

HOUSE No. 956

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel M. Donahue

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to motor vehicle service contracts.

PETITION OF:

NAME:

Daniel M. Donahue

DISTRICT/ADDRESS:

16th Worcester

HOUSE No. 956

By Mr. Donahue of Worcester, a petition (accompanied by bill, House, No. 956) of Daniel M. Donahue relative to motor vehicle service contracts. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to motor vehicle 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. Section 149M of chapter 175 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the definition of “consumer” the following
3 5 definitions:-

4 “Consumer product”, any tangible personal property that is distributed in commerce and
5 is normally used for personal, family or household purposes, including tangible personal
6 property intended to be attached to or installed in any real property without regard to whether it
7 is so attached or installed.

8 “Maintenance agreement”, a contract for regular maintenance.

9 “Motor vehicle manufacturer”, a person who: (i) manufactures, distributes or produces
10 motor vehicles under the person’s own name or label;

11 (ii) is a subsidiary of the person who manufactures, distributes or produces motor
12 vehicles; (iii) is a corporation which owns 100 per cent of the corporation, association,

13 partnership or other legal entity who manufactures, distributes or produces motor vehicles; or
14 (iv) does not manufacture, distribute or produce motor vehicles but, pursuant to a written
15 contract, licenses the use of its trade name or label to another person who manufactures,
16 distributes or produces motor vehicles.

17 SECTION 2. Said section 149M of said chapter 175, as so appearing, is hereby further
18 amended by striking out the definition of “service contract” and inserting in place thereof the
19 following definition:-

20 “Service contract”, a contract for a separately stated consideration and for a specific
21 duration to perform the service, repair, replacement or maintenance of a consumer product,
22 including a motor vehicle, or indemnification for service, repair, replacement or maintenance for
23 the operational or structural failure due to a defect in materials or workmanship or normal wear
24 and tear, with or without additional provision for incidental payment or indemnity under limited
25 circumstances, for related expenses, including, but not limited to, rental and food spoilage;
26 provided, however, that a service contract shall also include a contract or agreement sold for a
27 separately stated consideration for a specific duration that provides for any of the following: (i)
28 the repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming
29 into contact with road hazards including, but not limited to, potholes, rocks, wood debris, metal
30 parts, glass, plastic, curbs or composite scraps; (ii) the removal of dents, dings or creases on a
31 motor vehicle that can be repaired using the process of painless dent removal without affecting
32 the existing paint finish and without replacing vehicle body panels, sanding, bonding or painting;
33 or (iii) the repair of small motor vehicle windshield chips or cracks which may include the
34 replacement of the windshield for chips or cracks that cannot be repaired.

35 SECTION 3. Section 149N of said chapter 175, as so appearing, is hereby amended by
36 striking out, in line 100, the words “tangible personal property” and inserting in place thereof the
37 following words:- consumer products.

38 SECTION 4. Section 4 of said chapter 93B, as so appearing, is hereby amended by
39 adding the following subsection:-

40 (c)(1) It shall be an unfair or deceptive act or practice for a motor vehicle manufacturer,
41 distributor or franchisor representative to require, attempt to require, coerce, or attempt to coerce
42 a motor vehicle dealer to sell exclusively an extended service contract, extended maintenance
43 plan or similar products, including, but not limited to, guaranteed automobile protection or
44 guaranteed asset protection products, offered, endorsed or sponsored by the motor vehicle
45 manufacturer, distributor or franchisor representative by any of the following means: (i) a
46 statement made by the motor vehicle manufacturer, distributor or franchisor representative that
47 failure to sell exclusively an extended service contract, extended maintenance plan or similar
48 products will substantially and adversely impact the dealer; (ii) a provision in a franchise
49 agreement that the dealer sell exclusively an extended service contract, extended maintenance
50 plan or similar product offered, endorsed or sponsored by the motor vehicle manufacturer,
51 distributor or franchisor representative; (iii) measuring the dealer’s performance under the
52 franchise based on the sale of extended service contracts, extended maintenance plans or similar
53 products offered, endorsed or sponsored by the motor vehicle manufacturer, distributor or
54 franchisor representative; or (iv) requiring the dealer to exclusively promote the sale of extended
55 service contracts, extended maintenance plans or similar products offered, endorsed or sponsored
56 by the motor vehicle manufacturer, distributor or franchisor representative.

57 (2) Nothing in this subsection shall prohibit a motor vehicle manufacturer, distributor or
58 franchisor representative from providing incentives to a dealer that encourages a voluntary
59 decision to sell exclusively an extended service contract, extended maintenance plan or similar
60 product, including, but not limited to, guaranteed automobile protection or guaranteed asset
61 protection products offered, endorsed or sponsored by the manufacturer, distributor or franchisor.

62 Nothing in this subsection shall require or prohibit a motor vehicle manufacturer,
63 distributor or franchisor representative from enforcing a requirement that a dealer disclose to a
64 customer that a product covered by this subsection is not provided or supported by the
65 manufacturer, distributor or franchisor, if that is the case. In the case of a product that is a
66 service contract which is not provided or supported by the manufacturer, distributor or
67 franchisor, then the manufacturer, distributor or franchisor may require the franchisee to provide
68 the following disclosure to the consumer:

69 The service contract you are purchasing is not provided or backed by the manufacturer of
70 the vehicle you are purchasing. The manufacturer of this vehicle is not responsible for claims or
71 repairs under this service contract.

72 (3) Nothing in this subsection shall require or prohibit a motor vehicle manufacturer,
73 distributor, or franchisor representative from enforcing a requirement that a dealer from requiring
74 a franchisee dealer to provide the following notice prior to the sale of the service contract if the
75 service contract is not provided or backed by the motor vehicle manufacturer and the vehicle is
76 of the franchised line-make:

77 Buyer/Lessee acknowledges that the dealer is selling her/him a service contract that is not
78 backed by the vehicle manufacturer. Buyer/ Lessee understands that (i) the vehicle manufacturer

79 is not responsible for any claims under this service contract product and has no obligation in
80 connection with the sale or use of this service contract product, and (ii) this service contract may
81 or may not be accepted by other authorized dealers this vehicle manufacturer.

82 SECTION 5. Said chapter 175 is hereby amended by striking out section 149V, as so
83 appearing, and inserting in place thereof the following section:-

84 Section 149V. (a) The following shall be exempt from sections 149M to 149W, inclusive:

85 (i) warranties, service contracts or maintenance agreements provided by public utilities that are
86 regulated by the department of telecommunications and cable or the Federal Communications
87 Commission, or by an affiliate of such entity, covering customer wiring, transmission devices
88 serviced by such public utility or warranting services provided by such public utility or its
89 affiliate; (ii) mechanical breakdown insurance policies offered by insurers otherwise licensed and
90 regulated pursuant to the laws and regulations of the commonwealth; (iii) warranties, service
91 contracts or other agreements regarding automobiles under which a licensed motor vehicle dealer
92 or an affiliate of a licensed motor vehicle dealer is obligated to perform; (iv) warranties offered
93 by builders as part of a conveyance of real estate; (v) warranties on a product made by the
94 manufacturer, importer or seller of the product; and (vi) maintenance agreements.

95 (b) Motor vehicle manufacturers and service contracts on the motor vehicle
96 manufacturer's products need only comply with sections 149N(f), 149P, 149Q, 149R and 149U,
97 as applicable, of this Act, and motor vehicle manufacturers offering service contracts on the
98 motor vehicle manufacturer's products are exempt from licensure under section 149N(c) and the
99 requirements of section 149N(d).