

HOUSE No. 1183

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo J. Puppolo, Jr.

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:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>1/26/2021</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>2/12/2021</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/25/2021</i>

HOUSE No. 1183

By Mr. Puppolo of Springfield, a petition (accompanied by bill, House, No. 1183) of Angelo J. Puppolo, Jr., Steven S. Howitt and David Allen Robertson relative to motor vehicle service contracts. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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, is hereby amended by
2 inserting after the definition of “consumer” the following 5 definitions:-

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

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

8 “Motor vehicle distributor”, any person who is not a motor vehicle manufacturer or a
9 motor vehicle dealer and who sells or distributes new and unused motor vehicles to motor
10 vehicle dealers within the commonwealth or to a wholesaler who in turn sells or distributes such
11 vehicles to motor vehicle dealers within the commonwealth; provided, however, that “motor
12 vehicle distributor” shall include any branch office or division maintained by any corporation,

13 association, partnership or other legal entity for directing and supervising their franchisor
14 representatives.

15 “Motor vehicle franchisor representative”, a person employed by a motor vehicle
16 manufacturer or distributor to promote the sale of new motor vehicles or for supervising,
17 servicing, instructing or contracting motor vehicle dealers or prospective motor vehicle dealers
18 and any officer, agent or other authorized representative of a manufacturer or distributor.

19 “Motor vehicle manufacturer”, a person who: (i) manufactures or produces motor
20 vehicles under the person’s own name or label; (ii) is a subsidiary of the person who
21 manufactures or produces motor vehicles; (iii) is a corporation which owns 100 per cent of the
22 corporation, association, partnership or other legal entity who manufactures or produces motor
23 vehicles; or (iv) does not manufacture or produce motor vehicles but, pursuant to a written
24 contract, licenses the use of its trade name or label to another person who manufactures or
25 produces motor vehicles.

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

29 “Service contract”, a contract for a separately stated consideration and for a specific
30 duration to perform the service, repair, replacement or maintenance of a consumer product,
31 including a motor vehicle, or indemnification for service, repair, replacement or maintenance for
32 the operational or structural failure due to a defect in materials or workmanship or normal wear
33 and tear, with or without additional provision for incidental payment or indemnity under limited
34 circumstances, for related expenses, including, but not limited to, rental and food spoilage;

35 provided, however, that a service contract shall also include a contract or agreement sold for a
36 separately stated consideration for a specific duration that provides for any of the following: (i)
37 the repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming
38 into contact with road hazards including, but not limited to, potholes, rocks, wood debris, metal
39 parts, glass, plastic, curbs or composite scraps; (ii) the removal of dents, dings or creases on a
40 motor vehicle that can be repaired using the process of paintless dent removal without affecting
41 the existing paint finish and without replacing vehicle body panels, sanding, bonding or painting;
42 (iii) the repair of small motor vehicle windshield chips or cracks which may include the
43 replacement of the windshield for chips or cracks that cannot be repaired; or (iv) the repair of
44 damage to the interior components of a motor vehicle caused by wear and tear but which shall
45 expressly exclude the replacement of any part or component of a motor vehicle's interior.

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

49 SECTION 4. Section 149U of said chapter 175, as so appearing, is hereby amended by
50 adding the following subsection:-

51 (c) It shall be an unfair or deceptive act or practice for a motor vehicle manufacturer,
52 distributor or franchisor representative to require, attempt to require, coerce or attempt to coerce
53 a motor vehicle dealer to sell, offer to sell or sell exclusively an extended service contract,
54 extended maintenance plan or similar products, including, but not limited to, guaranteed
55 automobile protection or guaranteed asset protection products, offered, endorsed or sponsored by
56 the motor vehicle manufacturer, distributor or franchisor representative by any of the following

57 means: (i) a statement made by the motor vehicle manufacturer, distributor or franchisor
58 representative that failure to sell, offer to sell or sell exclusively an extended service contract,
59 extended maintenance plan or similar products will substantially and adversely impact the dealer;
60 (ii) a provision in a franchise agreement that the dealer sell or sell exclusively an extended
61 service contract, extended maintenance plan or similar product offered, endorsed or sponsored by
62 the motor vehicle manufacturer, distributor or franchisor representative; (iii) measuring the
63 dealer's performance under the franchise based on the sale of extended service contracts,
64 extended maintenance plans or similar products offered, endorsed or sponsored by the motor
65 vehicle manufacturer, distributor or franchisor representative; or (iv) requiring the dealer to
66 exclusively promote the sale of extended service contracts, extended maintenance plans or
67 similar products offered, endorsed or sponsored by the motor vehicle manufacturer, distributor or
68 franchisor representative.

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

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

77 Section 149V. (a) The following shall be exempt from sections 149M to 149W, inclusive:
78 (i) warranties, service contracts or maintenance agreements provided by public utilities that are

79 regulated by the department of telecommunications and cable or the Federal Communications
80 Commission, or by an affiliate of such entity, covering customer wiring, transmission devices
81 serviced by such public utility or warranting services provided by such public utility or its
82 affiliate; (ii) mechanical breakdown insurance policies offered by insurers otherwise licensed and
83 regulated pursuant to the laws and regulations of the commonwealth; (iii) warranties, service
84 contracts or other agreements regarding automobiles under which a licensed motor vehicle dealer
85 is obligated to perform; (iv) warranties offered by builders as part of a conveyance of real estate;
86 (v) warranties on a product made by the manufacturer, importer or seller of the product; and (vi)
87 maintenance agreements.

88 (b) Motor vehicle manufacturer's service contracts on the motor vehicle manufacturer's
89 products shall comply with sections 149M to 149W, inclusive, as applicable to be determined by
90 the commissioner of insurance; provided, however, that motor vehicle manufacturer's service
91 contracts on the motor vehicle manufacturer's products shall be exempt from licensure
92 requirements under subsection (d) of section 149N.