

SENATE NO. 246

AN ACT 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
2 Chapter 175 of the Massachusetts General Laws as appearing in the 2004 Official Edition are
3 hereby repealed.

4 SECTION 2. Chapter 175 of the Massachusetts General Laws, as appearing in the 2004 Official
5 Edition is hereby amended by inserting after Section 149L, the following new sections:—
6 Section 149M. As used in sections 149M to 149W the following words shall, unless the context
7 clearly requires otherwise, have the following meanings:— “Administrator”, the person who is
8 responsible for the administration of the service contracts or the service contracts plan.
9 “Commissioner”, the commissioner of insurance of this state. “Consumer”, a natural person
10 who buys other than for purposes of resale and tangible personal property that is distributed in
11 commerce and that is normally used for personal, family or household purposes and not for
12 business or research purposes.

13 “Home Service Contract” or “service contract”, a contract or agreement for a separately stated
14 consideration for a specific duration to perform the service, repair, replacement, or maintenance
15 of property or indemnification for repair, replacement, or maintenance, for the operational or
16 structural failure due to a defect in materials or workmanship, or normal wear and tear, with or
17 without additional provision for incidental payment or indemnity under limited circumstances,
18 for related expenses, including, but not limited to, rental, and food spoilage. Service contracts
19 may
20 provide for the service repair, replacement or maintenance of property for damage resulting
21 from power surges and accidental damage from handling; and may provide for leak or repair
22 coverage
23 to house roofing systems. “Home service contract holder” or “contract holder”, a consumer who
24 is the purchaser or holder of a service contract. “Person”, an individual, partnership,
25 corporation, incorporated or unincorporated association, joint stock company, reciprocal,
26 syndicate or any similar entity or combination or entities acting in concert. “Premium”, the
27 consideration paid to an insurer for the reimbursement insurance policy. “Provider”, a person
28 who is contractually obligated to the service contract holder under the terms of the home service
29 contract. “Reimbursement insurance policy”, a policy of insurance
30 issued to a provider to either provide reimbursement to the provider under the terms of the
31 insured service contracts issued or sold by the provider or, in the event of the provider’s non-
32 performance, to pay on behalf of the provider all covered contractual obligations incurred by the
33 provider under the terms of the insured home service contracts issued or sold by the provider.

34 “Warranty”, a warranty made solely by the manufacturer, importer or seller of property or
35 services without consideration, that is not negotiated or separated from the sale of the product
36 and
37 is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical
38 or electrical breakdown, labor or other remedial measures, such as repair or replacement of the
39 property or repetition of services. Section 149N. The following shall be exempt from sections
40 149M to 149W: (a) Warranties, service contracts of maintenance agreements offered by public
41 utilities on their transmission devices to the extent they are regulated by the Department of
42 Telecommunications and Energy; (b) Insurers otherwise licensed and regulated under the
43 insurance laws and regulations; or (c) Warranties, service contracts or other agreements
44 regarding automobiles. Section 149O (a) A provider may, but is not required to, appoint an
45 administrator or other designee to be responsible for any or all of the administration of service
46 contracts and compliance with sections 149M to 149W. (b) Service contracts shall not be
47 issued, sold or offered for sale in this state unless the provider has: (1) Provided a receipt for, or
48 other written evidence of, the purchase
49 of the service contract to the contract holder; and (2) Provided a copy of the service contract to
50 the service contract holder within a reasonable period of time from the date of purchase. (c)
51 Each provider of service contracts sold in this state shall file a registration with the
52 commissioner consisting of their name, full corporate address, phone and contact person and
53 designate a person in this state for service of process. Each provider shall pay to the
54 commissioner a fee in the amount of six hundred dollars (\$600) upon initial registration and
55 every three years thereafter. (d) In order to assure the faithful performance of a provider’s
56 obligations to its contract holders, each provider shall be responsible for complying with the

57 requirements of one of the following subdivisions: (1) Insure all services contracts under a
58 reimbursement insurance policy issued by an insurer that is authorized, registered or otherwise
59 permitted to transact insurance in this state or a surplus lines insurer authorized pursuant to the
60 laws of this state. The reimbursement insurance shall be obtained from an insurer that meets one
61 of the following requirements i. at the time the policy is filed with the commissioner, and
62 continuously thereafter, maintains surplus as to contract holders and paid-in capital of at least
63 \$15 million and annually file copies of the insurer's financial statements, its NAIC annual
64 statement, and the actuarial certification if required and filed in the insurer's state of domicile;
65 or ii. at the time the policy is filed with the director, and continuously thereafter, maintains
66 surplus as to policyholders and paid-in capital of less than \$15 million but at least equal to \$10
67 million, demonstrates to the satisfaction of the commissioner that the insurer maintains a ratio of
68 net written premiums, wherever written, to surplus as to contract holders and paid-in capital of
69 not greater than three (3) to one (1), and annually files copies of the insurer's financial
70 statements, its NAIC annual statement, and the actuarial certification if required and filed in the
71 insurer's state of domicile; or (2) i. Maintain a funded reserve account for its obligations under
72 its contracts issued and outstanding in this state. The reserve shall not be less than forty percent
73 (40%) of gross consideration received, less claims paid, on the sale of the service contract
74 for all in-force service contracts. The reserve account shall be subject to examination and review
75 by the commissioner; and ii. Place in trust with the commissioner a financial security
76 deposit, having a value of not less than five percent (5%) of the gross consideration received,
77 less claims paid, on the sale of the service contract for all service contracts issued and in force,
78 but

79 not less than \$25,000.00, consisting of one of the following: a surety bond issued by an
80 authorized surety; securities of the type eligible for deposit by authorized insurers in this state;
81 cash; a letter of credit issued by a qualified financial institution; or another form of security
82 prescribed by regulations issued by the
83 commissioner;

84 (3) i. Maintain, or together with its parent company maintain, a
85 net worth or stockholders' equity of \$25 million; and ii. Upon request, provide the
86 commissioner with a copy of the provider's or the provider's parent company's most recent
87 Form
88 10-K or Form 20-F filed with the Securities and Exchange Commission
89 (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the
90 company's financial statements, which shows a net worth of the provider or its parent
91 company of at least \$25 million. If the provider's parent company's Form 10-K, Form 20-F, or
92 financial statements are filed to meet the provider's financial stability requirement, then the
93 parent company shall agree to guarantee the obligations of the provider relating to service
94 contracts sold by the provider in this state. (e) Except for the requirements specified in sections
95 c and above, no other registration submissions or financial security
96 requirements shall be required by the commissioner for service contract providers. (f) Service
97 contracts shall require the provider to permit the service contract holder to return the service
98 contract within 20 days of the date the service contract was mailed to the service contract holder
99 or within 10 days of delivery if the service contract is delivered to the service contract holder at
100 the time of sale or within a longer time period permitted under the service contract. Upon
101 return of the service contract to the provider within the applicable time period, if no claim has

102 been made under the service contract prior to its return to the provider, the service contract is
103 void and the provider shall refund to the service contract holder, or credit the account of the
104 service contract holder or other payer of record, if different, the full purchase price of the
105 service contract. The right to void the service contract provided in this subsection is not
106 transferable and shall apply only to the original service contract purchaser, and only if no claim
107 has been made prior to its return to the provider. A ten per cent penalty per month shall be
108 added to a refund that is not paid or credited within 45 days after return of the service contract
109 to the provider.

110 (g) Premium Taxes: (1) Provider fees collected on service contracts shall not be
111 subject to premium taxes. (2) Premiums for reimbursement insurance policies shall be
112 subject to premium and all other applicable taxes. (h) Except for the registration requirements in
113 section c, providers and related service contracts sellers, administrators, and other persons
114 marketing, selling or offering to sell service contracts are exempt from any licensing
115 requirements of this state.

116 (i) A service contract is not insurance for any purpose, including, but not limited to, compliance
117 with the Massachusetts general laws, other than for the purpose of a service contract holder's
118 claim against a service contract provider for failure to comply with the provisions of the service
119 contract if so provided by other law. (j) The marketing, sale, offering for sale, issuance, making,
120 proposing to make and administration of service contracts by providers and related service
121 contract sellers, administrators, and other persons shall be exempt from all other provisions of
122 this state's insurance law. This shall include any non consumer, commercial service contract.
123 Any persons not licensed and regulated under this chapter shall subject to the Massachusetts
124 Consumer Protection Act.

125 Section 149P. (a) Reimbursement insurance policies insuring service contracts issued, sold or
126 offered for sale in this state shall state that the insurer that issued the reimbursement insurance
127 policy shall either reimburse or pay on behalf of the provider any covered sums the provider is
128 legally obligated to pay or, in the event of the provider's non-performance, shall provide the
129 service which the provider is legally obligated to perform according to the provider's
130 contractual obligations under the service contracts issued or sold by the provider. (b) In the
131 event covered service is not provided by the service contract provider within 60 days of proof of
132 loss by the service contract holder, the contract holder is entitled to apply directly to the
133 reimbursement insurance company.

134 Section 149Q. (a) Service contracts marketed, sold, offered for sale, issued, made proposed to
135 be made, or administered in this state shall be written, printed, or typed in clear, understandable
136 language that is easy to read, and shall disclose the requirements set forth in this section, as
137 applicable. (b) Service contracts insured under a reimbursement insurance policy pursuant to
138 section 149(d)(1) of this Act shall contain a statement in substantially the following form:
139 "Obligations of the provider under this service contract are insured under a service contract
140 reimbursement insurance policy." The service contract shall also state the name and address of
141 the insurer.

142 (c) Service contracts not insured under a reimbursement insurance policy pursuant to section
143 149(d)(1) of this Act shall contain a statement in substantially the following form: "Obligations
144 of the provider under this service contact are backed by the full faith and credit of the provider."

145 (d) Service contracts shall state the name and address of the provider, and shall identify any
146 administrator if different from the provider, the service contract seller, and the service contract
147 holder to the extent that the name of the service contract holder has been furnished by the

148 service contract holder. The identities of such parties are not required to be preprinted on the
149 service contract and may be added to the service contract at the time of sale. (e) Service contracts
150 shall state the total purchase price and the terms under which service contract is sold. The
151 purchase price is not required to be pre-printed on the service contract and may be negotiated at
152 the time of sale with the service contract holder. (f) Service contracts shall state the existence of
153 any deductible amount, if applicable. (g) Service contracts shall specify the property and
154 services to
155 be provided and any limitations, exceptions, or exclusions. (h) Service contracts shall state any
156 restrictions governing the transferability of the service contract, if applicable. (i) Service
157 contracts shall state the terms, restrictions or conditions governing cancellation of the service
158 contract prior to the termination or expiration date of the service contract by either the provider
159 or the service contract holder. The provider of the service contract shall mail a written notice to
160 the contract holder at the last known address of the service contract holder contained in the
161 records of the provider at least five (5) days prior to cancellation by the provider. Prior notice is
162 not required if the reason for cancellation is nonpayment of the provider, material
163 misrepresentation, or a substantial breach of duties by the service contract holder relating to the
164 covered product or its use. The notice shall state the effective date of the cancellation and the
165 reason for the
166 cancellation. (j) Service contracts shall set forth all of the obligations and duties of the service
167 contract holder, such as the duty to protect against any further damage and any requirements to
168 follow owner's manual. (k) Service contracts shall state whether or not the service contract
169 provides for any preexisting conditions, if applicable.

170 Section 149R. (a) A provider shall not use in its name the words insurance, casualty, surety,
171 mutual or any other words descriptive of the insurance, casualty or surety business; or a name
172 deceptively similar to the name or description of any insurance or surety corporation, or to the
173 name or any other provider. The words “guaranty, “warranty” or similar words may be used by
174 the provider. This section shall not apply to a company that was using any of the prohibited
175 language in its name prior to the effective date sections 149M through 149W. However, a
176 company using the prohibited language in its name shall include in its service contracts a
177 statement in substantially the following form: “This agreement is not an insurance contract.”

178 (b) A provider or its representative shall not in its service contracts or literature make, permit or
179 cause to be made any false or misleading statement, or deliberately omit any material statement
180 that would be considered misleading if omitted. (c) A person, such as a bank, savings and loan
181 association, lending institution, manufacturer, or seller of any product, shall not require the
182 purchase of a service contract as a condition of a loan or a condition for the sale of any property,
183 but may promote, endorse or recommend the purchase unless otherwise prohibited
184 by law.

185 Section 149S. (a)Books and Records: (1) The provider shall keep accurate accounts, books, and
186 records concerning transactions regulated under sections 149M through 149W. (2) The
187 provider’s accounts, books, and records shall include the following: i. Copies of each type of
188 service contracts sold; ii. The name and address of each service contract holder to the extent that
189 the name and address have been furnished to the service contract provider; iii. Written or
190 electronic claims files which shall contain at least the dates and description of claims related to
191 the service contract. (3) Except as provided in section 149S(b), the provider shall retain all

192 records required to be maintained by section 7 for at least one (1) year after the specified period
193 of coverage has
194 expired. (4) The records required under sections 149M through 149W may be, but are not
195 required to be maintained on a computer disk or other record keeping technology. If the records
196 are maintained in other than hard copy, the records shall be capable of duplication to legible
197 hard copy at the request of the commissioner. (b) A provider discontinuing business in this state
198 shall maintain its records until it furnishes the commissioner satisfactory proof that it has
199 discharged all obligations to contact holders in this state.

200 Section 149T. As applicable, an insurer that issued a reimbursement insurance policy shall not
201 terminate the policy until a notice of termination in accordance with Chapter 175 has been
202 mailed or delivered to the commissioner. The termination of a reimbursement insurance policy
203 shall not reduce the issuer's responsibility for service contracts issued by providers prior to the
204 date of the
205 termination.

206 Section 149U. (a) Insurers issuing reimbursement insurance to providers are deemed to have
207 received the premiums for such insurance upon the payment of provider fees by consumers for
208 service contracts issued by such insured providers. (b) This sections 149M through 149W shall
209 not prevent or limit the right of an insurer which issued a reimbursement insurance policy to
210 seek indemnification or subrogation against a provider if the issuer pays or is obligated to pay
211 the service contract holder sums that the provider was obligated to pay pursuant to the
212 provisions
213 of the service contract.

214 Section 149V. (a) The commissioner may conduct examinations of providers, administrators,
215 insurers or other persons to enforce the provisions of sections 149M through 149W and protect
216 service contract holders in this state. Upon request of the commissioner, the provider shall make
217 all accounts, books, and records concerning service contracts sold by the provider in this state
218 available to the commissioner which are necessary to enable the commissioner to reasonably
219 determine compliance or noncompliance with sections 149M through 149W. (b) The
220 commissioner may take action which is necessary or appropriate to enforce the provisions of
221 sections 149M through 149W and to protect service contract holders in this state. 1. If a
222 provider has violated the sections 149M through 149W, the commissioner may issue an order
223 directed to that provider to cease and desist from committing violations of said sections; may
224 issue an order prohibiting a service contract provider from selling or offering for sale service
225 contracts in violation of said sections; or may issue an order imposing a civil penalty on that
226 provider, or
227 any combination of the foregoing, as applicable. i. A person aggrieved by an order issued under
228 this paragraph may request a hearing before the commissioner. The hearing request shall be
229 filed with the commissioner within 20 days of the date the commissioner's order is effective: ii.
230 If a hearing is requested, an order issued by the commissioner under this section shall be
231 suspended from the original effective date of the order until completion of the hearing and
232 final decision of the commissioner; and iii. At the hearing, the burden shall be on the
233 commissioner to show why the order issued pursuant to this paragraph is justified.
234
235 The provisions of Chapter 175 shall apply to a hearing request under this section.

236 2. The commissioner may bring an action in any court of competent jurisdiction for an
237 injunction or other appropriate relief to enjoin threatened or existing violations of sections
238 149M through

239 149W. An action filed under this paragraph may also seek restitution on behalf of persons
240 aggrieved by a violation of said sections or orders or regulations of the commissioner.

241 3. A person who is found to have violated sections 149M through 149W or orders or regulation
242 of the commissioner may be assessed a civil penalty in an amount determined by the
243 commissioner of not more than five hundred dollars (\$500.00) per violation and no more than
244 ten thousand dollars (\$10,000) in the aggregate for all violations of a similar nature. For
245 purposes of this section, violations shall be of a similar nature if the violation consists of the
246 same or similar course of conduct, action, or practice, irrespective of the number of times the
247 act, conduct, or practice which is determined to be a violation of said sections occurred.

248 Section 149W. The Commissioner may promulgate reasonable rules and regulations necessary
249 to implement this Act but may not enlarge upon the authority provided by this Act.

250 SECTION 3. This Act shall govern all home service contracts issued after the effective date of
251 this Act. Contracts in effect at the time of adoption shall become covered upon any renewal
252 thereof.

253 SECTION 4. This Act shall become effective immediately upon its passage and approval by the
254 Governor, or upon its otherwise becoming a law.