
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Cheryl Horne.

DIGEST

Martiny (SB 519)

Proposed law defines a service contract as a contract or agreement to perform the repair, replacement, or maintenance of personal property, including a motor vehicle, or indemnification for the repair, replacement, or maintenance for the operational or structural failure of such property due to a defect in materials or workmanship, accidental damage from handling, or normal wear and tear.

Proposed law provides for a legal framework within which certain service contracts are defined, sold, and regulated in the state. Excludes the following from proposed law:

- (1) Warranties as defined in federal law.
- (2) Maintenance agreements.
- (3) Warranties, service contracts, or maintenance agreements offered by public utilities on their transmission devices to the extent regulated by the PSC.
- (4) Service contracts sold or offered for sale to persons other than consumers.
- (5) Service contracts on tangible property where the tangible property for which the service contract is sold has a purchase price of \$100.00 or less.
- (6) Home service contracts regulated by Department of Insurance.
- (7) Vehicle protection product warranties.

Proposed law requires the provider of service contracts to submit a receipt for the purchase of the service contract and a copy of the service contract to the service contract holder. Requires each provider to file a registration with the commissioner consisting of the provider's name, full corporate address, telephone number, and a person for service of process. Requires the provider of a motor vehicle service contract to deposit securities which at all times shall have a value of not less than \$150,000 or a surety bond with the insurance commissioner.

Proposed law requires reimbursement insurance policies insuring service contracts to disclose that the insurer that issued the reimbursement insurance policy shall either reimburse or pay any covered sums the provider is legally obligated to pay or, in the event of nonperformance, shall provide the obligated service. Requires service contracts insured under a reimbursement insurance policy to contain a statement that reads substantially: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy."

Requires service contracts not insured under a reimbursement policy to contain a statement that reads substantially: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider."

Proposed law prohibits the use of words descriptive of the insurance, casualty, or surety business or use of a name deceptively similar to the name or description of any insurance or surety corporation. Prohibits a provider from making any false or misleading statement or deliberately omitting any material statement if the omission would be considered misleading. Prohibits an insurer that issued a reimbursement policy from terminating a policy until a notice of termination has been mailed or delivered to the commissioner.

Proposed law permits the commissioner to conduct examinations of providers, administrators, insurers, or other persons to enforce the provisions of proposed law. Requires the provider to make available to the commissioner all books, accounts, and records concerning service contracts.

Proposed law permits the commissioner to take one or a combination of all the following actions upon a violation by a provider:

- (1) Issue a cease and desist order.
- (2) Issue an order prohibiting a service contract provider from selling or offering service contracts for sale.
- (3) Issue an order imposing a civil penalty on the violating provider.

Proposed law permits a person aggrieved by an order issued by the commissioner to request a hearing within 20 days of the effective date of the commissioner's order. Requires an order issued by the commissioner to be suspended from the original effective date of the order once a hearing is requested. Places the burden on the commissioner to show why the order is justified.

Proposed law permits the commissioner to bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of proposed law or the commissioner's orders. Permits an action to seek restitution on behalf of the persons aggrieved by a violation of proposed law or orders or regulations of the commissioner. Permits assessment of a civil penalty against a violator of not more than \$500 per violation and not more than \$10,000 in the aggregate for all violations of a similar nature.

Proposed law permits a person engaged in the service contract business as a provider or otherwise before the effective date of proposed law who submits an application for registration as a provider within 30 days after the commissioner makes the application available, to continue to engage in business as a provider until final agency action is taken by the commissioner.

Effective August 1, 2014.

(Adds R.S. 22:375.1-375.12)