

7465

I N S E N A T E

April 13, 2010

Introduced by Sen. BRESLIN -- (at request of the New York State Insurance Department) -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to service contracts; and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subsection (a) of section 308 of the insurance law, as
2 amended by chapter 11 of the laws of 2008, is amended to read as
3 follows:

4 (a) The superintendent may also address to any health maintenance
5 organization, any authorized insurer or rate service organization,
6 SERVICE CONTRACT PROVIDER, or officers thereof, any inquiry in relation
7 to its transactions or condition or any matter connected therewith.
8 Every corporation or person so addressed shall reply in writing to such
9 inquiry promptly and truthfully, and such reply shall be, if required by
10 the superintendent, subscribed by such individual, or by such officer or
11 officers of a corporation, as he shall designate, and affirmed by them
12 as true under the penalties of perjury. In the event any corporation or
13 person does not provide a good faith response to an inquiry from the
14 superintendent pursuant to this section relating to accident insurance,
15 health insurance, accident and health insurance or health maintenance
16 organization coverage, OR SERVICE CONTRACTS, within a time period speci-
17 fied by the superintendent of not less than fifteen business days, the
18 superintendent is authorized to levy a civil penalty, after notice and
19 hearing, against such corporation or person not to exceed five hundred
20 dollars per day for each day beyond the date specified by the super-
21 intendent for response, but in no event shall such penalty exceed seven
22 thousand five hundred dollars.

23 S 1-a. Subsection (a) of section 308 of the insurance law, as amended
24 by chapter 499 of the laws of 2009, is amended to read as follows:

25 (a) (1) The superintendent may also address to any health maintenance
26 organization, life settlement provider, life settlement intermediary or
27 its officers, or any authorized insurer or rate service organization,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 SERVICE CONTRACT PROVIDER, or officers thereof, any inquiry in relation
2 to its transactions or condition or any matter connected therewith.
3 Every corporation or person so addressed shall reply in writing to such
4 inquiry promptly and truthfully, and such reply shall be, if required by
5 the superintendent, subscribed by such individual, or by such officer or
6 officers of a corporation, as the superintendent shall designate, and
7 affirmed by them as true under the penalties of perjury.

8 (2) In the event any corporation or person does not provide a good
9 faith response to an inquiry from the superintendent pursuant to this
10 section relating to accident insurance, health insurance, accident and
11 health insurance or health maintenance organization coverage OR SERVICE
12 CONTRACTS or with respect to life settlements, within a time period
13 specified by the superintendent of not less than fifteen business days,
14 the superintendent is authorized to levy a civil penalty, after notice
15 and hearing, against such corporation or person not to exceed five
16 hundred dollars per day for each day beyond the date specified by the
17 superintendent for response, but in no event shall such penalty exceed
18 seven thousand five hundred dollars.

19 S 2. Paragraph 3-a of subsection (b) of section 1101 of the insurance
20 law, as amended by chapter 486 of the laws of 2000, is amended to read
21 as follows:

22 (3-a) Notwithstanding the foregoing, the marketing, sale, offer for
23 sale, issuance, making, proposing to make or administration of THE
24 FOLLOWING SHALL NOT CONSTITUTE DOING AN INSURANCE BUSINESS IN THIS
25 STATE:

26 (A) a service contract pursuant to article seventy-nine of this chap-
27 ter [or];

28 (B) A warranty, [service contract or] maintenance agreement, OR
29 SERVICE CONTRACT AS DEFINED IN SUBSECTION (K) OF SECTION SEVEN THOUSAND
30 NINE HUNDRED TWO OF THIS CHAPTER, ISSUED BY A SELLER OR DELIVERER OF
31 HEATING FUEL AND conditioned upon or otherwise associated with the sale
32 or supply of heating fuel [shall not constitute doing an insurance busi-
33 ness in this state]; OR

34 (C) A CONTRACT OR AGREEMENT TO PROVIDE TOWING, RENTAL, OR EMERGENCY
35 ROAD SERVICES MADE BY A MOTOR CLUB THAT IS A NOT-FOR-PROFIT ORGANIZATION
36 AND THAT HAS BEEN OPERATING AS SUCH IN THIS STATE FOR AT LEAST TEN
37 YEARS, OR ANY SUCCESSOR THERETO.

38 S 3. Subsection (a) of section 2302 of the insurance law, paragraphs 5
39 and 6 as amended and paragraph 7 as added by chapter 614 of the laws of
40 1997, is amended to read as follows:

41 (a) This article shall apply to all kinds of insurance written on
42 risks or operations in this state by an insurer authorized to do busi-
43 ness in this state except:

44 (1) reinsurance (other than joint reinsurance to the extent stated in
45 section two thousand three hundred seventeen of this article);

46 (2) accident and health insurance;

47 (3) annuities, life insurance, including provisions for non-cancella-
48 ble disability benefits in conjunction therewith;

49 (4) marine insurance (other than inland marine insurance and insurance
50 upon automobiles, airplanes, seaplanes, dirigibles or other aircraft);

51 (5) marine protection and indemnity insurance; AND

52 (6) insurance issued by an assessment cooperative fire insurance
53 company[; and

54 (7) service contract reimbursement insurance].

55 S 4. Section 7901 of the insurance law, as added by chapter 614 of the
56 laws of 1997, paragraphs 2 and 3 as amended and paragraph 4 of

1 subsection (b) as added by chapter 257 of the laws of 1998, is amended
2 to read as follows:

3 S 7901. Scope and purposes. (a) The purposes of this article are to:

4 (1) create a legal framework within which service contracts may be
5 sold in this state;

6 (2) encourage the marketing and developing of more economical and
7 effective means of providing services under service contracts; [and]

8 (3) permit and encourage fair and effective competition among differ-
9 ent systems of providing and paying for these services; AND

10 (4) PROTECT SERVICE CONTRACT HOLDERS.

11 (b) This article shall not apply to:

12 (1) Express or implied warranties MADE WITHOUT SEPARATE OR ADDITIONAL
13 CONSIDERATION;

14 (2) Maintenance agreements;

15 (3) Warranties, service contracts or maintenance agreements offered by
16 public utilities on their transmission devices to the extent they are
17 regulated by the public service commission; [and]

18 (4) Warranties, service contracts and maintenance agreements that are
19 MADE BY A SELLER OR DELIVERER OF HEATING FUEL AND conditioned upon or
20 otherwise associated with the sale or supply of heating fuel[.]; AND

21 (5) A CONTRACT OR AGREEMENT TO PROVIDE TOWING, RENTAL, OR EMERGENCY
22 ROAD SERVICES MADE BY A MOTOR CLUB THAT IS A NOT-FOR-PROFIT ORGANIZATION
23 AND THAT HAS BEEN OPERATING AS SUCH IN THIS STATE FOR AT LEAST TEN
24 YEARS, OR ANY SUCCESSOR THERETO.

25 S 5. Subsections (a) and (l) of section 7902 of the insurance law are
26 REPEALED, subsections (b), (c), (d), (m) and (n) are relettered
27 subsections (a), (b), (c), (l) and (m).

28 S 5-a. Subsections (a), (b), (c) and (k) of section 7902 of the insur-
29 ance law, as added by chapter 614 of the laws of 1997, subsection (k) as
30 amended by chapter 264 of the laws of 2006, and subsections (a), (b),
31 and (c) as relettered by section five of this act are amended to read as
32 follows:

33 (a) "Administrator" means any person [designated by a], OTHER THAN A
34 PROVIDER'S EMPLOYEE, WHO THE provider APPOINTS, to [be responsible for
35 administration of] ADMINISTER THE PROVIDER'S service contracts, includ-
36 ing servicing, claims management and processing, recordkeeping, customer
37 service and collection of fees, BUT WHO IS NOT AN OBLIGOR UNDER THE
38 SERVICE CONTRACTS THE PERSON ADMINISTERS.

39 (b) "Incidental [damages" has the meaning as set forth in subdivision
40 one of section 2-715 of the uniform commercial code, as such definition
41 may be amended from time to time] EXPENSES" MEANS EXPENSES ASSOCIATED
42 WITH OR ARISING OUT OF LOSSES COVERED UNDER A SERVICE CONTRACT.

43 (c) "Maintenance agreement" means a contract of limited duration that
44 provides for scheduled maintenance of property, other than contracts
45 providing for the repair or replacement of such property due to a defect
46 in materials or workmanship, or wear and tear.

47 (k) (1) "Service contract" means a contract or agreement[, for a sepa-
48 rate or additional consideration,] for a specific duration, to:

49 (A) perform the repair, replacement or maintenance of property, or
50 indemnification for repair, replacement or maintenance, due to a defect
51 in materials or workmanship or FROM wear and tear[, with or without
52 additional provision for];

53 (B) REPAIR OR REPLACE A TIRE OR WHEEL AS A RESULT OF DAMAGE ARISING
54 FROM A ROAD HAZARD AND THAT IS MADE BY OR FOR THE MANUFACTURER OR SELLER
55 OF THE MOTOR VEHICLE TIRE; OR

1 (C) PROVIDE MOTOR VEHICLE TOWING, RENTAL OR EMERGENCY ROAD SERVICE AND
2 THAT IS MADE BY A MOTOR CLUB.

3 (2) A SERVICE CONTRACT AS DESCRIBED IN SUBPARAGRAPH (A) OR (B) OF
4 PARAGRAPH ONE OF THIS SUBSECTION, MAY ALSO PROVIDE THE FOLLOWING:

5 (A) indemnity payments for incidental [damages] EXPENSES, provided
6 THAT any such indemnity payment per incident shall not exceed the
7 purchase price of the property [serviced. Service contracts may
8 include]; OR

9 (B) MOTOR VEHICLE towing, rental and emergency road service[, and].

10 (3) A SERVICE CONTRACT AS DESCRIBED IN SUBPARAGRAPH (A) OF PARAGRAPH
11 ONE OF THIS SUBSECTION, may also provide for the repair, replacement or
12 maintenance of property for damage resulting from power surges and acci-
13 dental damage from handling RESULTING FROM THE NORMAL AND CUSTOMARY USE
14 OF THE PROPERTY. [Service contracts may also include contracts to
15 repair, replace or maintain residential appliances and systems. Such
16 term shall also mean a contract or agreement made by or for the manufac-
17 turer or seller of a motor vehicle tire for repair or replacement of the
18 tire or wheel as the result of damage arising from a road hazard.]

19 S 5-b. Section 7902 of the insurance law is amended by adding a new
20 subsection (d) to read as follows:

21 (D) "MOTOR CLUB" MEANS AN ASSOCIATION OR CORPORATION THAT ENTERS INTO
22 CONTRACTS OR AGREEMENTS WITH MEMBERS OR SUBSCRIBERS UNDER WHICH MEMBERS
23 OR SUBSCRIBERS RECEIVE SERVICES AND BENEFITS ASSOCIATED WITH THE USE OR
24 OPERATION OF A MOTOR VEHICLE.

25 S 6. Subsection (a) of section 7903 of the insurance law, as added by
26 chapter 614 of the laws of 1997, is amended to read as follows:

27 (a) [Notwithstanding] NOTWITHSTANDING any other provision of this
28 chapter to the contrary, the marketing, sale, offering for sale, issu-
29 ance, making, proposing to make and administration of service contracts
30 by any provider, administrator or other person, shall be exempt from all
31 other provisions of this chapter, OTHER THAN ARTICLES ONE, TWO AND THREE
32 OF THIS CHAPTER. A provider may[, but is not required to,] appoint [an
33 administrator or other designee] ONE OR MORE ADMINISTRATORS to [be
34 responsible for] ADMINISTER any or all of the [administration of]
35 PROVIDER'S service contracts [and compliance with this article].

36 S 7. Paragraph 1 of subsection (b) of section 7903 of the insurance
37 law, as added by chapter 614 of the laws of 1997, is amended to read as
38 follows:

39 (1) provides a receipt for, or other written evidence of, the purchase
40 of the service contract and a copy of the terms and conditions of the
41 service contract to the service contract holder where the sale takes
42 place in a retail store or other place of business. A copy of the
43 service contract in all cases shall be provided to the service contract
44 holder within [a reasonable period of time] TEN DAYS after the date of
45 purchase of the service contract; and

46 S 8. Paragraphs 1 and 2 of subsection (c) of section 7903 of the
47 insurance law, paragraph 1 as amended by chapter 578 of the laws of
48 2000, and paragraph 2 as added by chapter 614 of the laws of 1997, are
49 amended to read as follows:

50 (1) insure the performance of all [its] THE PROVIDER'S obligations
51 under all service contracts pursuant to a service contract reimbursement
52 insurance policy issued by an insurer authorized to issue service
53 contract reimbursement insurance in this state [or procured by an excess
54 line licensee pursuant to section two thousand one hundred eighteen of
55 this chapter. In the event the provider fails to insure its obligations
56 pursuant to this paragraph or in the event that such insurance shall

1 lapse or be terminated, the provider shall comply with either paragraph
2 two or three of this subsection within forty-five days of the insurance
3 lapse or termination];

4 (2) (A) maintain a funded reserve account for [its] THE PROVIDER'S
5 obligations under [its] THE PROVIDER'S service contracts issued and
6 outstanding in this state, which reserve account (i) contains reserves
7 in an amount not less than forty percent of the gross consideration
8 received upon the sale of[, less claims paid under,] all [its] THE
9 PROVIDER'S service contracts then in force, but not less than [zero] ONE
10 HUNDRED THOUSAND DOLLARS, and (ii) shall be subject to examination and
11 review by the superintendent; and

12 (B) place in trust [with] FOR the superintendent a financial security
13 deposit, having a value of not less than five percent of the gross
14 consideration received upon the sale of[, less claims paid under,] all
15 service contracts issued and then in force, but not less than [fifty]
16 ONE HUNDRED thousand dollars, consisting of one or more of the follow-
17 ing:

18 (i) a surety bond issued by an [authorized surety] INSURER AUTHORIZED
19 IN THIS STATE TO WRITE FIDELITY AND SURETY INSURANCE;

20 (ii) securities of the type eligible for deposit by authorized insur-
21 ers in this state;

22 (iii) cash; or

23 (iv) a letter of credit issued by a qualified United States financial
24 institution; or

25 S 9. Subsection (e) of section 7903 of the insurance law is REPEALED
26 and a new subsection (e) is added to read as follows:

27 (E)(1) A PROVIDER SHALL MAINTAIN THE MONIES IN THE FUNDED RESERVE
28 ACCOUNT PROVIDED FOR IN SUBPARAGRAPH (A) OF PARAGRAPH TWO OF SUBSECTION
29 (C) OF THIS SECTION IN A FIDUCIARY CAPACITY FOR THE BENEFIT OF THE
30 SERVICE CONTRACT HOLDERS. THE ACCOUNT'S TITLE SHALL INDICATE ITS FIDUCI-
31 ARY NATURE.

32 (2) THE PROVIDER'S FUNDED RESERVE ACCOUNT AND ITS FINANCIAL SECURITY
33 DEPOSIT SHALL BE EXEMPT FROM LEVY, EXECUTION, AND ATTACHMENT, OR OTHER
34 ACTION IN WHICH A PERSON OTHER THAN A SERVICE CONTRACT HOLDER OR THE
35 SUPERINTENDENT SEEKS RECOVERY OR COLLECTION OF A DEBT AGAINST THE
36 PROVIDER.

37 (3) A PROVIDER SHALL NOT ASSIGN, PLEDGE AS SECURITY, OR OTHERWISE
38 ENCUMBER THE PROVIDER'S FUNDED RESERVE ACCOUNT OR FINANCIAL SECURITY
39 DEPOSIT.

40 S 10. Section 7904 of the insurance law, as added by chapter 614 of
41 the laws of 1997, is amended to read as follows:

42 S 7904. [Required disclosures; service contract reimbursement insur-
43 ance policy] SERVICE CONTRACT REIMBURSEMENT INSURANCE.

44 (A) Service contract reimbursement insurance policies insuring service
45 contracts issued, sold or offered for sale in this state shall state
46 that, upon failure of the provider to perform under the service
47 contract, including failure to return the unearned provider fee there-
48 under, the insurer that issued the service contract reimbursement insur-
49 ance policy shall pay on behalf of the provider any sums the provider is
50 legally obligated to pay under the service contract or shall perform the
51 service which the provider is legally obligated to perform according to
52 the provider's contractual obligations under the service contracts
53 issued or sold by the provider.

54 (B)(1) AN AUTHORIZED INSURER THAT ISSUES SERVICE CONTRACT REIMBURSE-
55 MENT INSURANCE POLICIES IN THIS STATE SHALL ESTABLISH A CONTINGENCY
56 RESERVE FUND INTO WHICH IT SHALL DEPOSIT FORTY PERCENT OF NET PREMIUMS

1 RECEIVED FOR ITS SERVICE CONTRACT REIMBURSEMENT INSURANCE POLICIES LESS
2 DEPOSITS IN THE UNEARNED PREMIUM RESERVE FUND ESTABLISHED UNDER SECTION
3 ONE THOUSAND THREE HUNDRED FIVE OF THIS CHAPTER.

4 (2) AN INSURER MAY MAKE A WITHDRAWAL FROM THE SERVICE CONTRACT CONTIN-
5 GENCY RESERVE FUND ONLY WITH THE PRIOR APPROVAL OF THE SUPERINTENDENT.
6 THE SUPERINTENDENT SHALL GRANT APPROVAL FOR A WITHDRAWAL FROM THE FUND
7 ONLY TO THE EXTENT THAT THE INSURER'S TOTAL EXPOSURE HAS BEEN REDUCED
8 DUE TO THE EXPIRATION OR OTHER TERMINATION OF SERVICE CONTRACTS THAT IT
9 INSURES.

10 S 11. Subsections (b), (d), (k) and (n) of section 7905 of the insur-
11 ance law, as added by chapter 614 of the laws of 1997, are amended to
12 read as follows:

13 (b) Service contracts insured under a service contract reimbursement
14 insurance policy pursuant to [paragarph] PARAGRAPH one of subsection (c)
15 of section seven thousand nine hundred three of this article shall
16 contain a statement in substantially the following form: "Obligations
17 of the provider under this service contract are insured under a service
18 contract reimbursement insurance policy. If the provider fails to pay or
19 provide service on a claim within sixty days after proof of loss has
20 been filed, the SERVICE contract holder is entitled to make a claim
21 directly against the insurer under the service contract reimbursement
22 insurance policy." The service contract shall also state the name and
23 address and a toll-free telephone number of the insurer under the
24 related service contract reimbursement insurance policy.

25 (d) Service contracts shall identify [any administrator if different
26 from] the provider [or seller, the provider], ADMINISTRATOR and [the
27 service contract] seller. The identities of such parties [are] SHALL
28 not BE required to be preprinted on the service contract and may be
29 added to the service contract at the time of sale. Service contracts
30 shall clearly state the procedure that the service contract holder must
31 [take] FOLLOW to [obtain service under the terms and conditions of the
32 service contract] FILE A SERVICE CONTRACT CLAIM.

33 (k) Service contracts shall state the terms, restrictions or condi-
34 tions governing termination of the service contract by the parties [to
35 the service contract]. [The] A SERVICE CONTRACT THAT AFFORDS THE SERVICE
36 CONTRACT HOLDER A RIGHT TO TERMINATE THE SERVICE CONTRACT SHALL INCLUDE
37 THE METHOD FOR CALCULATING THE REFUND DUE TO THE SERVICE CONTRACT HOLD-
38 ER. A provider [of the service contract] WHO TERMINATES A SERVICE
39 CONTRACT shall mail a written notice OF TERMINATION to the service
40 contract holder at the last known address of the service contract holder
41 contained in the records of the provider at least fifteen days prior to
42 [cancellation] TERMINATION by the provider. The notice shall state the
43 effective date of the [cancellation] TERMINATION and the reason for the
44 [cancellation] TERMINATION. [Written notice is not required if the
45 reason for cancellation is nonpayment of the provider fee, a material
46 misrepresentation, or a substantial breach of duties by the service
47 contract holder relating to the covered property or its use.]

48 (n) [Service contracts] (1) A SERVICE CONTRACT shall [contain a state-
49 ment of the service contract holder's right to return the contract]
50 STATE THAT THE SERVICE CONTRACT HOLDER MAY RESCIND THE SERVICE CONTRACT
51 BY PROVIDING WRITTEN NOTICE THEREOF TO THE PROVIDER within at least
52 twenty days of the date of mailing of the service contract or within at
53 least ten days if the service contract is delivered TO THE SERVICE
54 CONTRACT HOLDER at the time of the sale [or within a longer time period
55 permitted under the contract. If no claim has been made under the

1 contract, the contract shall be void and the provider shall refund to
2 the contract holder the full purchase price of the contract].

3 (2) THE SERVICE CONTRACT SHALL ALSO STATE THAT THE PROVIDER WILL
4 REFUND THE FULL PURCHASE PRICE, LESS THE COST OF ANY CLAIM PAID, TO A
5 SERVICE CONTRACT HOLDER WHO RESCINDS THE SERVICE CONTRACT PURSUANT TO
6 PARAGRAPH ONE OF THIS SUBSECTION.

7 (3) THE SERVICE CONTRACT SHALL SPECIFY THE ADDRESS TO WHICH THE
8 SERVICE CONTRACT HOLDER SHALL SEND THE WRITTEN NOTICE OF RESCISSION.

9 (4) The service contract shall [also] contain a statement that a ten
10 percent penalty per month shall be added to a refund that is not made
11 within thirty days of [return] THE DATE THAT THE SERVICE CONTRACT HOLDER
12 GIVES THE PROVIDER WRITTEN NOTICE OF RESCISSION of the SERVICE contract
13 [to the provider].

14 S 12. Subsection (b) of section 7906 of the insurance law, as added by
15 chapter 614 of the laws of 1997, is amended to read as follows:

16 (b) A provider shall not [in its service contracts or literature]
17 make, permit or cause to be made any false or misleading statement, or
18 deliberately omit any material statement [that would make the service
19 contracts or literature misleading if omitted], in THE SERVICE CONTRACT
20 OR IN connection with the sale, offer to sell, or advertisement of a
21 service contract.

22 S 13. Subsections (b) and (e) of section 7907 of the insurance law, as
23 added by chapter 614 of the laws of 1997, are amended to read as
24 follows:

25 (b) The registration application shall be accompanied by a fee of [two
26 hundred fifty] ONE THOUSAND dollars for each year or fraction of a year
27 in which the registration shall be in effect.

28 (e) The PROVIDER'S registration shall continue in force until SUCH
29 TIME AS THE REGISTRATION IS suspended or revoked by the superintendent
30 [on the grounds that the provider is not trustworthy or has violated any
31 provision of this chapter or has given cause for the revocation or
32 suspension of such registration or the provider has failed to comply
33 with any prerequisite for the issuance of such registration approved,]
34 or terminated at the request of the provider, subject, however, to the
35 biennial renewal of the registration[, by filing a renewal application
36 and payment, prior to March first of each odd numbered year following
37 that in which its original registration application is filed, of a fee
38 of five hundred dollars] PURSUANT TO SUBSECTION (G) OF THIS SECTION.

39 S 14. Subsection (f) of section 7907 of the insurance law, as added by
40 chapter 614 of the laws of 1997, is amended to read as follows:

41 (f) Except for the registration requirement in this section, [provid-
42 ers and administrators] A PROVIDER OR ADMINISTRATOR of service contracts
43 [are], AS TO ITS SERVICE CONTRACT BUSINESS, SHALL BE exempt from any
44 licensing requirements UNDER THIS CHAPTER.

45 S 15. Subsection (g) of section 7907 of the insurance law, as added by
46 chapter 614 of the laws of 1997, is amended to read as follows:

47 (g) A PROVIDER SHALL FILE A BIENNIAL RENEWAL APPLICATION AND PAY A FEE
48 OF ONE THOUSAND DOLLARS TO THE SUPERINTENDENT, PRIOR TO MARCH FIRST OF
49 EACH ODD NUMBERED YEAR FOLLOWING THAT YEAR IN WHICH THE PROVIDER FILED
50 ITS ORIGINAL REGISTRATION APPLICATION AS LONG AS THE PROVIDER HAS
51 OUTSTANDING SERVICE CONTRACT OBLIGATIONS. The biennial renewal applica-
52 tion shall contain such information as required by the superintendent
53 including, but not limited to information to demonstrate that the appli-
54 cant continues to satisfy all requirements of section seven thousand
55 nine hundred three of this article.

1 S 16. Paragraph 2 of subsection (a) of section 7908 of the insurance
2 law, as added by chapter 614 of the laws of 1997, is amended to read as
3 follows:

4 (2) A provider's or its administrator's accounts, books and records
5 shall include:

6 (A) copies of each type of service contract issued;

7 (B) the name and address of each service contract holder to the extent
8 that the name and address have been furnished by the service contract
9 holder to the provider;

10 (C) a list of the provider locations where service contracts are
11 marketed, sold, offered for sale, issued, made or proposed to be made or
12 administered; [and]

13 (D) [written] DOCUMENTATION FOR ALL claims filed, which shall contain
14 at least the dates and description of all claims related to the service
15 contracts; AND

16 (E) SUCH OTHER INFORMATION AS THE SUPERINTENDENT MAY REQUIRE.

17 S 17. Section 7910 of the insurance law, as added by chapter 614 of
18 the laws of 1997, is amended to read as follows:

19 S 7910. Enforcement provisions. (a) The superintendent may conduct
20 investigations or examinations of providers, administrators, insurers or
21 other persons to enforce the provisions of this article and protect
22 service contract holders [in this state]. Upon request of the super-
23 intendent, the provider shall make all accounts, books and records
24 concerning service contracts sold in this state by the provider avail-
25 able to the superintendent [which] THAT are necessary to enable the
26 superintendent to [reasonably] determine compliance [or noncompliance]
27 with this article.

28 (b) The superintendent may take action [which] THAT is necessary or
29 appropriate to enforce the provisions of this article and the super-
30 intendent's regulations and orders, and to protect service contract
31 holders [in this state].

32 [(1) If the provider has violated this article or the superintendent's
33 regulations or orders, the] (C) THE superintendent may REVOKE, OR
34 SUSPEND A PROVIDER'S REGISTRATION, OR MAY order a service contract
35 provider to cease and desist from committing violations of this article
36 or the superintendent's regulations or orders, OR may issue an order
37 [suspending a provider's registration under this article or] prohibiting
38 a service contract provider from marketing, selling, offering for sale,
39 issuing, making or proposing to make service contracts, or may issue an
40 order imposing a civil penalty, or any combination of [these] THE FORE-
41 GOING, IF THE PROVIDER, OR THE PROVIDER'S EXECUTIVE OFFICER OR OFFICERS
42 DIRECTLY RESPONSIBLE FOR THE PROVIDER'S SERVICE CONTRACT BUSINESS, HAS:

43 (1) VIOLATED ANY PROVISION OF THE INSURANCE LAW TO WHICH THE PROVIDER
44 IS SUBJECT, OR ANY REGULATION, OR SUBPOENA OR ORDER OF THE SUPERINTEN-
45 DENT OR OF ANOTHER STATE'S INSURANCE COMMISSIONER OR SERVICE CONTRACT
46 REGULATOR, OR ANY OTHER LAW IN THE COURSE OF THE REGISTRANT'S DEALINGS
47 IN SUCH CAPACITY;

48 (2) PROVIDED MATERIALLY INCORRECT, MATERIALLY MISLEADING, MATERIALLY
49 INCOMPLETE OR MATERIALLY UNTRUE INFORMATION IN ITS REGISTRATION APPLICA-
50 TION OR BIENNIAL RENEWAL APPLICATION;

51 (3) OBTAINED OR ATTEMPTED TO OBTAIN A REGISTRATION THROUGH MISREPRE-
52 SENTATION OR FRAUD;

53 (4) (A) USED FRAUDULENT, COERCIVE OR DISHONEST PRACTICES;

54 (B) DEMONSTRATED INCOMPETENCE;

55 (C) DEMONSTRATED UNTRUSTWORTHINESS; OR

1 (D) DEMONSTRATED FINANCIAL IRRESPONSIBILITY IN THE CONDUCT OF SERVICE
2 CONTRACT BUSINESS IN THIS STATE OR ELSEWHERE;

3 (5) BEEN CONVICTED OF A FELONY, OR HAS BEEN GUILTY OF FRAUDULENT OR
4 DISHONEST PRACTICES OR OTHER MISCONDUCT OR MALFEASANCE;

5 (6) ENGAGED IN ANY UNFAIR TRADE OR CLAIMS PRACTICE IN THE COURSE OF
6 THE PROVIDER'S SERVICE CONTRACT BUSINESS;

7 (7) HAD A SERVICE CONTRACT PROVIDER LICENSE OR REGISTRATION, OR THE
8 EQUIVALENT DENIED, SUSPENDED OR REVOKED IN ANY OTHER STATE, PROVINCE,
9 DISTRICT OR TERRITORY;

10 (8) FAILED TO HONOR ITS CONTRACTUAL OBLIGATIONS SET OUT IN A SERVICE
11 CONTRACT; OR

12 (9) FAILED TO PAY STATE INCOME TAX OR COMPLY WITH ANY ADMINISTRATIVE
13 OR COURT ORDER DIRECTING PAYMENT OF STATE INCOME TAX.

14 (D) An order issued under [this paragraph may] SUBSECTION (C) OF THIS
15 SECTION SHALL be delivered to the provider OR TO ITS DESIGNATED AGENT
16 FOR SERVICE OF PROCESS at [its principal office or to the provider's
17 designated agent for service of process indicated in the provider's
18 registration materials pursuant to paragraph two of subsection (a) of
19 section seven thousand nine hundred seven of this article] THE ADDRESS
20 CONTAINED IN THE PROVIDER'S MOST RECENT REGISTRATION APPLICATION.

21 [(A)] (E) (1) A person aggrieved by an order issued under [this para-
22 graph] SUBSECTION (C) OF THIS SECTION may request a hearing before the
23 superintendent. The hearing request shall be filed with the superinten-
24 dent within twenty days of the date the superintendent's order is effec-
25 tive;

26 [(B)] (2) If a hearing is requested, [an] THEN THE order issued under
27 [this paragraph] SUBSECTION (C) OF THIS SECTION shall be suspended from
28 the original effective date of the order until completion of the hearing
29 and delivery of the final decision thereon TO THE PROVIDER by the super-
30 intendent, except that where the [provider has demonstrated a consistent
31 pattern or practice of gross misconduct in connection with the market-
32 ing, sale, offering for sale, issuance, making or proposing to make of
33 service contracts] ORDER CONTAINS A FINDING BY THE SUPERINTENDENT THAT
34 THE PUBLIC HEALTH, SAFETY OR WELFARE IMPERATIVELY REQUIRES EMERGENCY
35 ACTION, the effective date of the order shall not be suspended pending
36 the hearing and decision by the superintendent; and

37 [(C)] (3) At the hearing, the burden shall be on the superintendent to
38 show why the order issued pursuant to this paragraph is justified. The
39 provisions of section three hundred four of this chapter shall apply to
40 a hearing requested under this [paragraph] SUBSECTION.

41 [(2)] (F) The superintendent may bring an action in any court of
42 competent jurisdiction for an injunction or other appropriate relief to
43 enjoin threatened or existing violations of this article or of the
44 superintendent's orders or regulations. [An] THE SUPERINTENDENT, IN AN
45 action filed under this [paragraph] SUBSECTION may also seek restitution
46 on behalf of persons aggrieved by a violation of this article or orders
47 or regulations of the superintendent.

48 [(3)] (G)(1) A person in violation of this article may be subject to a
49 monetary penalty of not more than five hundred dollars per violation.
50 [If the violation is not willful, such person may in lieu of paying such
51 monetary penalty, provide restitution to the persons aggrieved by the
52 violation or otherwise remedy the violation within sixty days after
53 becoming aware of the violation.]

54 (2) THE SUPERINTENDENT MAY ALSO REQUIRE THE PROVIDER TO PAY RESTITU-
55 TION TO THE PERSONS AGGRIEVED BY THE VIOLATION OR TAKE SUCH OTHER ACTION
56 TO REMEDY OR AMELIORATE THE VIOLATION.

1 [(c)] (H) The authority of the superintendent under this section is in
2 addition to any other authority of the superintendent.

3 S 18. Section 7912 of the insurance law, as added by chapter 614 of
4 the laws of 1997, is amended to read as follows:

5 S 7912. [Transition. Providers who have submitted an application for
6 approval of registration pursuant to section seven thousand nine hundred
7 seven of this article who have been previously engaged in New York
8 state, for not less than two years immediately prior to the effective
9 date of this section in the business of marketing, selling, offering for
10 sale, issuing, making, proposing or administering a service contract
11 which otherwise was in compliance with all applicable laws of the state
12 of New York immediately prior to the effective date of this section, may
13 engage in such business in the state of New York until such time as the
14 superintendent has issued a determination on such application for
15 approval of registration provided that such application is received by
16 the superintendent within sixty days of the effective date of this
17 section.] PROVIDER RESPONSIBILITIES. A PROVIDER SHALL BE RESPONSIBLE
18 FOR ALL ASPECTS OF THE SERVICE CONTRACT BUSINESS THAT IT CONDUCTS IN
19 THIS STATE, IRRESPECTIVE OF WHETHER THE PROVIDER DESIGNATES AN ADMINIS-
20 TRATOR OR ALLOWS ANOTHER PERSON TO MARKET OR SELL ITS SERVICE CONTRACTS.

21 S 19. Section 7913 of the insurance law is renumbered section 7914 and
22 a new section 7913 is added to read as follows:

23 S 7913. CEASING TO MAINTAIN REGISTRATION. (A)(1) A REGISTERED PROVIDER
24 THAT: INTENDS TO WITHDRAW FROM THE SERVICE CONTRACT MARKET IN THIS
25 STATE; FAILS TO MAINTAIN ITS PROVIDER REGISTRATION; OR WHOSE REGISTRA-
26 TION THE SUPERINTENDENT HAS REVOKED OR SUSPENDED, SHALL SUBMIT TO THE
27 SUPERINTENDENT FOR APPROVAL A PLAN TO EFFECTUATE A WITHDRAWAL FROM THE
28 SERVICE CONTRACT MARKET IN THIS STATE.

29 (2) THE PROVIDER SHALL SUBMIT THE PROPOSED PLAN:

30 (A) AT LEAST FORTY-FIVE DAYS PRIOR TO THE PROVIDER'S INTENDED WITH-
31 DRAWAL FROM THE SERVICE CONTRACT MARKET; OR

32 (B) NOT LATER THAN THIRTY DAYS AFTER THE: (I) PROVIDER'S REGISTRATION
33 EXPIRES, OR (II) AFTER THE EFFECTIVE DATE OF AN ORDER ISSUED BY THE
34 SUPERINTENDENT THAT REVOKES OR SUSPENDS THE PROVIDER'S REGISTRATION.

35 (3) THE PLAN SHALL SET FORTH PROCEDURES BY WHICH THE PROVIDER SHALL
36 MEET ITS CONTRACTUAL OBLIGATIONS UNDER ITS SERVICE CONTRACTS AND ANY
37 APPLICABLE STATUTORY OBLIGATIONS OF THE PROVIDER; AND SUCH OTHER INFOR-
38 MATION AS THE SUPERINTENDENT MAY REQUIRE.

39 (4) TO PROTECT THE INTERESTS OF THE PROVIDER'S SERVICE CONTRACT HOLD-
40 ERS, THE SUPERINTENDENT MAY REQUIRE THAT A PROVIDER, WHICH HAS DEMON-
41 STRATED ITS FINANCIAL RESPONSIBILITY BY ONE OF THE METHODS SPECIFIED IN
42 PARAGRAPH TWO OR THREE OF SUBSECTION (C) OF SECTION SEVEN THOUSAND NINE
43 HUNDRED THREE OF THIS ARTICLE, DEPOSIT IN TRUST, IN THE NAME OF THE
44 SUPERINTENDENT, AN AMOUNT EQUAL TO THE MINIMUM FUNDED RESERVE ACCOUNT
45 CALCULATED BASED UPON THE PROVIDER'S OUTSTANDING SERVICE CONTRACTS.

46 (5) A PROVIDER WHO FAILS TO SUBMIT A PROPOSED PLAN WITHIN THE TIME
47 FRAMES SPECIFIED IN THIS SECTION, OR WITHDRAWS FROM THE SERVICE CONTRACT
48 MARKET IN THIS STATE WITHOUT HAVING A PLAN APPROVED BY THE SUPERINTEN-
49 DENT, SHALL BE SUBJECT TO A MONETARY PENALTY OF NOT MORE THAN FIVE
50 HUNDRED DOLLARS PER DAY FOR FAILURE TO FILE A PLAN.

51 (B) THE SUPERINTENDENT MAY CONTINUE TO ENFORCE THE PROVISIONS OF THIS
52 ARTICLE AS TO A PROVIDER AS LONG AS THE PROVIDER HAS OUTSTANDING SERVICE
53 CONTRACT OBLIGATIONS, NOTWITHSTANDING: (1) A PROVIDER'S FAILURE TO MAIN-
54 TAIN ITS REGISTRATION; (2) AN ORDER BY THE SUPERINTENDENT REVOKING OR
55 SUSPENDING THE PROVIDER'S REGISTRATION; OR (3) THE SUPERINTENDENT'S
56 APPROVAL OF A PLAN TO EFFECTUATE A WITHDRAWAL PURSUANT TO THIS SECTION.

1 S 20. This act shall take effect on the one hundred eightieth day
2 after it shall have become a law, provided however, that if section 1 of
3 chapter 499 of the laws of 2009 is not in effect on such date, then the
4 amendments made by section one-a of this act shall take effect on the
5 same date and in the same manner as section 1 of chapter 499 of the laws
6 of 2009 takes effect, except that any rule or regulation necessary for
7 the timely implementation of this act on its effective date may be
8 promulgated on or before such date.