

(H. B. 2824)
(Conference)

(No. 392)

(Approved September 8, 2000)

AN ACT

To amend the title of Chapter XXI; amend Article 21.010, add Articles 21.230 to 21.340 of Act No. 77 of June 21, 1957, as amended, known as the Insurance Code of Puerto Rico, in order to regulate service contracts in Puerto Rico, and for other purposes.

STATEMENT OF MOTIVES

It is the duty of the Government of Puerto Rico to watch over the interests of Puerto Rican consumers, who face market innovations on a daily basis as a result of the dynamics in the world economy, such as extended warranties or service contracts. Service contracts constitute a protective option that allows the buyer to maintain the goods acquired in an adequate operating and functioning condition. Said contracts offer, in exchange for the payment of fees, to make repairs or replace a product in the event it suffers specific damage or deficiencies caused by defects in the materials, or manpower, or other causes.

Service contracts have been available to consumers in the United States for many years. They constitute an alternative that offers consumers greater protection, allowing them to maintain the product they acquire in adequate operating and functioning condition. At present there is no legislation in Puerto Rico to define and specifically regulate service contracts and extended warranties. Nevertheless, they are considered as insurance under

the Insurance Code of Puerto Rico, which neither defines nor regulates them. It is the intention of this measure to assure that the service contracts issued in Puerto Rico offer the same benefits for the same risks as the contracts issued by the same providers in other jurisdictions of the United States.

Service contracts make it possible for the consumer to enjoy the product for the purposes for which it was acquired, for the longest time possible. It should be promoted that the companies in this business be regulated and supervised by the Government, so that the rights of consumers are guaranteed. By establishing said regulations, this Legislature intends that all controversies that arise under this Act shall be settled promptly.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- The title of Chapter XXI of Act No. 77 of June 19, 1957, as amended, known as the "Insurance Code of Puerto Rico" is hereby amended to read as follows:

"Chapter XXI. Automobile Clubs or Associations and Service Contracts"

Section 2.-An introductory paragraph is hereby added to Article 21.010 of Act No. 77 of June 19, 1977, as amended, known as the "Insurance Code of Puerto Rico" which shall provide the following:

"Article 21.010. - Definitions

The following definitions shall apply to Articles 21.010 to 21.220:

(a) ..."

Section 3. - Articles 21.230 through 21.330 are hereby added to Act No. 77 of June 19, 1957, as amended, known as the "Insurance Code of Puerto Rico" which shall provide the following:

"Article 21.230. - Service Contracts

The provisions of Articles 21.240 to 21.330 shall constitute a separate subchapter, which shall be applicable to service contracts, as defined below. All reference to "this subchapter" shall refer to the provisions of said Articles. Except for those provisions of this Code expressly stated in this subchapter to apply to service contracts, and by Chapters I and II, the other provisions of this Code shall not be applicable to said contracts.

Article 21.240. - Scope

This subchapter shall not apply to manufacturer's guarantees or maintenance contracts as defined hereinbelow.

Article 21.250. - Definitions

As used in this subchapter:

- (1) "Maintenance Contract" means a contract of limited duration that only provides programmed maintenance. The maintenance contract shall not include any of the obligations included in the service contract.
- (2) "Service Contract" means a contract or agreement issued in exchange for a separate identified payment, of stipulated duration, through which the repair, replacement or incidental maintenance of the goods, or compensation for said repair, replacement or maintenance that is needed due to an operating or structural deficiency that arise due to a defect in materials, labor or fair wear and tear of the goods, is to be provided. A service contract may contain additional provisions for incidental payments under specified circumstances, for services such as towing and emergency service on the road, or in the case of goods that are not a motor vehicle, to cover

damages caused by an electric power failure or accidental damage due to its use, if the latter do not constitute the main services offered in the contract. A service contract does not include insurance against mechanical failures, maintenance contracts or manufacturer's guarantee.

- (3) "Manufacturer" means a person who manufactures or produces an article and sells it under his/her name or trademark; or that is a subsidiary fully-owned by the person who manufactures or produces the article, or that is a corporation that owns one hundred (100) percent of the entity that manufactures or produces the article; or who does not manufacture or produce the article but sells it under his/her own name or trademark; or who manufactures or produces the article which is sold under the name or trademark of another person; or who does not manufacture or produce the article, but, pursuant to a written contract, authorizes another person to sell it under the name or trademark of the former.
- (4) "Manufacturer's guarantee" means the guarantee offered by the manufacturer, importer or vendor of goods or services related thereto, free of additional costs, which is not negotiated separately from the sale of the product, that is incidental to its sale and binds said manufacturer, importer or vendor, to compensate for defective parts, mechanical failure or electrical defects.
- (5) "Fees" means the total payment made in exchange of a service contract.

- (6) "Reimbursement Insurance Policy" means an insurance policy issued in behalf of a provider, whereby the insurer is bound, for the benefit of the contract holders, to execute all the obligations and responsibilities of the provider under the terms of the service contract, in the event of noncompliance with all said obligations and responsibilities by the provider. The term "all said obligations and responsibilities" includes, but is not limited to compliance with the obligations established in the service contract, and the reimbursement of unearned fees, in the event the provider does not make said reimbursement when the service contract is cancelled or terminated. A "reimbursement insurance policy" shall also be deemed to be the one whereby an insurer makes a commitment to compensate the provider for those payments or for the cost of those products or services that he/she is bound to offer under the service contracts issued by him/her, when said policy also provides for compliance with the holder of the contract, of all the obligations and responsibilities of the provider in the event of noncompliance thereof by the provider.
- (7) "Premium" means the payment made by a provider to an insurer for a reimbursement insurance policy.
- (8) "Provider" means any natural or juridical person, resident or nonresident in Puerto Rico, that is bound under a service contract.
- (9) "Non-original replacements" means replacement parts not manufactured for or by the original manufacturer of the product.

- (10) "Insurance against mechanical failures" means a policy or contract issued by an authorized insurer whereby he/she is bound to repair, replace or maintain, or to compensate for said repair, replacement or maintenance, in the event that specific goods covered by said insurance suffer operating or structural failure due to defects in the materials or labor, or caused by the normal wear and tear of said goods.
- (11) "Contract holder" means the person who acquires a service contract or that is the holder of said contract.

Article 21.260. - Requirements to do Service Contract Business

- (1) No service contract shall be issued, sold or offered for sale in Puerto Rico, unless the provider has:
- (a) provided a receipt for the acquisition of the service contract to the holder of the contract;
 - (b) provided a copy of the service contract to the holder of the contract within a reasonable period of time from the date of acquisition; and
 - (c) has complied with the provisions of this Subchapter.
- (2) Every provider who wishes to issue service contracts in Puerto Rico shall be registered with the Commissioner using the forms prescribed by the latter, and shall pay the Commissioner the sum of five hundred dollars (\$500.00) a year, no later than June 30 of each year.
- (3) In order to ensure the faithful compliance of the obligations to the contract holders, each provider shall comply with at least one of the following requirements:

- (a) insure every contract issued under a reimbursement insurance policy; or
- (b) maintain an adequately backed reserve, to satisfy all obligations in effect under service contracts issued in Puerto Rico. Said reserve shall not be less than forty percent (40%) of the gross fees received for all contracts, and shall be deposited in a trust constituted under the laws of Puerto Rico with the prior approval of the Commissioner. Said deposit shall be made in installments due forty-five (45) days after the close of each quarter in which the provider issues service contracts in Puerto Rico. The trust shall accredit to its funds the income received from the investment of its assets, which shall be carried out pursuant to the same standards that apply to the investments of the insurers of the country under this Code. The trustee in charge of the administration of the trust shall also be approved by the Commissioner, and shall be domiciled in Puerto Rico and shall operate the trust from this jurisdiction. The Commissioner shall establish, through regulations, the norms for the use or withdrawal of funds from the trust, as well as for its liquidation if experience shows that the reserve of a provider is inadequate, the Commissioner shall require it to be increased in the amount needed to make it adequate. In addition to said reserve, provided the option in this Article is used, the provider shall fiducially deposit a financial guaranty with the Commissioner, in the amount of one hundred thousand (100,000) dollars, using one of the following options:

- i. Post and keep in effect a financial security bond, issued by a licensed insurer in Puerto Rico, with the prior approval of the Commissioner. Said bond shall not be subject to cancellation, unless the Commissioner is given written notice, not less than sixty (60) days prior to the canceling thereof.
 - ii. Deposit assets eligible for deposit of the same type allowed to insurers, in the amount of the financial guarantee.
 - iii. Deposit a certificate of deposit issued by a commercial bank authorized to do business in Puerto Rico.
 - iv. Deposit a clear, unconditional and irrevocable letter of credit issued by an acceptable financial institution. A "clear, unconditional and irrevocable letter of credit" is one that is not conditioned to any other agreement, document or contract; that the sole presentation of a sight draft is sufficient to draw funds against it; and it cannot be modified without the consent of the provider. An "acceptable financial institution" is one that is organized under the laws of Puerto Rico, the United States or any of its states; that is supervised and examined by state and federal entities that have regulatory authority over financial institutions, and is not a subsidiary or affiliate owner of the provider; or
- c. Maintain, or the parent company shall maintain a net worth of one hundred (100) million dollars, and if required by the Commissioner, furnish the Commissioner a copy of the most

recent Form 10-K or Form 20-F filed before the Security Exchange Commission (SEC), a copy of the financial statement of the provider, or of its parent company, certified by a certified public accountant that shows that the net worth of the provider or of the parent company is not less than one hundred (100) million dollars. Provided, that the said forms 10-K or 20-F, or the audited financial statements of the parent company are used to show that it complies with the requirement established herein, the parent company shall agree to secure all the obligations of the provider related to the service contracts sold by it in Puerto Rico.

- (4) The fees shall not be subject to premium taxes. Notwithstanding the above, if the provider acquires an insurance reimbursement policy, the corresponding premium shall be subject to the premium tax that applies to it pursuant to this Code.
- (5) Every authorized provider shall be liable for the acts or omissions of the persons or entities that act in representation of the provider; provided that said acts and omissions are related to the promotion, sale and offering of the service contracts of the provider.
- (6) No provider shall issue, deliver or use any service contract form, or application form or other addenda, unless it has first been presented to, and approved by the Commissioner; no person shall issue, nor deliver any form whatsoever that has not thus been presented to, and approved by him/her.

- (7) The provisions of Sections 11.020, 11.030, 11.050, 11.060, 11.080, 11.090, 11.100, 11.120, 11.130, 11.140, 11.150, 11.160, 11.170, 11.180, 11.200, 11.230, 11.240, 11.250, 11.260, 11.280, 11.360, 11.370, of this Code related to the service contracts, shall be applicable to the service contracts, in the measure that they are compatible, except with regard to those instances in which there is a more specific provision in this subchapter.

Article 21.270. – Reimbursement Insurance Policy – Required Disclosures

- (1) Every reimbursement insurance policy that insures service contracts issued, sold or offered for sale in Puerto Rico, shall specifically and visibly state, that when the provider incurs noncompliance of the service contract, such as the failure to return the unearned fees received, the insurer that issued the policy shall pay the holder of the contract whichever sums that the provider is legally bound to pay pursuant to the service contract issued by him/her, or shall provide the service that the provider is legally bound to provide according to the contractual obligations under the service contract issued by the provider.
- (2) Nothing provided in this Article shall imply that the insurer is exempted from the applicable provisions of Chapter XI of this Code.

Article 21.280. – Required Disclosures – Service Contracts

- (1) Every service contract that is issued, sold or offered for sale in Puerto Rico shall be written in clear and intelligible language,

and the entire contract shall be legibly printed or typewritten, and shall clearly establish the requirements provided in this Article, as applicable.

- (2) Every service contract insured under a reimbursement insurance policy pursuant to Section 21.260(3)(a), shall contain a statement that substantially bears the following information: “The obligations of the provider under this service contract are guaranteed under a reimbursement insurance policy. If the provider does not pay, or does not provide a service claimed within sixty (60) days following the notice of the claim, the holder of the contract shall be entitled to file a claim directly with the insurer that offers said policy”. Under a reimbursement insurance policy, any payment not accrued by the provider may be claimed from the insurer. The service contract shall also visibly state the name and address of the insurer.
- (3) Every service contract not insured under a reimbursement insurance policy pursuant to Section 21.260(3)(a), shall contain a statement that substantially has the following information: “The obligations of the provider under this service contract are guaranteed solely by the full faith and credit of the provider”.
- (4) By virtue of the service contract, the return of unearned fees may be claimed from the provider. The service contract shall also visibly state the name and address of the provider. The service contract shall identify the person that will provide the service under the contract, the vendor of the service contract, and the holder of the contract, if known.

- (5) Every service contract shall visibly state the total price and the terms under which it is sold.
- (6) If prior approval is required to obtain services, the service contract shall clearly and simply establish the procedure to obtain said prior approval and to file a claim, including a toll-free telephone number for the service of claims, and, in the case of motor vehicle service contracts, a procedure to obtain emergency repairs outside of regular business hours.
- (7) Every service contract shall clearly and visibly state whether there is a deductible, and if so, what the deductible amount is.
- (8) Every service contract shall specify the products and services that shall be provided, as well as any applicable limitations, exceptions or exclusions.
- (9) Every motor vehicle service contract shall state the conditions under which the use of non-original replacements shall be allowed.
- (10) Every service contract shall state any terms, restrictions or conditions that govern its transfer to third parties.
- (11) Every service contract shall indicate the terms, restrictions or conditions that govern the termination or cancellation thereof, either by the holder of the contract or the provider. In the last case, the provider shall send a written notice to the holder of the contract by mail, at least fifteen (15) days prior to the termination or cancellation of the service contract. Said notice shall establish the effective date of the cancellation or termination and the reason therefor. Notwithstanding the above, the service contract may provide for the immediate

cancellation or termination in cases of false or fraudulent representations that are material for the issuing of the contract, or that the provider in good faith had not issued the service contract, if the true facts had been made known to him/her.

- (12) Every service contract shall have a provision that will allow the holder of the contract to return the service contract within a term of not less than ten (10) days from the delivery of the service contract to the holder of the contract, or, if the service contract were remitted by mail, within a term of not less than twenty (20) days from the date of said remittance, or in a longer period allowed by the contract. Provided the holder of the contract exercises such right, and has not presented any claim under the service contract, it shall be null and the provider will reimburse or credit the complete fee corresponding to the service contract, to the holder of the contract. A penalty of ten percent (10%) a month shall be imposed on said fee, that shall be added to any reimbursement or credit required by this section that is not paid within thirty (30) days following the date that the holder returns the service contract to the provider.
- (13) Every service contract shall establish all the obligations and duties of the holder of the contract, such as the obligation to protect the property against any additional damage and the obligation to give maintenance and service to it.
- (14) Every service contract shall clearly establish if it excludes subsequent damages or pre-existing conditions.

Article 21.290. –Prohibited Acts

- (1) No provider shall use in his name nor shall identify him/herself using words such as insurance, contingency, guarantee, bond, mutual, or any other words that describe the insurance business, or a name that is deceitfully similar to the name or description of any insurance or warranty insurance corporation, or of any other provider.
- (2) No person shall make, or otherwise verbally divulge any announcement, information, matter, statement or anything that will misconstrue or exaggerate the terms of a service contract or a reimbursement policy, or the benefits and advantages thereof, nor shall intentionally omit any material statement that would be considered deceitful when omitted, in connection with the sale, an offer for sale, or advertisement of a service contract.
- (3) No person shall bind nor condition the granting of a loan, or the sale of any goods, to the acquisition of a service contract.

Article 21.300. – Books and files

- (1) Every provider shall keep exact accounts, books and files of the transactions regulated under this subchapter.
- (2) The accounts, books and files of a provider shall, at least, include the following:
 - a. Copies of each type of service contract issued;
 - b. The name and address of each holder of a contract in the measure that this information has been provided by the holder of the contract;
 - c. A list of the places in which the provider promotes, sells or offers service contracts for sale; and

- d. The claim files, which shall at least contain the date, amount and description of each receipt, claim or expense related to the service contracts.
- (3) With the exception of what is provided in Subsection 5 of this Article, every provider shall keep the pertinent files of each holder of a contract for a period of not less than three years after the term of each coverage has expired.
- (4) The providers may keep all the files required under this subchapter electronically or by similar filing systems. In said case, the files shall be readily accessible to the Commissioner from a terminal or other scanning device and shall have the capacity to be printed in a legible manner.
- (5) Any provider who discontinues his/her business in Puerto Rico shall keep his files until he/she can present sufficient satisfactory evidence to the Commissioner that he/she has complied with all his/her obligations towards the holders of contracts in Puerto Rico.

Article 21.310. – Cancellation or non-renewal of reimbursement insurance policies

No insurer who has issued a reimbursement insurance policy shall cancel or refuse to renew the policy, unless he/she hands or sends a notice to such effect, at least sixty (60) days prior to the date that said cancellation or non-renewal becomes effective. A copy of the cancellation or non-renewal notice shall also be sent to the Commissioner, so that he may determine the subsequent compliance by the provider of the provisions of this subchapter. The termination of a reimbursement insurance policy shall not, in any way,

affect the liability of the insurer for service contracts issued prior to the cancellation or non-renewal date.

Article 21.320. – Obligation to Reimburse

Once a contract holder pays the corresponding service contract fee to a provider, and provided said service contract is insured under a reimbursement insurance policy, the holder of the contract shall be entitled to any benefit provided by the policy, regardless of whether the provider has paid or not the premium of the corresponding reimbursement insurance policy. The above provision shall not affect the reciprocal rights and obligations between the insurer and the provider. In those cases in which a provider recruits other persons for the promotion and sale of service contracts covered under a reimbursement insurance policy, the provider shall have the obligation of notifying the insurer of the identity of said other persons.

Section 21.330. – Service contracts in other jurisdictions

- (1) Every service contract provider under this subchapter shall inform the Commissioner, within the term the Commissioner provides through regulations, whether the provider or any entity affiliated or related to him/her issues the same or similar service contracts to other jurisdictions of the United States. In the event that the provider reports that it or any affiliated or related entity issues the same or similar service contracts to residents of other United States jurisdictions, the provider shall certify to the Commissioner that the service contracts issued under this subchapter to residents of Puerto Rico offer substantially the same benefits for the same risks as the service contracts issued in other jurisdictions of the United States.

- (2) In the event that the provider cannot produce the certification required by this Article, the Commissioner shall not authorize the issue of new service contracts under this subchapter, unless the provider submits a plan to match the benefits within a term that the Commissioner deems reasonable. Nothing in this Article shall be interpreted as to create a private cause of action in behalf of the holders of service contracts, applicants for said contracts and any other person, in the event that a provider does not provide the equal benefits stated in this Article.

Article 21.340. – Compliance Provisions

- (1) The Commissioner shall have all the powers and prerogatives that are prescribed in Chapter II of this Code to enforce the provisions of this subchapter and protect the holders of contracts.
- (2) The Commissioner shall take any action that is necessary and appropriate to enforce the provisions of this subchapter and promulgate the regulations and issue the orders needed to protect the holders of contracts, provided, that said regulations shall include the specific terms that the Commissioner shall have, to handle and resolve any issue pursuant to said regulations.
- (3) Violations of this subchapter shall be subject, among others that could otherwise be applicable, to the sanctions provided by Article 27.300 of this Code.
- (4) Any person that is affected by an act of the Commissioner under this subchapter may request a hearing before the

Commissioner pursuant to the provisions found in Chapter II of this Code.

- (5) The Authority of the Commissioner under this Article does not limit any other authority conferred on him/her by the laws of Puerto Rico.

Section 4. - Saving Clause.

If any word, clause, paragraph, article or part of this Act were to be declared null or invalid by a court of competent jurisdiction, the order issued by it shall not affect nor invalidate the remaining provisions thereof and its effect shall be limited to the word, clause, paragraph, article or part thereof that has been thus declared.

Section 5. - Effectiveness

This Act shall take effect immediately after its approval.

September 19, 2002

Elba Rosa Rodríguez-Fuentes, Esq., Director of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that she has duly compared the English and Spanish texts of Act No. 392 (H.B. 2824) (Conference) of the 7th Session of the 13th Legislature of Puerto Rico, entitled:

AN ACT to amend the title of Chapter XXI; amend Article 21.010, add Articles 21.230 to 21.340 of Act No. 77 of June 21, 1957, as amended, known as the Insurance Code of Puerto Rico, in order to regulate service contracts in Puerto Rico, and for other purposes,

and finds the same are complete, true and correct versions of each other.

Elba Rosa Rodríguez-Fuentes