

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

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 passage of the accompanying bill:

An Act relative to home service contracts.

PETITION OF:

| | |
|----------------|-------------------|
| NAME: | DISTRICT/ADDRESS: |
| Ronald Mariano | 3rd Norfolk |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3737 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
—————

AN ACT RELATIVE TO HOME 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. Sections 149F through 149L, inclusive, of chapter 175 of the General Laws are
2 hereby repealed.

3 SECTION 2. Chapter 175 of the General Laws is hereby amended by inserting after section
4 149L the following sections:-

5 Section 149M. As used in sections 149M to 149X, inclusive, the following words shall, unless
6 the context clearly requires otherwise, have the following meanings:-

7 “Administrator”, the person who is responsible for the administration of the service contracts or
8 the service contracts plan.

9 “Consumer”, an individual who purchases other than for purposes of resale tangible personal
10 property used for personal, family or household purposes.

11 “NAIC”, National Association of Insurance Commissioners.

12 “Person”, a natural person, corporation, association, partnership or other legal entity.

13 “Premium”, the consideration paid to an insurer for a reimbursement insurance policy.

14 “Provider”, a person who is contractually obligated to the service contract holder under the terms
15 of the service contract.

16 “Reimbursement insurance policy”, a policy of insurance issued to a provider to either provide
17 reimbursement to the provider under the terms of the insured service contracts issued or sold by
18 the provider or, in the event of the provider’s nonperformance, to pay on behalf of the provider
19 all covered contractual obligations incurred by the provider under the terms of the insured
20 service contracts issued or sold by the provider.

21 “Service contract”, a contract for a separately stated consideration and for a specific duration to
22 perform the service, repair, replacement, or maintenance of property or indemnification for
23 service, repair, replacement, or maintenance, for the operational or structural failure due to a
24 defect in materials or workmanship, or normal wear and tear, with or without additional
25 provision for incidental payment or indemnity under limited circumstances, for related expenses,
26 including, but not limited to, rental, and food spoilage. Service contracts may provide for the
27 service, repair, replacement or maintenance of property for damage resulting from power surges
28 and accidental damage from handling and may provide for leak or repair coverage to roofing
29 systems on residential dwellings.

30 “Service contract holder”, a consumer who is in possession of a service contract.

31 “Warranty”, a guarantee incidental to the sale of the product made solely by the manufacturer,
32 importer or seller of property or services without consideration that is not negotiated or separated
33 from the sale of the product that guarantees indemnity for defective parts, mechanical or
34 electrical breakdown, labor or other remedial measures, such as repair or replacement of the
35 property or repetition of services.

36 Section 149N. (a) A provider may appoint an administrator or other designee to be responsible
37 for the administration of service contracts executed pursuant to sections 149M to 149W.

38 (b) Service contracts shall not be issued, sold or offered for sale unless the provider has
39 provided: (1) a receipt for, or other written evidence of, the purchase of the service contract to
40 the contract holder; and (2) a copy of the service contract to the service contract holder within a
41 reasonable period of time from the date of purchase.

42 (c) A provider of service contracts shall file a registration with the commissioner which shall
43 include, without limitation, their name, address, phone and contact person and a designated
44 person in this state for service of process. Each provider shall pay to the commissioner a fee in
45 the amount of \$600 upon initial registration and every 3 years thereafter.

46 (d) In order to assure the faithful performance of a provider's obligations to its contract holders,
47 each provider shall: (1) insure all services contracts under a reimbursement insurance policy
48 issued by an insurer that is authorized, registered or otherwise permitted to transact insurance in
49 the commonwealth or a surplus lines insurer authorized to do business in the commonwealth;
50 provided, further, that the reimbursement insurance policy shall be obtained from an insurer that:

51 (i) at the time the policy is filed with the commissioner, and continuously thereafter, maintains
52 surplus as to contract holders and paid-in capital of at least \$15,000,000 and annually file copies
53 of the insurer's financial statements, its NAIC annual statement, and the actuarial certification if
54 required and filed in the insurer's state of domicile; or (ii) at the time the policy is filed with the
55 commissioner, and continuously thereafter, maintains surplus as to policyholders and paid-in
56 capital of less than \$15,000,000 but at least \$10,000,000, demonstrates to the satisfaction of the
57 commissioner that the insurer maintains a ratio of net written premiums, wherever written, to
58 surplus as to contract holders and paid-in capital of not greater than 3 to 1, and annually files

59 copies of the insurer's financial statements, its NAIC annual statement, and the actuarial
60 certification if required and filed in the insurer's state of domicile; (2) (i) maintain a funded
61 reserve account for its obligations under its contracts issued and outstanding in the
62 commonwealth. The reserve account shall not be less than 40 per cent of gross consideration
63 received, less claims paid, on the sale of the service contract for all in-force service contracts and
64 shall be subject to examination and review by the commissioner; and (ii) place in trust with the
65 commissioner a financial security deposit, having a value of not less than 5 per cent of the gross
66 consideration received, less claims paid, on the sale of the service contract for all service
67 contracts issued and in force, but not less than \$25,000, consisting of 1 of the following: a surety
68 bond issued by an authorized surety; securities of the type eligible for deposit by authorized
69 insurers in the commonwealth; cash; a letter of credit issued by a qualified financial institution;
70 or another form of security authorized by the commissioner; or (3) (i) maintain, or together with
71 its parent company maintain, a net worth or stockholders' equity of \$25,000,000; and (ii) upon
72 request, provide the commissioner with a copy of the provider's or the provider's parent
73 company's most recent Form 10-K or Form 20-F filed with the United States Securities and
74 Exchange Commission within the last calendar year, or if the company does not file with the
75 United States Securities and Exchange Commission, a copy of the company's financial
76 statements showing a net worth of the provider or its parent company of at least \$25,000,000. If
77 the provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet
78 the provider's financial stability requirement, then the parent company shall agree to guarantee
79 the obligations of the provider relating to service contracts sold by the provider in the
80 commonwealth.

81 (e) Except for the requirements specified in subsections (c) and (d) above, no other registration
82 submissions or financial security requirements shall be required by the commissioner for service
83 contract providers.

84 (f) Service contracts shall require the provider to permit the service contract holder to return the
85 service contract within 20 days of the date the service contract was mailed to the service contract
86 holder or within 10 days of delivery of the service contract to the service contract holder if the
87 service contract is delivered to the service contract holder at the time of sale or within a longer
88 time period permitted under the service contract. Upon return of the service contract to the
89 provider within the applicable time period, if no claim has been made under the service contract
90 prior to its return to the provider, the service contract shall be void and the provider shall refund
91 to the service contract holder, or credit the account of the service contract holder or other payer
92 of record, if different, the full purchase price of the service contract. The right to void the service
93 contract provided in this subsection shall not be transferable and shall apply only to the original
94 service contract purchaser if no claim has been made prior to its return to the provider. A 10 per
95 cent penalty per month shall be added to a refund that is not paid or credited within 45 days after
96 return of the service contract to the provider.

97 (g) Provider fees collected on service contracts shall not be subject to section 9 of chapter 176L;
98 provided, however, that premiums for reimbursement insurance policies shall be subject to said
99 section 9 of said chapter 176L and all other general or special laws.

100 (h) Except for the registration requirements pursuant to section (c), providers and related service
101 contracts sellers, administrators and other persons marketing, selling or offering to sell service
102 contracts shall not be required to hold any other form of license granted by the commonwealth.

103 Section 149O. (a) Reimbursement insurance policies insuring service contracts issued, sold or
104 offered for sale in the commonwealth shall require the insurer that issued the reimbursement
105 insurance policy to reimburse or pay on behalf of the provider any covered sums the provider is
106 legally obligated to pay or, in the event of the provider's non-performance, shall provide the
107 service which the provider is legally obligated to perform according to the provider's contractual
108 obligations under the service contracts issued or sold by the provider.

109 (b) In the event covered service is not provided by the service contract provider within 60 days
110 of proof of loss by the service contract holder, the contract holder may apply directly to the
111 reimbursement insurance company.

112 Section 149P. Service contracts shall be printed in clear and understandable language and shall
113 include: (1) a statement in substantially the following form: "Obligations of the provider under
114 this service contract are insured under a service contract reimbursement insurance policy", or for
115 service contracts not insured under a reimbursement insurance policy a statement in substantially
116 the following form: "Obligations of the provider under this service contract are backed by the full
117 faith and credit of the provider"; (2) the name and address of the insurer, provider, any
118 administrator if different from the provider, the service contract seller and the service contract
119 holder to the extent that the name of the service contract holder has been furnished by the service
120 contract seller; (3) the total purchase price and the terms under which service contract was sold;
121 (4) the existence of any deductible amount, if applicable; (5) the property and services to be
122 provided and any limitations, exceptions, or exclusions if applicable; (6) any restrictions
123 governing the transferability of the service contract, if applicable; (7) the terms, restrictions or
124 conditions governing cancellation of the service contract prior to the termination or expiration
125 date of the service contract by either the provider or the service contract holder; provided,

126 however, that the provider of the service contract shall mail a written notice to the contract
127 holder, including the effective date of the cancellation and the reason therefore, at the last known
128 address of the service contract holder contained in the records of the provider at least 5 days
129 prior to cancellation by the provider unless the reason for cancellation is nonpayment of the
130 provider, material misrepresentation or a substantial breach of duties by the service contract
131 holder relating to the covered product or its use; (8) all of the obligations and duties of the
132 service contract holder, such as the duty to protect against any further damage and any
133 requirements to follow owner's manual; (9) whether or not the service contract provides for any
134 preexisting conditions, if applicable.

135 Section 149Q. (a) A provider shall not use in its name the words insurance, casualty, surety,
136 mutual or any other words descriptive of the insurance, casualty or surety business; or a name
137 deceptively similar to the name or description of any insurance or surety corporation, or to the
138 name or any other provider; provided, however, that the words "guaranty", "warranty" or other
139 similar words may be used.

140 (b) A provider or its representative shall not permit or cause to be made any false or misleading
141 statement, or deliberately omit any material statement that would be considered misleading if
142 omitted.

143 (c) A person shall not require the purchase of a service contract as a condition of a loan or a
144 condition for the sale of any property, but may promote, endorse or recommend the purchase
145 unless otherwise prohibited by law.

146 Section 149R. (a) The provider shall keep accurate accounts, books, and records concerning
147 transactions regulated under sections 149M through 149W. which shall include: (i) copies of each
148 type of service contract sold; (ii) the name and address of each service contract holder to the

149 extent that the name and address have been furnished to the service contract provider; and (iii)
150 written or electronic claims files which shall contain the dates and description of claims related
151 to the service contract.

152 (b) Except as provided in section 149S(b), the provider shall retain all records required to be
153 maintained by section 7 for at least 1 year after the specified period of coverage has expired.

154 (c) Records required under sections 149M through 149W, inclusive, may be maintained on a
155 computer disk or other record keeping technology. If the records are maintained in a form other
156 than hard copy, the records shall be capable of duplication to legible hard copy at the request of
157 the commissioner.

158 (d) A provider discontinuing business in the commonwealth shall maintain its records until it
159 furnishes the commissioner satisfactory proof that it has discharged all obligations to contact
160 holders in the commonwealth.

161 Section 149S. An insurer issuing a reimbursement insurance policy shall not terminate the policy
162 until a notice of termination has been mailed or delivered to the commissioner. The termination
163 of a reimbursement insurance policy shall not reduce the issuer's responsibility for service
164 contracts issued by providers prior to the date of the termination.

165 Section 149T. (a) An insurer issuing reimbursement insurance to providers shall be considered to
166 have received the premiums for such insurance upon the payment of provider fees by consumers
167 for service contracts issued by such insured providers.

168 (b) Sections 149M through 149W, inclusive, shall not prevent or limit the right of an insurer
169 which issued a reimbursement insurance policy to seek indemnification or subrogation against a
170 provider if the issuer pays or is obligated to pay the service contract holder sums that the
171 provider was obligated to pay pursuant to the provisions of the service contract.

172 Section 149U. (a) The commissioner may conduct examinations of providers, administrators,
173 insurers or other persons to enforce the provisions of sections 149M through 149V, inclusive,
174 and protect service contract holders. Upon request of the commissioner, the provider shall make
175 all accounts, books, and records concerning service contracts sold by the provider available to
176 the commissioner which are necessary to enable the commissioner to reasonably determine
177 compliance or noncompliance with sections 149M through 149W, inclusive.

178 (b)(1) The commissioner may enforce the provisions of sections 149M through 149W, inclusive.
179 The commissioner may, without limitation, issue a cease and desist order to prevent continuing
180 violations of said sections; may issue an order prohibiting a service contract provider from
181 selling or offering for sale service contracts in violation of said sections; or may issue an order
182 imposing a civil penalty on that provider or any combination of the foregoing, as applicable.

183 (2) A person aggrieved by an order issued under this paragraph may request a hearing before the
184 commissioner. Said request shall be filed with the commissioner within 20 days of the
185 commissioner's order. If a hearing is requested, an order issued by the commissioner under this
186 section shall be suspended from the original effective date of the order until completion of the
187 hearing and final decision of the commissioner. At the hearing, the burden shall be on the
188 commissioner to show why the order issued pursuant to this paragraph is justified.

189 (3) The commissioner may bring an action in any court of competent jurisdiction for an
190 injunction or other appropriate relief to enjoin threatened or existing violations of sections 149M
191 through 149W, inclusive. An action filed under this paragraph may also seek restitution on
192 behalf of persons aggrieved by a violation of said sections or orders or regulations of the
193 commissioner.

194 (4) A person who is found to have violated sections 149M through 149W, inclusive, or orders or
195 regulation of the commissioner may be assessed a civil penalty in an amount determined by the
196 commissioner of not more than \$500 per violation and not more than \$10,000 in the aggregate
197 for all violations of a similar nature. For purposes of this section, violations shall be of a similar
198 nature if the violation consists of the same or similar course of conduct, action or practice,
199 irrespective of the number of times the act, conduct or practice which is determined to be a
200 violation of said sections occurred.

201 Section 149W. The following shall be exempt from sections 149M to 149W, inclusive: (a)
202 warranties, service contracts or maintenance agreements provided by public utilities, regulated
203 by the department of telecommunications and cable or federal communications commission, or
204 by an affiliate of such entity, covering customer wiring, transmission devices serviced by such
205 public utility, or warranting services provided by such public utility or its affiliate; (b)
206 mechanical breakdown insurance policies offered by insurers otherwise licensed and regulated
207 under the insurance laws and regulations of the commonwealth; and (c) warranties, service
208 contracts or other agreements regarding automobiles.

209 Section 149X. The commissioner may promulgate rules and regulations for the administration
210 and enforcement of this act.

211 SECTION 3. A person engaged in the service contract business, as a provider or otherwise, on or
212 before the effective date of this act, who submits an application for registration as a provider
213 pursuant to this act within 30 days after the commissioner makes the application available, may
214 continue to engage in business as a provider until final agency action is taken by the
215 commissioner regarding the registration application and all rights to administrative judicial
216 review have been exhausted or expired. This act shall govern all service contracts issued after the

217 effective date of this act. Contracts in effect at the time of passage shall become covered upon
218 any renewal thereof.

219 SECTION 4. Notwithstanding any general or special law to the contrary, the marketing, sale,
220 offering for sale, issuance, making, proposing to make and administration of service contracts by
221 providers and related service contract sellers, administrators and other persons pursuant to
222 sections 149M through 149W, inclusive, of chapter 175 of the General Laws shall not be
223 considered insurance for any purpose, including, but not limited to, a service contract holder's
224 claim against a service contract provider for failure to comply with the provisions of the service
225 contract.

226 SECTION 5. Notwithstanding any general or special law to the contrary, section 149R of chapter
227 175 of the General Laws shall not apply to a company using any of the prohibited language in its
228 name prior to the effective date of said sections 149R; provided, however, that a company using
229 such prohibited language in its name shall include in its service contracts a statement in
230 substantially the following form: "This agreement is not an insurance contract."