

HOUSE BILL ANALYSIS

SB 5869

Title: An act relating to regulating service contracts.

Brief Description: Regulating service contracts.

Sponsors: Senators Prentice, Hale and Winsley; by request of Attorney General.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Meeting Date: March 30, 1999.

Bill Analysis Prepared by: Anntonette Z. Alberti (786-7117).

Background: Many retailers sell service contracts to consumers. Service contracts are agreements to repair, replace, or maintain merchandise for a given period of time. Service contracts offer protections in addition to any guarantees that are offered under the warranties provided by the manufacturers, importers, or sellers of merchandise.

If a retailer who sells service contracts goes out of business, the retailer no longer exists to perform the pre-paid services or to refund the consideration consumers paid for the service contracts.

Summary of Bill: Retailers selling service contracts in this state are required to first obtain registration from the Insurance Commissioner. In order to obtain registration the retailer must comply with filing, reporting, and record keeping requirements. The Insurance Commissioner may investigate service contract providers and enforce the provisions of this act. The Insurance Commissioner may deny, suspend, or revoke registration to sell service contracts after notice and hearing if the service contract provider operates irresponsibly or deceptively. Registration may be suspended without notice and hearing if the service contract provider becomes insolvent, bankrupt, or otherwise poses an imminent threat to the public. The Insurance Commissioner may impose a fine of up to \$2,000 per violation in lieu of suspension.

Service contract providers must give consumers a written receipt and a copy of the service contract. The service contract must be written in plain language, must contain certain disclosures, must describe the process for obtaining service and filing a claim, and must lay out the consumer's duties under the contract. The contract may not require out of state adjudication. Consumers are allowed to return service contracts for a full refund within 20 days of the date the service contract was mailed to them, within 10 days of delivery, or within a longer period of time as specified in the service contract. If a claim has been made on the service contract within that period, the contract cannot be returned. If the purchase price is not remitted to the consumer

within 30 days of the return of the service contract, the service contract provider must pay the consumer a 10 percent penalty per month until the money is refunded.

In addition, service contract providers must ensure the reliability of the contracts they sell by doing one of the following things: (1) insuring the contracts under reimbursement insurance policies; (2) maintaining a reserve account of at least 40 percent of the gross receipts of service contract sales and depositing financial security with the Insurance Commissioner; or (3) maintaining a net worth or stockholders' equity of \$1,000,000, and upon request, providing the Insurance Commissioner with a copy of its most recent Securities and Exchange Commission filings.

Reimbursement insurance policies for service contracts must cover all costs associated with fulfillment of the service contract. The consumer may apply for relief directly to the reimbursement insurance company. Issuers of reimbursement insurance policies may not terminate policies until filing notice of termination with the Insurance Commissioner. Service contract providers may not imply that they are insurance companies or that service contracts are insurance policies.

Lenders may not require consumers to obtain a service contract as a condition of obtaining a loan for or making a sale of any property.

Violations of this act are violations of the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Rulemaking Authority: The Insurance Commissioner is granted authority to make rules implementing this act.