SENATE DOCKET, NO. 22 FILED ON: 1/8/2021

SENATE . . . . . No. 657

The Commonwealth of Massachusetts

PRESENTED BY:

Diana DiZoglio

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:
Diana DiZoglio	*First Essex*

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SENATE . . . . . No. 657

By Ms. DiZoglio, a petition (accompanied by bill, Senate, No. 657) of Diana DiZoglio for legislation relative to motor vehicle service contracts. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *576* OF 2019-2020.]

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:

SECTION 1. Section 149M of chapter 175 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after the definition of "consumer" the following 5 definitions:-

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

"Maintenance agreement", a contract for regular maintenance.

"Motor vehicle distributor", any person who is not a motor vehicle manufacturer or a motor vehicle dealer and who sells or distributes new and unused motor vehicles to motor

vehicle dealers within the commonwealth or to a wholesaler who in turn sells or distributes such vehicles to motor vehicle dealers within the commonwealth; provided, however, that "motor vehicle distributor" shall include any branch office or division maintained by any corporation, association, partnership or other legal entity for directing and supervising their franchisor representatives.

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

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

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

"Service contract", a contract for a separately stated consideration and for a specific duration to perform the service, repair, replacement or maintenance of a consumer product, including a motor vehicle, or indemnification for service, repair, replacement or maintenance for

the operational or structural failure due to a defect in materials or workmanship or normal wear and tear, with or without additional provision for incidental payment or indemnity under limited circumstances, for related expenses, including, but not limited to, rental and food spoilage; provided, however, that a service contract shall also include a contract or agreement sold for a separately stated consideration for a specific duration that provides for any of the following: (i) the repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs or composite scraps; (ii) the removal of dents, dings or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding or painting; (iii) the repair of small motor vehicle windshield chips or cracks which may include the replacement of the windshield for chips or cracks that cannot be repaired; or (iv) the repair of damage to the interior components of a motor vehicle caused by wear and tear but which shall expressly exclude the replacement of any part or component of a motor vehicle's interior.

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 149U of said chapter 175, as so appearing, is hereby amended by adding the following subsection:-

(c) 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, offer to sell or 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, offer to sell or 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 or 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.

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 or 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.

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