use of this service contract product, and (ii) this service contract may or may not be accepted by other authorized dealers this vehicle manufacturer.

SECTION 5. Said chapter 175 is hereby amended by striking out section 149V, as so appearing, and inserting in place thereof the following section:-

Section 149V. (a) The following shall be exempt from sections 149M to 149W, inclusive: (i) warranties, service contracts or maintenance agreements provided by public utilities that are regulated by the department of telecommunications and cable or the Federal Communications Commission, or by an affiliate of such entity, covering customer wiring, transmission devices serviced by such public utility or warranting services provided by such public utility or its affiliate; (ii) mechanical breakdown insurance policies offered by insurers otherwise licensed and regulated pursuant to the laws and regulations of the commonwealth; (iii) warranties, service contracts or other agreements regarding automobiles under which a licensed motor vehicle dealer or an affiliate of a licensed motor vehicle dealer is obligated to perform; (iv) warranties offered by builders as part of a conveyance of real estate; (v) warranties on a product made by the manufacturer, importer or seller of the product; and (vi) maintenance agreements.

(b) Motor vehicle manufacturers and service contracts on the motor vehicle manufacturer's products need only comply with sections 149N(f), 149P, 149Q, 149R and 149U, as applicable, of this Act, and motor vehicle manufacturers offering service contracts on the motor vehicle manufacturer's products are exempt from licensure under section 149N(c) and the requirements of section 149N(d).