

Regular Session, 2014

SENATE BILL NO. 519

BY SENATOR MARTINY

INSURANCE POLICIES. Provides with respect to service provider contracts. (8/1/14)

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AN ACT

To enact Subpart L-1 of Part I of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:375.1 through 375.12, relative to service contracts; to provide for definitions; to provide for rights, responsibilities, and duties of service contract providers; to provide for disclosures; to provide for reimbursement insurers and insurance policies; to provide for recordkeeping; to provide for enforcement; to provide relative to conflict with other laws; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subpart L-1 of Part I of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:375.1 through 375.12, is hereby enacted to read as follows:

**SUBPART L-1. SERVICE CONTRACTS**

**§375.1. Scope and purpose**

**A. The purpose of this Subpart is to create a legal framework within which certain service contracts are defined, sold, and regulated in this state. To the extent of any conflict with the framework for motor vehicle breakdown insurers contained in Subpart L of this Part, the provisions of this Subpart shall**

1 control. Service contracts, as defined herein, shall be regulated exclusively by  
2 this Subpart and shall not otherwise be subject to the provisions of this Title.

3 B. The provisions of this Subpart shall not apply to:

4 (1) Warranties as defined in the Magnuson-Moss Warranty Act, 15  
5 U.S.C. 2301 et. seq.

6 (2) Maintenance agreements.

7 (3) Warranties, service contracts, or maintenance agreements offered by  
8 public utilities on their transmission devices to the extent they are regulated by  
9 the Public Service Commission.

10 (4) Service contracts sold or offered for sale to persons other than  
11 consumers.

12 (5) Service contracts on tangible property where the tangible property  
13 for which the service contract is sold has a purchase price of one hundred  
14 dollars or less, exclusive of sales tax.

15 (6) Home service contracts regulated pursuant to R.S. 22:1806.1 et seq.  
16 and contracts or other instruments exempted thereunder.

17 (7) Vehicle protection product warranties regulated pursuant to R.S.  
18 32:1271 et seq. and contracts or other instruments exempted thereunder.

19 C. Motor vehicle manufacturers' service contracts on the motor vehicle  
20 manufacturers' products need only comply with R.S. 22:375.3(G), 375.5(A),  
21 375.5(D) - (L), 375.6, and 375.10. Motor vehicle manufacturers are exempt  
22 from the registration requirement of R.S. 22:375.3(D).

23 D. The types of agreements referred to in Subsections B and C of this  
24 Section, and service contracts governed pursuant to this Subpart are regulated  
25 exclusively by this Subpart and are exempt from all other provisions of this  
26 Title.

27 §375.2. Definitions

28 As used in this Subpart, the following terms have these meanings:

29 (1) "Administrator" means the person who is responsible for the

1 administration of the service contracts or the service contracts plan or who is  
2 responsible for any submission required by this Subpart.

3 (2) "Commissioner" means the commissioner of insurance.

4 (3) "Consumer" means a natural person who buys, other than for  
5 purposes of resale, any tangible personal property that is distributed in  
6 commerce and that is normally used for personal, family, or household purposes  
7 and not for business or research purposes.

8 (4) "Maintenance agreement" means a contract of limited duration that  
9 provides for scheduled maintenance only and does not include repair or  
10 replacement.

11 (5) "Motor vehicle manufacturer" means a person that:

12 (a) Manufactures or produces motor vehicles and sells motor vehicles  
13 under its own name or label.

14 (b) Is a wholly owned subsidiary of a person who manufactures or  
15 produces motor vehicles.

16 (c) Is a corporation that owns one hundred percent of a person who  
17 manufactures or produces motor vehicles.

18 (d) Does not manufacture or produce motor vehicles, but sells motor  
19 vehicles under the trade name or label of another person who manufactures or  
20 produces motor vehicles.

21 (e) Manufactures or produces motor vehicles and sells such motor  
22 vehicles under the trade name or label of another person who manufactures or  
23 produces motor vehicles.

24 (f) Does not manufacture or produce motor vehicles but, pursuant to a  
25 written contract, licenses the use of its trade name or label to another person  
26 who manufactures or produces motor vehicles or that sells motor vehicles under  
27 the licensor's trade name or label.

28 (6) "Nonoriginal manufacturer's parts" means replacement parts not  
29 made for or by the original manufacturer of the property, commonly referred

1 to as "after market parts."

2 (7) "Person" means an individual, partnership, corporation,  
3 incorporated or unincorporated association, joint stock company, reciprocal,  
4 syndicate, or any similar entity or combination of entities acting in concert.

5 (8) "Premium" means the consideration paid to an insurer for a  
6 reimbursement insurance policy.

7 (9) "Provider" means a person who is contractually obligated to the  
8 service contract holder under the terms of the service contract.

9 (10) "Provider fee" means the consideration paid for a service contract.

10 (11) "Reimbursement insurance policy" means a policy of insurance  
11 issued to a provider either to provide reimbursement to the provider under the  
12 terms of the insured service contracts issued or sold by the provider or, in the  
13 event of the provider's nonperformance, to pay on behalf of the provider all  
14 covered contractual obligations incurred by the provider under the terms of the  
15 insured service contracts issued or sold by the provider.

16 (12) "Service contract" means a contract or agreement for a separately  
17 stated consideration for a specific duration to perform the repair, replacement,  
18 or maintenance of personal property, including a motor vehicle, or to provide  
19 indemnification for the repair, replacement, or maintenance for the operational  
20 or structural failure of such property due to a defect in materials or  
21 workmanship, accidental damage from handling, or normal wear and tear, with  
22 or without additional provisions for incidental payment of indemnity under  
23 limited circumstances including but not limited to towing, rental and emergency  
24 road service, and road hazard protection. A service contract may provide for  
25 the repair, replacement, or maintenance of personal property for damage  
26 resulting from power surges or interruption. "Service contract" also includes  
27 a contract or agreement sold for a separately stated consideration for a specific  
28 duration that provides one or more of the following:

29 (a) The repair or replacement, or indemnification for the repair or

1 replacement, of a motor vehicle for the operational or structural failure of one  
2 or more parts or systems of the motor vehicle brought about by the failure of  
3 an additive product or system to perform as represented.

4 (b) The repair or replacement of tires or wheels on a motor vehicle  
5 damaged as a result of coming into contact with road hazards including but not  
6 limited to potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or  
7 composite scraps.

8 (c) The removal of dents, dings, or creases on a motor vehicle that can  
9 be repaired using the process of paintless dent removal without affecting the  
10 existing paint finish and without replacing vehicle body panels, sanding,  
11 bonding, or painting.

12 (d) The repair of small motor vehicle windshield chips or cracks or the  
13 replacement of a windshield that cannot be repaired.

14 (e) The repair or replacement of motor vehicle key fobs and remote  
15 access devices.

16 (f) Such other benefits as the commissioner may deem suitable for offer  
17 in the form of a service contract to the extent not inconsistent with this  
18 definition.

19 (13) "Service contract holder" or "contract holder" means a person who  
20 is the purchaser or holder of a service contract.

21 (14) "Warranty" means a warranty made solely by the manufacturer,  
22 importer, or seller of property or services without consideration, that is not  
23 negotiated or separated from the sale of the product and is incidental to the sale  
24 of the product, that guarantees indemnity for defective parts, mechanical or  
25 electrical breakdown, labor, or other remedial measures, such as repair or  
26 replacement of the property or repetition of services.

27 §375.3. Requirements for doing business

28 A. A provider may, but is not required to, appoint an administrator or  
29 other designee to be responsible for any or all of the administration of service

1 contracts and compliance with this Subpart.

2 B. Service contracts shall not be issued, sold, or offered for sale in this  
3 state unless the provider has provided to the service contract holder both of the  
4 following:

5 (1) A receipt for, or other written evidence of, the purchase of the service  
6 contract.

7 (2) A copy of the service contract, within a reasonable period of time  
8 from the date of purchase.

9 C. A provider shall provide a consumer with a complete sample copy of  
10 the service contract terms and conditions prior to the time of sale upon a  
11 request from the consumer. A provider may comply with this Subsection by  
12 providing the consumer with a complete sample copy of the terms and  
13 conditions or by directing the consumer to a website containing a complete  
14 sample of the terms and conditions of the service contract.

15 D.(1) Each provider of service contracts sold in this state shall file a  
16 registration with the commissioner consisting of the provider's name, full  
17 corporate address, telephone number, and contact person and shall designate  
18 a person in this state for service of process.

19 (2) Each provider shall pay to the commissioner a fee in the amount of  
20 two hundred dollars upon initial registration and every year thereafter. Said  
21 registration need only be updated by written notification to the commissioner  
22 if material changes occur in the registration on file.

23 (3) Each provider of service contracts covering motor vehicles shall  
24 deposit with, or for the benefit of, the insurance commissioner securities which  
25 at all times shall have a value of not less than one hundred fifty thousand  
26 dollars.

27 (a) For purposes of this Section, the securities which may be used as a  
28 deposit shall be cash, certificates of deposit purchased from a financial  
29 institution licensed to conduct business in the state of Louisiana, bonds of the

1 state of Louisiana or any of its political subdivisions, or bonds of the United  
2 States government.

3 (b) In lieu of the deposit of securities required by this Section, the  
4 provider may file with the commissioner a surety bond in the required amount.  
5 The bond shall be issued by a surety insurer authorized to do business in the  
6 state of Louisiana, shall be for the same purpose as the deposit in lieu of which  
7 it is filed, and shall be subject to the approval of the commissioner. No such  
8 bond shall be cancelled or subject to cancellation unless thirty days' written  
9 notice is given to the commissioner.

10 (c) If the required deposit is made in the form of bonds or certificates of  
11 deposit, they shall be irrevocably pledged to the commissioner; however, any  
12 interest earned on such securities shall be the property of the provider.

13 (d) Each deposit or surety shall be maintained unimpaired,  
14 unencumbered, and pledged to the commissioner until such time as all  
15 outstanding service contracts in Louisiana have run their full term and expired.  
16 It is the intent of this Paragraph that the deposit or surety remain fully in force  
17 until such time as all of the provider's obligations to the service contract holders  
18 are fulfilled.

19 (e) The deposit or surety required by this Paragraph may from time-to-  
20 time be substituted with other acceptable securities, or surety bond, subject to  
21 the approval of the commissioner.

22 (f) A person previously licensed as a vehicle mechanical breakdown  
23 insurer under R.S. 22:361 et seq., shall be permitted to utilize its existing deposit  
24 to meet the requirements of this Paragraph.

25 (g) A provider of service contracts for property other than motor  
26 vehicles, who does not provide service contracts for motor vehicles, shall not be  
27 subject to the deposit requirement of this Paragraph.

28 E. In order to assure the faithful performance of a provider's obligations  
29 to its contract holders, each provider shall be responsible for complying with

1 **the requirements of one of the following Paragraphs:**

2 **(1) Insure all service contracts under a reimbursement insurance policy**  
3 **issued by an insurer licensed, registered, or otherwise authorized to do business**  
4 **in this state, and either:**

5 **(a) At the time the policy is filed with the commissioner, and**  
6 **continuously thereafter satisfy both of the following:**

7 **(i) Maintain surplus as to policyholders and paid-in capital of at least**  
8 **fifteen million dollars.**

9 **(ii) Annually file copies of the insurer's financial statements, its National**  
10 **Association of Insurance Commissioners (NAIC) Annual Statement, and the**  
11 **actuarial certification required by and filed in the insurer's state of domicile.**

12 **(b) At the time the policy is filed with the commissioner, and**  
13 **continuously thereafter satisfy all of the following:**

14 **(i) Maintain surplus as to policyholders and paid-in capital of less than**  
15 **fifteen million dollars but no less than ten million dollars.**

16 **(ii) Demonstrate to the satisfaction of the commissioner that the company**  
17 **maintains a ratio of net written premiums, wherever written, to surplus as to**  
18 **policyholders and paid-in capital of not greater than three-to-one.**

19 **(iii) Annually files copies of the insurer's audited financial statements,**  
20 **its NAIC Annual Statement, and the actuarial certification required by and**  
21 **filed in the insurer's state of domicile.**

22 **(2)(a) Maintain a funded reserve account for its obligations under its**  
23 **contracts issued and outstanding in this state. The reserves shall not be less than**  
24 **forty percent of gross consideration received, less claims paid, on the sale of the**  
25 **service contract for all in-force contracts. The reserve account shall be subject**  
26 **to examination and review by the commissioner.**

27 **(b) In addition to the deposit or bond required by Paragraph D(3) of this**  
28 **Section, place in trust with the commissioner a financial security deposit having**  
29 **a value of not less than five percent of the gross consideration received, less**



1 claims paid, on the sale of the service contract for all service contracts issued  
2 and in force, but not less than twenty-five thousand dollars, consisting of one of  
3 the following:

4 (i) A surety bond issued by an authorized surety.

5 (ii) Securities of the type eligible for deposit by authorized insurers in  
6 this state.

7 (iii) Cash.

8 (iv) A letter of credit issued by a qualified financial institution.

9 (v) Another form of security prescribed by regulations issued by the  
10 commissioner.

11 (3)(a) Individually, or together with its parent company, maintain a net  
12 worth or stockholders' equity of one hundred million dollars.

13 (b) Upon request, provide the commissioner with a copy of the provider's  
14 or the provider's parent company's most recent Form 10-K or Form 20-F filed  
15 with the Securities and Exchange Commission (SEC) within the last calendar  
16 year, or if the company does not file with the SEC, a copy of the company's  
17 audited financial statements, showing a net worth of the provider or its parent  
18 company of at least one hundred million dollars. If the provider's parent  
19 company's Form 10-K, Form 20-F, or financial statements are filed to meet the  
20 provider's financial stability requirement, then the parent company shall agree  
21 to guarantee the obligations of the provider relating to service contracts sold by  
22 the provider in this state.

23 F. Except for the requirements specified in Subsections D and E of this  
24 Section, no other financial security requirements shall be imposed by the  
25 commissioner for service contract providers.

26 G.(1) Service contracts shall require the provider to permit the service  
27 contract holder to return the service contract within twenty days of the date the  
28 service contract was mailed to the service contract holder or within ten days of  
29 delivery if the service contract is delivered to the service contract holder at the

1 time of sale or within a longer time period permitted under the service contract.  
2 Upon return of the service contract to the provider within the applicable time  
3 period, if no claim has been made under the service contract prior to its return  
4 to the provider, the service contract is void and the provider shall refund to the  
5 service contract holder, or credit to the account of the service contract holder,  
6 the full purchase price of the service contract. The right to void the service  
7 contract provided in this Subsection is not transferable and shall apply only to  
8 the original service contract purchaser, and only if no claim has been made  
9 prior to its return to the provider. A ten percent penalty per month shall be  
10 added to a refund that is not paid or credited within forty-five days after return  
11 of the service contract to the provider.

12 (2) Subsequent to the time period specified in Paragraph (1) of this  
13 Subsection or if a claim has been made under the service contract within that  
14 time period, a service contract holder may cancel the service contract and the  
15 provider shall refund to the contract holder one hundred percent of the  
16 unearned pro rata provider fee, less any claims paid. A reasonable  
17 administrative fee may be charged by the provider not to exceed ten percent of  
18 the gross provider fee paid by the service contract holder or twenty-five dollars,  
19 whichever is greater.

20 H.(1) Provider fees collected on service contracts shall not be subject to  
21 premium taxes.

22 (2) Premiums for reimbursement insurance policies shall be subject to  
23 all applicable taxes including premium taxes.

24 I. Except for the provider registration requirements in Subsection D of  
25 this Section, providers and related service contract sellers, administrators, and  
26 other persons marketing, selling, or offering to sell service contracts are exempt  
27 from any licensing requirements of this Title.

28 J. The marketing, sale, offering for sale, issuance, making, proposing to  
29 make, and administration of service contracts by providers and related service

1 contract sellers, administrators, and other persons shall be exempt from all  
2 other provisions of this Title.

3 **§375.4. Required disclosures; reimbursement insurance policies**

4 **A. Reimbursement insurance policies insuring service contracts issued,**  
5 **sold, or offered for sale in Louisiana shall state that the insurer that issued the**  
6 **reimbursement insurance policy shall either reimburse or pay on behalf of the**  
7 **provider any covered sums the provider is legally obligated to pay or, in the**  
8 **event of the provider's nonperformance, shall provide the service which the**  
9 **provider is legally obligated to perform according to the provider's contractual**  
10 **obligations under the service contracts issued or sold by the provider.**

11 **B. In the event any covered service is not provided by the service**  
12 **contract provider within sixty days of proof of loss by the service contract**  
13 **holder, the contract holder is entitled to apply directly to the reimbursement**  
14 **insurance company.**

15 **§375.5. Required disclosure; service contracts**

16 **A. Service contracts marketed, sold, offered for sale, issued, made,**  
17 **proposed to be made, or administered in this state shall be written, printed, or**  
18 **typed in clear, understandable language that is easy to read, and shall disclose**  
19 **the requirements set forth in this Section, as applicable.**

20 **B. Each service contract insured under a reimbursement insurance**  
21 **policy pursuant to R.S. 22:375.3(E)(1) shall contain a statement in substantially**  
22 **the following form: "Obligations of the provider under this service contract are**  
23 **insured under a service contract reimbursement insurance policy." The service**  
24 **contract shall also state the name and address of the insurer.**

25 **C. Each service contract not insured under a reimbursement insurance**  
26 **policy pursuant to R.S. 22:375.3(E)(1) shall contain a statement in substantially**  
27 **the following form: "Obligations of the provider under this service contract are**  
28 **backed by the full faith and credit of the provider."**

29 **D. Each service contract shall state the name and address of the provider**

1 and shall identify any administrator if different from the provider, the service  
2 contract seller, and the service contract holder to the extent that the name of the  
3 service contract holder has been furnished by the service contract holder. The  
4 identities of such parties are not required to be preprinted on the service  
5 contract and may be added to the service contract at the time of sale.

6 E. Each service contract shall state the total purchase price and the  
7 terms under which the service contract is sold. The purchase price is not  
8 required to be preprinted on the service contract and may be negotiated at the  
9 time of sale with the service contract holder.

10 F. Each service contract shall state the existence of any deductible  
11 amount, if applicable.

12 G. Each service contract shall specify the merchandise and services to  
13 be provided and any limitations, exceptions, or exclusions.

14 H. Each service contract covering automobiles shall state whether the use  
15 of the nonoriginal manufacturer's parts is permissible.

16 I. Each service contract shall state any restrictions governing the  
17 transferability of the service contract, if applicable.

18 J. Each service contract shall state the terms, restrictions, or conditions  
19 governing cancellation of the service contract prior to the termination or  
20 expiration date of the service contract by either the provider or the service  
21 contract holder. The provider of the service contract shall mail a written notice  
22 to the contract holder at the last known address of the service contract holder  
23 contained in the records of the provider at least five days prior to cancellation  
24 by the provider. Prior notice is not required if the reason for cancellation is  
25 nonpayment of the provider fee, a material misrepresentation by the service  
26 contract holder to the provider, or a substantial breach of duties by the service  
27 contract holder relating to the covered product or its use. The notice shall state  
28 the effective date of the cancellation and the reason for the cancellation. If a  
29 service contract is cancelled by the provider for a reason other than

1        nonpayment of the provider fee, the provider shall refund to the contract holder  
2        one hundred percent of the unearned pro rata provider fee, less any claims paid.  
3        A reasonable administrative fee may be charged by the provider not to exceed  
4        ten percent of the gross provider fee paid by the service contract holder or  
5        twenty-five dollars, whichever is greater.

6                K. Each service contract shall set forth all of the obligations and duties  
7        of the service contract holder, such as the duty to protect against any further  
8        damage and any requirement to follow an owner's manual.

9                L. Each service contract shall state whether or not the service contract  
10       provides for or excludes consequential damages or preexisting conditions, if  
11       applicable. Service contracts may, but are not required to, cover damage  
12       resulting from rust, corrosion, or damage caused by noncovered parts or  
13       systems.

14        §375.6. Prohibited acts

15                A. A provider shall not use in its name the words "insurance",  
16       "casualty", "surety", "mutual", or any other words descriptive of the  
17       insurance, casualty, or surety business nor shall the provider use a name  
18       deceptively similar to the name or description of any insurance or surety  
19       corporation, or to the name of any other provider. The word "guaranty" or  
20       similar word may be used by a provider. This Subsection shall not apply to a  
21       company that was using any of the prohibited language in its name prior to the  
22       effective date of this Subpart. However, a company using the prohibited  
23       language in its name shall include in its service contracts a statement in  
24       substantially the following form: "This agreement is not an insurance  
25       contract."

26                B. A provider or its representative shall not in its service contracts or  
27       literature make, permit, or cause to be made any false or misleading statement,  
28       or deliberately omit any material statement if the omission would be considered  
29       misleading.

1           C. A person, such as a bank, savings and loan association, lending  
2           institution, manufacturer, or seller of any product, shall not require the  
3           purchase of a service contract as a condition of a loan or a condition for the sale  
4           of any property.

5           D. A motor vehicle service contract provider or its representative shall  
6           not, directly or indirectly, represent in any manner, whether by written  
7           solicitation or telemarketing, a false, deceptive, or misleading statement with  
8           respect to any of the following:

9                   (1) The provider's affiliation with a motor vehicle manufacturer.

10                   (2) The provider's possession of information regarding a motor vehicle  
11                   owner's current motor vehicle manufacturer's original equipment warranty.

12                   (3) The expiration of a motor vehicle owner's current motor vehicle  
13                   manufacturer's original equipment warranty.

14                   (4) A requirement for the motor vehicle owner to register for a new  
15                   motor vehicle service contract with the provider in order to maintain coverage  
16                   under the motor vehicle owner's current motor vehicle service contract or  
17                   manufacturer's original equipment warranty.

18           §375.7. Recordkeeping requirements

19                   A.(1) The provider shall keep accurate accounts, books, and records  
20                   concerning transactions regulated under this Subpart.

21                   (2) The provider's accounts, books, and records shall include all of the  
22                   following:

23                           (a) Copies of each type of service contract sold.

24                           (b) The name and address of each service contract holder to the extent  
25                           that the name and address have been furnished by the service contract holder.

26                           (c) A list of the locations where service contracts are marketed, sold, or  
27                           offered for sale.

28                           (d) Written claims files which shall contain at least the dates and  
29                           descriptions of claims related to the service contracts.

1           **(3) Except as provided in Subsection B of this Section, the provider shall**  
2           **retain all records required to be maintained by this Section for at least one year**  
3           **after the specified period of coverage has expired.**

4           **(4) The records required under this Subpart may be, but are not**  
5           **required to be, maintained on a computer disk or other recordkeeping**  
6           **technology. If the records are maintained in other than hard copy, the**  
7           **recordkeeping technology shall have the capacity to produce a legible hard**  
8           **copy of any record at the request of the commissioner.**

9           **B. A provider discontinuing business in this state shall maintain its**  
10           **records until it furnishes the commissioner satisfactory proof that it has**  
11           **discharged all obligations to contract holders in this state.**

12           **§375.8. Cancellation of reimbursement insurance policy**

13           **An insurer that issued a reimbursement insurance policy shall not**  
14           **terminate the policy until a notice of termination in accordance with R.S.**  
15           **22:1267 has been mailed or delivered to the commissioner. The termination of**  
16           **a reimbursement insurance policy shall not reduce the issuer's responsibility for**  
17           **service contracts issued by providers prior to the date of the termination.**

18           **§375.9. Obligation of reimbursement insurance policy insurers**

19           **A. Insurers issuing reimbursement insurance to providers are deemed**  
20           **to have received the premiums for such insurance upon the payment of provider**  
21           **fees by consumers for service contracts issued by such insured providers.**

22           **B. This Subpart shall not prevent or limit the right of an insurer that**  
23           **issued a reimbursement insurance policy to seek indemnification or subrogation**  
24           **against a provider if the issuer pays or is obligated to pay the service contract**  
25           **holder sums that the provider was obligated to pay pursuant to the provisions**  
26           **of the service contract.**

27           **§375.10. Enforcement provisions**

28           **A. The commissioner may conduct examinations of providers,**  
29           **administrators, insurers, or other persons to enforce the provisions of this**

1        Subpart and to protect service contract holders in this state. Upon request of the  
2        commissioner, the provider shall make available to the commissioner all  
3        accounts, books, and records concerning service contracts sold by the provider  
4        that are necessary to enable the commissioner to reasonably determine  
5        compliance or noncompliance with this Subpart.

6                B. The commissioner may take any action necessary or appropriate to  
7        enforce the provisions of this Subpart and the commissioner's regulations and  
8        orders and to protect service contract holders in this state.

9                (1) If a provider has violated this Subpart or the commissioner's  
10       regulations or orders, the commissioner may issue an order directing to that  
11       provider to cease and desist from committing such violations, may issue an  
12       order prohibiting a service contract provider from selling or offering for sale  
13       service contracts in violation of this Subpart, or may issue an order imposing  
14       a civil penalty on that provider, or any combination of the foregoing, as  
15       applicable.

16               (a) A person aggrieved by an order issued under this Paragraph may  
17       request a hearing before the commissioner. The hearing request shall be filed  
18       with the commissioner within twenty days of the effective date of the  
19       commissioner's order.

20               (b) If a hearing is requested, an order issued by the commissioner under  
21       this Paragraph shall be suspended from the original effective date of the order  
22       until completion of the hearing and final decision of the commissioner.

23               (c) At the hearing, the burden shall be on the commissioner to show why  
24       the order issued pursuant to this Paragraph is justified. The provisions of R.S.  
25       22: 2191 et seq. shall apply to a hearing requested under this Paragraph.

26               (2) The commissioner may bring an action in any court of competent  
27       jurisdiction for an injunction or other appropriate relief to enjoin threatened  
28       or existing violations of this Subpart or of the commissioner's orders or  
29       regulations. An action filed under this Paragraph may also seek restitution on



1 behalf of persons aggrieved by a violation of this Subpart or orders or  
2 regulations of the commissioner.

3 (3) A person who is found to have violated this Subpart, or any order or  
4 regulation of the commissioner may be assessed a civil penalty, in an amount  
5 determined by the commissioner, of not more than five hundred dollars per  
6 violation and not more than ten thousand dollars in the aggregate for all  
7 violations of a similar nature. For purposes of this Section, violations shall be  
8 of a similar nature if the violation consists of the same or similar course of  
9 conduct, action, or practice, irrespective of the number of times the act,  
10 conduct, or practice which is determined to be a violation of this Subpart  
11 occurred.

12 §375.11. Effectiveness

13 A person engaged in the service contract business, as a provider or  
14 otherwise, in this state on or before the effective date of this Subpart, who  
15 submits an application for registration as a provider pursuant to this Subpart  
16 within thirty days after the commissioner makes the application available, may  
17 continue to engage in business as a provider in this state until final agency  
18 action is taken by the commissioner regarding the registration application and  
19 all rights to administrative judicial review have been exhausted or expired.

20 §375.12 Conflicts with other laws

21 To the extent any provision of this Subpart conflicts with any other  
22 provision of law, including Subpart L of this Part, the provision of this Subpart  
23 shall control.

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

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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)