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OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR

DEC 1 2017

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Today, I am transmitting to the Council of the District of Columbia for its consideration and enactment, the "Service Contract Regulation and Enforcement Act of 2017."

A service contract, sometimes called a service agreement, service warranty, extended warranty or a protection plan, is a prolonged agreement offered to consumers for purchase in addition to the standard warranty on newly purchased items. A service contract generally promises to repair, replace or indemnify the consumer against defects in the material or workmanship relating to the purchased items, after expiration of the manufacturer's warranty. Service contracts can cover automobiles, home appliances, as well as consumer products (such electronics and similar equipment).

The bill will create a legal framework within which service contracts may be sold and regulated in the District, while providing effective and efficient consumer protection around the marketing and sale of service contracts. The legislation is designed to encourage innovation in the marketing and development of more economical and effective means of providing services under service contracts as well as encourage fair and effective competition which allows consumers to compare the price and quality of service contracts and included services across providers.

Providing a regulatory framework for service contracts is consistent with the District's commitment to ensuring that consumers are well-protected in every aspect of the marketplace, and with best practices nationwide. Accordingly, I urge the Council to act favorably and expeditiously on the proposed bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser".

Muriel Bowser

Enclosures



Chairman Phil Mendelson
at the Request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To create a legal framework within which service contracts may be sold and regulated in the District; provide effective and efficient consumer protection around the marketing and sale of service contracts; encourage innovation in the marketing and development of more economical and effective means of providing services under service contracts; and permit and encourage fair and effective competition which allows consumers to compare price and quality of services across providers.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this act may be cited as the "Service Contract Regulation and Enforcement Act of 2017".

Sec. 2. Definitions.

For the purposes of this act:

(1) "Administrator" means a person, other than the provider of a service contract or an employee of the provider, who is responsible for the third-party administration of a service contract and who can be designated with the responsibility for any filings required by this act.

(2) "Commercial transaction" means an interaction between non-consumer parties in which goods, services or something of value is exchanged for some type of remuneration.

(3) "Commissioner" means the Commissioner of the Department.

(4) "Conspicuously", with reference to a term, means written, displayed, or presented so that a reasonable person against which it is to operate ought to have noticed it.

35 Whether a term is stated conspicuously or not is a decision for the court. Conspicuously stated
36 terms include the following:

37 (A) A heading in capitals equal to or greater in size than the surrounding
38 text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

39 (B) Language in the body of a record or display in larger type than the
40 surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or
41 set off from surrounding text of the same size by symbols or other marks that call attention to the
42 language.

43 (5) “Consumer” means a natural person who buys, other than for purposes of
44 resale, any goods or services that are distributed in commerce and that are generally used for
45 personal, family or household purposes, including fixtures, and not for business or research
46 purposes.

47 (6) “Department” means the Department of Insurance, Securities, and Banking.

48 (7) “Maintenance agreement” means a contract of limited duration that provides
49 solely for scheduled maintenance.

50 (8) “Manufacturer” means a person that:

51 (A) Manufactures or produces the goods or services and sells the goods or
52 services under its own name or label;

53 (B) Is a wholly owned subsidiary of the person who manufactures or
54 produces the goods or services;

55 (C) Is a corporation which owns 100% of the person who manufactures or
56 produces the goods or services;

57 (D) Does not manufacture or produce the goods or services, but the goods
58 or services are sold under its trade name or label; or

59 (E) Manufactures or produces the goods or services and the goods or
60 services are sold under the trade name or label of another person.

61 (9) "Mechanical breakdown insurance" means a policy, contract or agreement
62 issued by an insurer that provides for the repair, replacement, or maintenance of goods or
63 indemnification for repair, replacement, or maintenance, for the operational or structural failure
64 of the goods due to a defect in materials or workmanship or to normal wear and tear.

65 (10) "Non-original manufacturer's parts" means replacement parts not made for
66 or by the original manufacturer of the good.

67 (11) "Person" means an individual, partnership, corporation, incorporated or
68 unincorporated association, joint stock company, syndicate or any similar entity or combination
69 of entities acting in concert.

70 (12) "Premium" means the consideration paid to an insurer for a reimbursement
71 insurance policy.

72 (13) "Provider" is a person that is contractually obligated to the service contract
73 holder under terms of the contract and that administers, issues, makes, provides, sells, or offers to
74 sell a service contract.

75 (14) "Provider fee" means the consideration paid for a service contract.

76 (15) "Reimbursement insurance policy" means a policy of insurance issued to a
77 provider to either provide reimbursement to the provider under the terms of the insured service
78 contract issued or sold by the provider or, in the event of the provider's non-performance, to pay
79 on behalf of the provider all covered contractual obligations and liabilities incurred by the

80 provider under the terms of the insured service contracts issued or sold by the provider. This
81 includes the return of an unearned provider fee in the event of termination of a service contract.

82 (16) "Seller" means a person, other than the provider or administrator of a service
83 contract, who markets, sells, offers to sell, negotiates, or issues a service contract to a consumer
84 on behalf of a provider.

85 (17) "Service contract":

86 (A) Means an agreement:

- 87 (1) For a separately stated consideration or for a specific duration;
88 (2) To perform the repair, replacement or maintenance of goods, or
89 to provide indemnification for repair, replacement or maintenance of those goods, for the
90 operational or structural failure due to a defect in materials, workmanship or normal wear and
91 tear, or other damages or loss;

92 (3) With or without additional provision for incidental payment of
93 indemnity under limited circumstances;

94 (B) Includes:

- 95 (1) An agreement for towing,
96 (2) An agreement for rental and emergency road service; or
97 (3) An agreement for any extension of a warranty; and

98 (C) Does not include mechanical breakdown insurance or maintenance
99 agreements.

100 (18) "Service contract holder" means a person who is the purchaser or holder of a
101 service contract.

102 (19) "Third-party administration":

103 (A) Includes:

104 (1) Performing or arranging the collection, maintenance, or
105 disbursement of money to compensate any party for claims or repairs pursuant to a service
106 contract;

107 (2) Participating in processing or adjustment of claims arising
108 under a service contract;

109 (3) Maintaining records required by the provisions of this act; and

110 (4) Complying with the providers' requirements, other than the
111 financial security requirements, or taxes required of the provider; and

112 (B) Does not include the performance of repairs, or clerical functions
113 ancillary to the performance of repairs, by a repair facility that performs no other activities with
114 respect to a service contract.

115 (20) "Warranty" means a guarantee that:

116 (A) Is made solely by the manufacturer, importer or seller of goods or
117 services without charge;

118 (B) Is not negotiated or separated from the sale of the goods or services
119 and is incidental to the sale of the goods or services; and

120 (C) Guarantees indemnity for defective parts, mechanical or electrical
121 breakdown, labor or other remedial measures, such as repair or replacement of the goods or
122 repetition of services.

123 Sec. 3. Scope and Exemptions.

124 (a) This act shall not apply to:

125 (1) Warranties;

126 (2) Maintenance agreements;
127 (3) Commercial transactions; and
128 (4) Warranties, service contracts or maintenance agreements offered by public
129 utilities on their transmission devices to the extent they are regulated by the Public Service
130 Commission or other governmental entity.

131 (b) Service contracts that the manufacturer sells or offers for sale on the manufacturer's
132 own products shall only be required to comply with sections 7(a), 7(b)(3) to 7(b)(12), and 10, as
133 applicable, of this act.

134 (c) This act shall not apply to service contracts:

135 (1) Paid for with separate and additional consideration;

136 (2) Issued at the point of sale, or within 60 days of the original purchase date of
137 the goods or services; and

138 (3) Where the goods or services identified in the service contract have a purchase
139 price of \$200 or less, exclusive of sales tax.

140 Sec. 4. Requirements for doing business.

141 (a) A provider, a seller, or an agent or employee of a provider or seller, shall not issue,
142 sell, or offer for sale in the District any service contract unless:

143 (1) The service contract includes a provision giving the prospective service
144 contract holder a rescission period of 10 days;

145 (2) The provider or seller, or an employee or agent of the provider or seller, has:

146 (A) Provided a complete sample copy of the service contract agreement
147 terms and conditions available for inspection by a prospective service contract holder prior to the
148 time of sale;

149 (B) Provided a copy of the executed service contract to the service
150 contract holder within 30 days of the date of purchase;

151 (C) Provided a receipt for the purchase of the service contract to the
152 service contract holder; and

153 (D) Complied with all provisions of this act.

154 (b) Each provider that sells or offers to sell service contracts in the District shall file a
155 registration with the Commissioner on a form, and at a fee, prescribed by the Commissioner.

156 (c) A registration is subject to annual renewal beginning April 1 of a given calendar year.

157 (d) A registration expires on March 31 of a given calendar year.

158 (e) In order to assure the faithful performance of a provider's obligations to its service
159 contract holders, each provider who is contractually obligated to provide service under a service
160 contract shall:

161 (1) Insure all service contracts under a reimbursement insurance policy issued by
162 an insurer authorized to transact insurance in the District or issued pursuant to section 40 of the
163 District of Columbia Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1063; D.C.
164 Official Code § 31-2502.40); or

165 (2)(A) Maintain a separate funded reserve account for its obligations under its
166 service contracts issued and outstanding in the District. The reserves shall not be less than 40%
167 of gross consideration received, less claims paid, on the sale of the service contract for all in-
168 force contracts. The reserve account shall be subject to examination and review by the
169 Commissioner at the expense of the provider; and

170 (B) Deposit, in a custodial or controlled account, cash, securities, a surety
171 bond, or any combination of these that is acceptable to the Commissioner, such that:

172 (i) The deposit shall have a value of not less than \$300,000;

173 (ii) The deposit shall be an admitted asset of the provider in the
174 determination of net worth;

175 (iii) All income from deposits shall be an asset of the provider. A
176 provider that has made a securities deposit may withdraw that deposit, or any part thereof, after
177 making a substitute deposit of cash, securities, or any combination of these or other assets of
178 equal amount and value. Any securities shall be subject to prior approval by the Commissioner
179 before being deposited or substituted; and

180 (iv) The deposit shall be available to protect the interests of the
181 provider's service contract holders in the District and to assure continuation of performance of
182 services to service contract holders of a provider which is in the process of cessation of business
183 activities under this act. The Commissioner may use the deposit for administrative costs directly
184 attributable to cessation of business activities under this act.

185 (f) Any person who markets, sells, or offers to sell service contracts for a provider that
186 complies with this act shall be exempt from the District's licensing requirements under section 3
187 of the Producer Licensing Act of 2002, effective March 27, 2003 (D.C. Law 14-264; D.C.
188 Official Code § 31-1131.03).

189 Sec. 5. Changes in registration; cessation of business

190 (a) The registration required under subsection 4(b) shall be updated by written
191 notification to the Commissioner if changes occur in the registration on file.

192 (b) A registrant that has terminated its service contract business shall send notice within
193 15 days to:

194 (1) The Commissioner;

195 (2) All holders of in-force service contracts; and

196 (3) All providers for which it acts as an administrator.

197 (c) A registrant that terminates its service contract business pursuant to subsection (b) of
198 this section shall not issue new service contracts in the District, and may not renew existing
199 service contracts in the District, unless authorized by the Commissioner in a manner prescribed
200 by the Commissioner by rule. The registrant also shall not act as an administrator for any service
201 contract programs that it has contracted for in the District.

202 Sec. 6. Service contract requirements.

203 (a) A service contract issued, sold, or offered for sale in the District shall be written in
204 clear, understandable language and the entire contract shall be printed or typed in easy to read
205 12-point type or larger. A provider may comply with the font size requirement of this subsection
206 by directing the consumer to a publicly accessible website containing a complete sample of terms
207 and conditions of the service contract.

208 (b) A service contract shall:

209 (1) Conspicuously state the name and address of the provider;

210 (2) Conspicuously state the name, address, and a toll-free claims service
211 telephone number of the reimbursement policy insurer, if applicable, on the contract or on a
212 separate document attached to the contract;

213 (3) Identify the provider obligated to perform the service under the contract, the
214 service contract seller, the service contract holder, and the administrator, if applicable;

215 (4) Conspicuously state the total purchase price and the terms under which the
216 service contract is sold; provided, that the purchase price is not required to be pre-printed on the
217 service contract and may be negotiated at the time of sale with the service contract holder;

- 218 (5) Conspicuously state the existence of any deductible amount;
- 219 (6) Specify the goods or services to be provided and any limitations, exceptions or
220 exclusions;
- 221 (7) State the conditions upon which the use of non-original manufacturers' parts,
222 or substitute service, may be allowed;
- 223 (8) State any terms, restrictions or conditions governing the transferability of the
224 service contract;
- 225 (9) State the terms, restrictions, or conditions governing termination of the service
226 contract by the service contract holder;
- 227 (10) Provide that:
- 228 (A) The service contract holder may return the contract during the 10-day
229 rescission period under section 4(a)(1) or within a longer time period permitted under the service
230 contract;
- 231 (B) If no claim has been made under the service contract, the service
232 contract is void upon its return and the provider will refund to the service contract holder the full
233 purchase price of the service contract;
- 234 (C) If the provider fails to refund the full purchase price of the service
235 contract within 30 days after the service contract holder returns the contract, the provider will
236 also pay a penalty of 10% of that purchase price per month that the provider fails to pay the full
237 refund due; and
- 238 (D) The provider shall pay or provide service on a claim within 60 days
239 after proof of loss has been filed;

240 (11) Set forth all the obligations and duties of the service contract holder, such as
241 any duty to protect against further damage, any requirements for certain service and
242 maintenance, and any limited service area or authorized service entities;

243 (12) State whether the service contract provides for or excludes consequential
244 damages or pre-existing conditions, and, if so, identify any consequential occurrence or pre-
245 existing condition that will be covered or excluded; and

246 (13) Any other requirements prescribed by the Commissioner by rule for the
247 purpose of effective and efficient consumer protection.

248 (c) If prior approval of repair work is required, the service contract shall conspicuously
249 state the procedure for obtaining prior approval and for making a claim, including a toll-free
250 telephone number for claim service and a procedure for obtaining emergency repairs performed
251 outside of normal business hours.

252 (d) No service contract shall contain an automatic renewal provision unless the provider
253 or seller provides the prospective service contract holder with a separate, written notice,
254 acknowledged by the prospective service contract holder, that informs the prospective service
255 contract holder of the automatic renewal provision.

256 Sec. 7. Required disclosures.

257 (a) A service contract insured under a reimbursement insurance policy pursuant to section
258 4(f)(1) shall conspicuously contain the following language: "Obligations of the provider under
259 this service contract are guaranteed under a service contract reimbursement insurance policy. If
260 the provider fails to pay or provide service on a claim within 60 days after proof of loss has been
261 filed, the service contract holder is entitled to make a claim directly against the insurance
262 company."

263 (b) A service contract not insured under a reimbursement insurance policy pursuant to
264 section 4(f)(1) shall conspicuously contain the following language: “Obligations of the provider
265 under this service contract are backed solely by the assets of the provider (issuer) and are not
266 guaranteed under a service contract reimbursement insurance policy.”

267 (c) A service contract shall:

268 (1) State that a claim may be filed against the provider;

269 (2) Contain the following language: “This service contract agreement is subject to
270 regulation by the District of Columbia Department of Insurance, Securities and Banking.”; and

271 (3) State that the service contract is not guaranteed under the District of Columbia
272 Property and Casualty Guaranty Fund.

273 Sec. 8. Required disclosures regarding a reimbursement insurance policy.

274 Reimbursement insurance policies insuring a service contract issued, sold, or offered for
275 sale in the District shall conspicuously state that, upon failure of the provider to perform under
276 the contract, such as failure to return the unearned provider fee, the insurer that issued the policy
277 shall pay on behalf of the provider any sums the provider is legally obligated to pay or shall
278 provide the service which the provider is legally obligated to perform according to the provider’s
279 contractual obligations under the service contract issued or sold by the provider.

280 Sec. 9. Prohibited acts.

281 (a) A provider or administrator shall not use in its name or advertising the words
282 “insurance”, “casualty”, “guaranty”, “surety”, “mutual insurance”, or any other words
283 descriptive of the insurance, casualty, guaranty or surety business; or a name deceptively similar
284 to the name or description of any insurance or surety company, or any other provider.

285 (b) No provider, and no employee, agent or representative of a provider shall knowingly
286 make, permit or cause to be made any false or misleading statement, or deliberately omit any
287 material statement that would be considered misleading if omitted, in connection with:

288 (1) The sale, offer to sell or advertisement of a service contract; or

289 (2) The benefits or services available under a service contract.

290 (c) A provider, its agent or representative shall not, without the written consent of the
291 service contract holder, knowingly charge a service contract holder for duplication of coverage
292 or duties required by District or federal law, a warranty expressly issued by a manufacturer or
293 seller of goods or services, or any implied warranty enforceable against the lessor, seller or
294 manufacturer of goods or services.

295 (d) A provider, its agent or representative shall not enter into any agreement to commit
296 any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable
297 restraint of, or monopoly in the service contract industry.

298 (e) A provider, its agent or representative shall not make, publish, disseminate or
299 circulate, or directly or indirectly aid or encourage the making, publishing, dissemination or
300 circulation of:

301 (1) Any oral or written statement about a person's financial condition that the
302 provider, its agent or representative knows to be false, and which is calculated to injure the
303 person; or

304 (2) Any oral or written statement that the provider, agent, or representative knows
305 to be false or misleading with respect to the service contract industry or any provider.

306 (f) A provider, its agent or representative shall not file with any supervisory or other
307 public official; make, publish, disseminate, circulate or deliver to any person; place before the

308 public; or cause directly or indirectly to be made, published, disseminated, circulated, delivered
309 to any person or placed before the public, any false statement of financial condition of any
310 provider with intent to deceive.

311 (g) A provider, its agent or representative shall not make any false entry in any book,
312 report or statement of any provider with intent to deceive any agent or examiner lawfully
313 appointed to examine into its condition or into any of its affairs, or any public official to whom
314 the provider is required by law to report, or who has authority by law to examine into its
315 condition or into any of its affairs.

316 (h) A provider, its agent or representative shall not willfully omit from any book, report
317 or statement that the provider files with the District government or disseminates to the public any
318 material fact that pertains to the provider's business and is necessary to prevent other contents of
319 the book, report, or statement from being false or misleading.

320 (i) A provider, its agent or representative shall not engage in any of the following service
321 contract claims practices:

322 (1) Knowingly misrepresenting to a service contract holder relevant facts or
323 service contract provisions related to coverage;

324 (2) Failing to acknowledge with reasonable promptness pertinent written
325 communications with respect to claims arising under its service contract agreements;

326 (3) Failing to promptly provide upon request a reasonable explanation of the basis
327 for denial or partial settlement of a claim;

328 (4) Failing to develop and maintain documented claims files supporting decisions
329 made regarding liability or failing to maintain records of their claims handling procedures;

330 (5) Failing to attempt in good faith to effectuate a fair and equitable settlement of
331 a claim when the cause or coverage has been determined to be or become reasonably clear;

332 (6) Refusing to pay a claim without conducting a reasonable investigation;

333 (7) Failing, in the case of a claim denial, to provide an accurate explanation of the
334 basis for the denial; or

335 (8) Failing to ensure that services performed under the service contract are
336 performed by an entity that possesses all licenses required by the District, and applicable federal,
337 state, or municipal law.

338 (j) No provider or insurance producer shall finance the consideration due from the sale of
339 a service contract with a premium finance company.

340 (k) A service contract sold or offered for sale in the District shall comply with the
341 Arbitration Amendment Act of 2007, effective February 27, 2008 (D.C. Law 17-111; D.C.
342 Official Code § 16-4401 *et seq.*).

343 Sec. 10. Recordkeeping requirements.

344 (a) A provider shall maintain accurate accounts, books and records concerning any
345 transaction regulated under this act.

346 (b) The accounts, books and records of a provider shall include:

347 (1) Copies of each type of service contract issued;

348 (2) The name and address of each service contract holder;

349 (3) A list of the provider locations where a service contract is marketed, sold or
350 offered for sale; and

351 (4) Claims files which shall contain, at minimum, the dates, amounts and
352 description of all receipts, claims and expenditures related to any service contracts sold.

353 (c) A provider shall retain all records required under this section pertaining to each
354 service contract holder for at least 3 years after the specified period of coverage has expired.

355 (d) A provider may keep all records required under this act on a computer disk or other
356 similar technology. If a provider maintains records in other than hard copy, records shall be
357 accessible from a computer terminal available to the Commissioner, in the District, and be
358 capable of duplication to legible hard copy.

359 (e) A provider shall make all accounts, books and records concerning transactions
360 regulated under this act available to the Commissioner, in the District, upon request.

361 Sec. 11. Service contract forms; review of forms, rates and rules.

362 (a) A provider shall file with the Commissioner, for prior review and approval in a
363 manner prescribed by the Commissioner by rule, any service contract form, rate or rule that the
364 provider uses in the District.

365 (b) All forms that a provider uses in the District shall meet the service contract
366 requirements and contain all required disclosures provided by this act, or any other requirement
367 prescribed by the Commissioner by rule.

368 (c) If requested by the Commissioner, all rates shall disclose:

369 (1) Rating factors;

370 (2) Rules;

371 (3) Rating methodologies; and

372 (4) Any other requirement prescribed by the Commissioner by rule.

373 (d) The Commissioner may reject any form filed pursuant to this section if the form:

374 (1) Violates this act;

375 (2) Is misleading in any respect; or

376 (3) Is reproduced so that any material provision is substantially illegible.

377 (e) The Commissioner may reject any rate or rule filed pursuant to this section if the rate
378 or rule:

379 (1) Violates this act; or

380 (2) Is determined to be excessive, inadequate, or unfairly discriminatory in
381 relation to the benefits provided, based on criteria established by rule.

382 Sec. 12. Termination of service contract.

383 (a) No service contract may be terminated by a provider, nor shall any termination be
384 effective for any purpose, unless the service contract holder has:

385 (1) Failed to pay any costs due under the terms of the service contract;

386 (2) Engaged in fraudulent activity related to the provider or its agent in
387 connection with any application to or claim against the provider; or

388 (3) Otherwise obtained the mutual consent of the provider.

389 (b) A provider shall send written notice to the service contract holder explaining the
390 reasons for the termination of a service contract.

391 (c) A provider shall return any unearned provider fee.

392 Sec. 13. Termination of reimbursement insurance policy.

393 As applicable, an insurer that issued a reimbursement insurance policy shall not terminate
394 the policy until a notice of termination in accordance with section 4(g) of the Managing General
395 Agents Act of 1993, effective October 21, 1993 (D.C. Law 10-41; D.C. Official Code § 31-
396 1503(7)) has been mailed or delivered to the Commissioner. The termination of a reimbursement
397 insurance policy shall not reduce or eliminate the insurer's responsibility for service contracts
398 issued by providers prior to the date of the termination.

399 Sec. 14. Obligation of reimbursement insurance policy insurers.

400 (a) Providers appointed pursuant to section 2(4)(A)(ii) of the Managing General Agents
401 Act of 1993, effective October 21, 1993 (D.C. Law 10-41; D.C. Official Code § 31-
402 1501(4)(A)(ii)) are considered to be the agent of the insurer that issued the reimbursement
403 insurance policy. If a provider is acting as an administrator and enlists other persons or entities to
404 provide services on behalf of the provider, the provider shall notify the insurer of the existence
405 and identities of the other persons or entities.

406 (b) This act shall not prevent or limit the right of an insurer which issued a
407 reimbursement insurance policy to seek indemnification or subrogation against a provider if the
408 issuer pays or is obligated to pay a service contract holder sums that the provider was obligated
409 to pay pursuant to the provisions of a service contract or under a contractual agreement.

410 Sec. 15. Investigations and examinations; complaints.

411 (a) The Commissioner may conduct investigations or examinations of providers, and their
412 administrators, insurers, or other persons to enforce the provisions of this act and protect service
413 contract holders in the District.

414 (b) All expenses of any investigation or examination shall be paid by the provider
415 examined, and the provider shall timely pay the Commissioner the actual expense of such an
416 examination upon receipt of an itemized bill provided by the Commissioner.

417 (c) The Commissioner may receive and process any complaint that is made against any
418 provider and that alleges certain acts or practices that may constitute one or more violations of
419 this act.

420 (d) Any member of the public may file a complaint with the Commissioner under
421 subsection (c) of this section.

422 (e) All complaints filed under subsection (c) shall be made in writing, shall fully identify
423 the complainant by name and address, and shall be made in a form prescribed by the
424 Commissioner by rule.

425 Sec. 16. Enforcement.

426 (a) Whenever the Commissioner determines that a provider has engaged, or is about to
427 engage, in an act or practice constituting a violation of any provision of this act or any rule or
428 order hereunder, and that immediate action against the provider is in the public interest, the
429 Commissioner may issue, without a hearing, a summary order directing the provider to cease and
430 desist from engaging in such activity; provided, that the summary cease and desist order shall
431 give the provider:

432 (1) Notice of the opportunity for a hearing before the Commissioner to determine
433 whether the summary cease and desist order should be vacated, modified, or entered as final and
434 that the hearing shall be conducted according to the rules for contested cases set forth in Chapter
435 38 of Title 26 of the District of Columbia Municipal Regulations; and

436 (2) Notice that the summary cease and desist order will be entered as final if the
437 provider does not request a hearing within 15 days of service of the order.

438 (b) Whenever the Commissioner determines after notice and a hearing, unless the
439 provider has waived the right to a hearing, that a provider has engaged in an act or practice
440 constituting a violation of this act or any rule or order adopted under this act, the Commissioner
441 may, in addition to taking any other action authorized under this act to protect the public:

442 (1) Order a provider to cease and desist from committing violations of this act or
443 any rules promulgated pursuant to this act or any Commissioner's orders;

444 (2) Issue an order prohibiting a provider from selling or offering for sale service
445 contracts in the District;

446 (3) Issue an order imposing a civil penalty of up to \$10,000 per violation;

447 (4) Issue an order requiring a provider to pay restitution or take other corrective
448 action;

449 (5) Issue an order required a provider to pay reasonable costs of the hearing; or

450 (6) Take any other administrative action within the Commissioner's authority.

451 (c) A person aggrieved by the Commissioner's order may appeal to the District of
452 Columbia Court of Appeals pursuant to section 11 of the District of Columbia Administrative
453 Procedure Act, approved October 21, 1968 (Pub. L. 90-614; D.C. Official Code § 2-510).

454 (d) The Commissioner may provide the Office of the Attorney General with information
455 to bring an action in the Superior Court of the District of Columbia for an injunction or other
456 appropriate relief to enjoin threatened or existing violations of this act or of the Commissioner's
457 orders or regulations. An action filed under this section also may seek restitution, or other
458 corrective action, on behalf of persons aggrieved by a violation of this act or orders or rules of
459 the Commissioner.

460 (e) The authority of the Commissioner under this section is in addition to any other
461 authority vested in the Commissioner.

462 Sec. 17. Rulemaking.

463 The Commissioner may promulgate rules to implement the provisions of this act.

464 Sec. 18. Conforming amendment.

465 Title 28, Section 3904 of the District of Columbia Official Code is amended as follows:

466 (1) Subsection (hh) is amended by striking the phrase “; or” and inserting a
467 semicolon in its place.

468 (2) Subsection (ii) is amended by striking the period at the end and inserting the
469 phrase “; or” in its place.

470 (3) A new subsection (jj) is added to read as follows:

471 “(jj) Violate section 10(b) of the Service Contract Regulation and Enforcement Act of
472 2017, as introduced on _____ (Bill 22-__).”.

473 Sec. 19. Severability.

474 If any provision of this act or the application of such provision to any circumstance is
475 held invalid, the remainder of this act or the application of the provision to other circumstances
476 shall not be affected thereby.

477 Sec. 20. Fiscal impact statement.

478 The Council adopts the fiscal impact statement in the committee report as the fiscal
479 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
480 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

481 Sec. 21. Effective date.

482 This act shall take effect following approval by the Mayor (or in the event of veto by the
483 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
484 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
485 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c) (1)), and publication in the District of
486 Columbia Register.

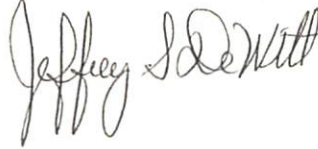
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: October 31, 2017

SUBJECT: Fiscal Impact Statement – Service Contract Regulation and Enforcement Act of 2017

REFERENCE: Draft Bill as shared with the Office of Revenue Analysis on September 15, 2017

Conclusion

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill.

Background

Service contracts, as defined in the bill, are agreements for the repair, replacement, or maintenance related to the operational or structural failure of a consumer good whereby the consumer pays separate consideration for coverage over a specified period of time.¹ The bill requires any provider or seller of a service contract in the District to register² with the Commissioner of the Department of Insurance, Securities, and Banking (DISB), pay the appropriate fees, and obtain and maintain appropriate levels of insurance³ and reserves against outstanding contracts. The providers and sellers must provide consumers with a sample contract, terms and conditions, including a ten-day rescission period, a copy of the executed contract, and a purchase receipt. The bill also establishes what information companies must include in their contracts, including disclosures, and the visual clarity with which contracts must be written.⁴

¹ The bill does not apply to service contracts issued at the point of sale, within sixty days of purchase, where the goods purchased cost less than \$200, or any contracts issued by a government entity.

² Providers and sellers must notify DISB within fifteen days of the company terminating its service contract business.

³ The bill also outlines the responsibilities of insurance providers.

⁴ The bill precludes the use of certain words (such as insurance, casualty, or surety), practices, or representations by service companies.

The Honorable Phil Mendelson

FIS: "Service Contract Regulation and Enforcement Act of 2017," Draft Bill as shared with the Office of Revenue Analysis on September 15, 2017

DISB is responsible for enforcing any service contract violations, including investigations, examinations, or complaint reviews. Providers must maintain service contract records for each consumer for at least three years after the contract expires and ensure those are available to DISB upon request.

Financial Plan Impact

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill. The bill requires service contract providers and sellers to register with DISB and obtain and maintain appropriate levels of insurance and reserves. The Office of Revenue Analysis and DISB are unable to determine the population of service contract providers and sellers, but the registration requirements will require the payment of a fee⁵ which will be deposited into the District's Local Fund. DISB will also enforce the bill's requirements and can do so with its existing enforcement staff.

⁵ DISB has not yet set a fee schedule.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Alana Intrieri
Executive Director
Office of Policy and Legislative Affairs

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: September 26, 2017

SUBJECT: Legal Sufficiency Review – Draft “Service Contract Regulation and Enforcement Act of 2017”
(AE-17-496)

This is to Certify that this Office has reviewed the above-referenced proposed legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.


Janet M. Robins