
SUBSTITUTE HOUSE BILL 2355

State of Washington

64th Legislature

2016 Regular Session

By House Business & Financial Services (originally sponsored by Representatives Kirby, Vick, and Blake)

READ FIRST TIME 01/25/16.

1 AN ACT Relating to registered service contract and protection
2 product guarantee providers; and amending RCW 48.110.030, 48.110.040,
3 48.110.050, 48.110.055, 48.110.073, 48.110.130, and 48.110.902.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 48.110.030 and 2014 c 82 s 2 are each amended to
6 read as follows:

7 (1) A person may not act as, or offer to act as, or hold himself
8 or herself out to be a service contract provider in this state, nor
9 may a service contract be sold to a consumer in this state, unless
10 the service contract provider has a valid registration as a service
11 contract provider issued by the commissioner.

12 (2) Applicants to be a service contract provider must make an
13 application to the commissioner upon a form to be furnished by the
14 commissioner. The application must include or be accompanied by the
15 following information and documents:

16 (a) All basic organizational documents of the service contract
17 provider, including any articles of incorporation, articles of
18 association, partnership agreement, trade name certificate, trust
19 agreement, shareholder agreement, bylaws, and other applicable
20 documents, and all amendments to those documents;

1 (b) The identities of the service contract provider's executive
2 officer or officers directly responsible for the service contract
3 provider's service contract business, and, if more than fifty percent
4 of the service contract provider's gross revenue is derived from the
5 sale of service contracts, the identities of the service contract
6 provider's directors and stockholders having beneficial ownership of
7 ten percent or more of any class of securities;

8 (c)(i) For service contract providers relying on RCW
9 48.110.050(2) (a) or (b) or 48.110.075(2)(a) to assure the faithful
10 performance of its obligations to service contract holders, the most
11 recent audited annual financial statements or other financial reports
12 acceptable to the commissioner for the ((two)) most recent ((years))
13 year which prove that the applicant ((is solvent and any information
14 the commissioner may require in order to review the current financial
15 condition of the applicant. If the service contract provider is
16 relying on RCW 48.110.050(2)(c) to assure the faithful performance of
17 its obligations to service contract holders, then the audited
18 financial statements of the service contract provider's parent
19 company must also be filed. In lieu of submitting audited financial
20 statements, a service contract provider relying on RCW
21 48.110.050(2)(a) or 48.110.075(2)(a) to assure the faithful
22 performance of its obligations to service contract holders may comply
23 with the requirements of this subsection (2)(c) by submitting annual
24 financial statements of the applicant that are certified as accurate
25 by two or more officers of the applicant;)) has and maintains a net
26 worth or stockholder's equity of two hundred thousand dollars or
27 more. In lieu of submitting audited financial statements, a service
28 contract provider relying on RCW 48.110.050(2)(a) or 48.110.075(2)(a)
29 to assure the faithful performance of its obligations to service
30 contract holders may comply with the requirements of this subsection
31 (2)(c)(i) by submitting annual financial statements of the applicant
32 that are certified as accurate by two or more officers of the
33 applicant; or

34 (ii) For service contract providers relying on RCW
35 48.110.050(2)(c) to assure the faithful performance of its
36 obligations to service contract holders, the most recent audited
37 annual financial statements or form 10-K or form 20-F filed with the
38 securities and exchange commission which prove that the applicant has
39 and maintains a net worth or stockholder's equity of one hundred
40 million dollars or more. However, if the service contract provider is

1 relying on its parent company's net worth or stockholder's equity to
2 meet the requirements of RCW 48.110.050(2)(c) and the service
3 contract provider has provided the commissioner with a written
4 guarantee by the parent company in accordance with RCW
5 48.110.050(2)(c), then the most recent audited financial statements
6 or form 10-K or form 20-F filed with the securities and exchange
7 commission of the service contract provider's parent company must be
8 filed and the applicant need not submit its own financial statements
9 or demonstrate a minimum net worth or stockholder's equity; and

10 (d) An application fee of two hundred fifty dollars, which must
11 be deposited into the general fund(~~(; and~~

12 ~~(e) Any other pertinent information required by the~~
13 ~~commissioner)).~~

14 (3) Each registered service contract provider must appoint the
15 commissioner as the service contract provider's attorney to receive
16 service of legal process issued against the service contract provider
17 in this state upon causes of action arising within this state.
18 Service upon the commissioner as attorney constitutes effective legal
19 service upon the service contract provider.

20 (a) With the appointment the service contract provider must
21 designate the person to whom the commissioner must forward legal
22 process so served upon him or her.

23 (b) The appointment is irrevocable, binds any successor in
24 interest or to the assets or liabilities of the service contract
25 provider, and remains in effect for as long as there could be any
26 cause of action against the service contract provider arising out of
27 any of the service contract provider's contracts or obligations in
28 this state.

29 (c) The service of process must be accomplished and processed in
30 the manner prescribed under RCW 48.02.200.

31 (4) The commissioner may refuse to issue a registration if the
32 commissioner determines that the service contract provider, or any
33 individual responsible for the conduct of the affairs of the service
34 contract provider under subsection (2)(b) of this section, is not
35 competent(~~(;)~~); not trustworthy(~~(; financially responsible, or)~~); has
36 had a license as a service contract provider or similar license
37 denied or revoked for cause by any state; or cannot demonstrate a net
38 worth or stockholder's equity in accordance with the applicable
39 requirements of subsection (2)(c) of this section.

1 (5) A registration issued under this section is valid, unless
2 surrendered, suspended, or revoked by the commissioner, or not
3 renewed for so long as the service contract provider continues in
4 business in this state and remains in compliance with this chapter. A
5 registration is subject to renewal annually on the first day of July
6 upon application of the service contract provider and payment of a
7 fee of two hundred dollars, which must be deposited into the general
8 fund. If not so renewed, the registration expires on the June 30th
9 next preceding.

10 (6) A service contract provider must keep current the information
11 required to be disclosed in its registration under this section by
12 reporting all material changes or additions within thirty days after
13 the end of the month in which the change or addition occurs.

14 **Sec. 2.** RCW 48.110.040 and 2006 c 274 s 5 are each amended to
15 read as follows:

16 (1)(a) Every registered service contract provider must file an
17 annual report for the preceding calendar year with the commissioner
18 on or before March 1st of each year, or within any extension of time
19 the commissioner for good cause may grant. The report must be in the
20 form and contain those matters as the commissioner prescribes and
21 shall be verified by at least two officers of the service contract
22 provider.

23 (b)(i) A service contract provider relying on RCW
24 48.110.050(2)(a) or 48.110.075(2)(a) to assure the faithful
25 performance of its obligations to service contract holders may not be
26 required to submit audited financial statements of the service
27 contract provider as part of its annual reports. If requested by the
28 commissioner, a service contract provider relying on those provisions
29 must provide a copy of the most recent annual financial statements of
30 the service contract provider or its parent company certified as
31 accurate by two officers of the service contract provider or its
32 parent company.

33 (ii) A service contract provider relying on its parent company's
34 net worth to meet the requirements of RCW 48.110.050(2)(c) to assure
35 the faithful performance of its obligations to service contract
36 holders must submit as part of its annual report the most recent
37 audited financial statements or form 10-K or form 20-F filed with the
38 United States securities and exchange commission of the service

1 contract provider's parent company if requested by the commissioner
2 but need not submit its own audited financial statements.

3 (2) At the time of filing the report, the service contract
4 provider must pay a filing fee of twenty dollars which shall be
5 deposited into the general fund.

6 (3) As part of any investigation by the commissioner, the
7 commissioner may require a service contract provider to file monthly
8 financial reports whenever, in the commissioner's discretion, there
9 is a need to more closely monitor the financial activities of the
10 service contract provider. Monthly financial statements must be filed
11 in the commissioner's office no later than the twenty-fifth day of
12 the month following the month for which the financial report is being
13 filed. These monthly financial reports are the internal financial
14 statements of the service contract provider. The monthly financial
15 reports that are filed with the commissioner constitute information
16 that might be damaging to the service contract provider if made
17 available to its competitors, and therefore shall be kept
18 confidential by the commissioner. This information may not be made
19 public or be subject to subpoena, other than by the commissioner and
20 then only for the purpose of enforcement actions taken by the
21 commissioner.

22 **Sec. 3.** RCW 48.110.050 and 2006 c 274 s 6 are each amended to
23 read as follows:

24 (1) Service contracts shall not be issued, sold, or offered for
25 sale in this state or sold to consumers in this state unless the
26 service contract provider has:

27 (a) Provided a receipt for, or other written evidence of, the
28 purchase of the service contract to the contract holder; and

29 (b) Provided a copy of the service contract to the service
30 contract holder within a reasonable period of time from the date of
31 purchase.

32 (2) In order to either demonstrate its financial responsibility
33 or assure the faithful performance of the service contract provider's
34 obligations to its service contract holders, every service contract
35 provider shall comply with the requirements of one of the following:

36 (a) Insure all service contracts under a reimbursement insurance
37 policy issued by an insurer holding a certificate of authority from
38 the commissioner or a risk retention group, as defined in 15 U.S.C.
39 Sec. 3901(a)(4), as long as that risk retention group is in full

1 compliance with the federal liability risk retention act of 1986 (15
2 U.S.C. Sec. 3901 et seq.), is in good standing in its domiciliary
3 jurisdiction, and is properly registered with the commissioner under
4 chapter 48.92 RCW. The insurance required by this subsection must
5 meet the following requirements:

6 (i) The insurer or risk retention group must, at the time the
7 policy is filed with the commissioner, and continuously thereafter,
8 maintain surplus as to policyholders and paid-in capital of at least
9 fifteen million dollars and annually file audited financial
10 statements with the commissioner; and

11 (ii) The commissioner may authorize an insurer or risk retention
12 group that has surplus as to policyholders and paid-in capital of
13 less than fifteen million dollars, but at least equal to ten million
14 dollars, to issue the insurance required by this subsection if the
15 insurer or risk retention group demonstrates to the satisfaction of
16 the commissioner that the company maintains a ratio of direct written
17 premiums, wherever written, to surplus as to policyholders and paid-
18 in capital of not more than three to one;

19 (b)(i) Maintain a funded reserve account for its obligations
20 under its service contracts issued and outstanding in this state. The
21 reserves shall not be less than forty percent of the gross
22 consideration received, less claims paid, on the sale of the service
23 contract for all in-force contracts. The reserve account shall be
24 subject to examination and review by the commissioner; and

25 (ii) Place in trust with the commissioner a financial security
26 deposit, having a value of not less than five percent of the gross
27 consideration received, less claims paid, on the sale of the service
28 contract for all service contracts issued and in force, but not less
29 than twenty-five thousand dollars, consisting of one of the
30 following:

31 (A) A surety bond issued by an insurer holding a certificate of
32 authority from the commissioner;

33 (B) Securities of the type eligible for deposit by authorized
34 insurers in this state;

35 (C) Cash;

36 (D) An irrevocable evergreen letter of credit issued by a
37 qualified financial institution; or

38 (E) Another form of security prescribed by rule by the
39 commissioner; or

1 (c)(i) Maintain, or its parent company maintain, a net worth or
2 stockholder's equity of at least one hundred million dollars; and

3 (ii) Upon request, provide the commissioner with a copy of the
4 service contract provider's or, if using the net worth or
5 stockholder's equity of its parent company to satisfy the one hundred
6 million dollar requirement, the service contract provider's parent
7 company's most recent form 10-K or form 20-F filed with the
8 securities and exchange commission within the last calendar year, or
9 if the company does not file with the securities and exchange
10 commission, a copy of the service contract provider's or, if using
11 the net worth or stockholder's equity of its parent company to
12 satisfy the one hundred million dollar requirement, the service
13 contract provider's parent company's most recent audited financial
14 statements, which shows a net worth of the service contract provider
15 or its parent company of at least one hundred million dollars. If the
16 service contract provider's parent company's form 10-K, form 20-F, or
17 audited financial statements are filed with the commissioner to meet
18 the service contract provider's financial stability requirement, then
19 the parent company shall agree to guarantee the obligations of the
20 service contract provider relating to service contracts sold by the
21 service contract provider in this state. A copy of the guarantee
22 shall be filed with the commissioner. The guarantee shall be
23 irrevocable as long as there is in force in this state any contract
24 or any obligation arising from service contracts guaranteed, unless
25 the parent company has made arrangements approved by the commissioner
26 to satisfy its obligations under the guarantee.

27 (3) Service contracts shall require the service contract provider
28 to permit the service contract holder to return the service contract
29 within twenty days of the date the service contract was mailed to the
30 service contract holder or within ten days of delivery if the service
31 contract is delivered to the service contract holder at the time of
32 sale, or within a longer time period permitted under the service
33 contract. Upon return of the service contract to the service contract
34 provider within the applicable period, if no claim has been made
35 under the service contract prior to the return to the service
36 contract provider, the service contract is void and the service
37 contract provider shall refund to the service contract holder, or
38 credit the account of the service contract holder with the full
39 purchase price of the service contract. The right to void the service
40 contract provided in this subsection is not transferable and shall

1 apply only to the original service contract purchaser. A ten percent
2 penalty per month shall be added to a refund of the purchase price
3 that is not paid or credited within thirty days after return of the
4 service contract to the service contract provider.

5 (4) This section does not apply to service contracts on motor
6 vehicles or to protection product guarantees.

7 **Sec. 4.** RCW 48.110.055 and 2011 c 47 s 17 are each amended to
8 read as follows:

9 (1) This section applies to protection product guarantee
10 providers.

11 (2) A person must not act as, or offer to act as, or hold himself
12 or herself out to be a protection product guarantee provider in this
13 state, nor may a protection product be sold to a consumer in this
14 state, unless the protection product guarantee provider has:

15 (a) A valid registration as a protection product guarantee
16 provider issued by the commissioner; and

17 (b) Either demonstrated its financial responsibility or assured
18 the faithful performance of the protection product guarantee
19 provider's obligations to its protection product guarantee holders by
20 insuring all protection product guarantees under a reimbursement
21 insurance policy issued by an insurer holding a certificate of
22 authority from the commissioner or a risk retention group, as defined
23 in 15 U.S.C. Sec. 3901(a)(4), as long as that risk retention group is
24 in full compliance with the federal liability risk retention act of
25 1986 (15 U.S.C. Sec. 3901 et seq.), is in good standing in its
26 domiciliary jurisdiction, and properly registered with the
27 commissioner under chapter 48.92 RCW. The insurance required by this
28 subsection must meet the following requirements:

29 (i) The insurer or risk retention group must, at the time the
30 policy is filed with the commissioner, and continuously thereafter,
31 maintain surplus as to policyholders and paid-in capital of at least
32 fifteen million dollars and annually file audited financial
33 statements with the commissioner; and

34 (ii) The commissioner may authorize an insurer or risk retention
35 group that has surplus as to policyholders and paid-in capital of
36 less than fifteen million dollars, but at least equal to ten million
37 dollars, to issue the insurance required by this subsection if the
38 insurer or risk retention group demonstrates to the satisfaction of
39 the commissioner that the company maintains a ratio of direct written

1 premiums, wherever written, to surplus as to policyholders and paid-
2 in capital of not more than three to one.

3 (3) Applicants to be a protection product guarantee provider must
4 make an application to the commissioner upon a form to be furnished
5 by the commissioner. The application must include or be accompanied
6 by the following information and documents:

7 (a) The names of the protection product guarantee provider's
8 executive officer or officers directly responsible for the protection
9 product guarantee provider's protection product guarantee business
10 and their biographical affidavits on a form prescribed by the
11 commissioner;

12 (b) The name, address, and telephone number of any administrators
13 designated by the protection product guarantee provider to be
14 responsible for the administration of protection product guarantees
15 in this state;

16 (c) A copy of the protection product guarantee reimbursement
17 insurance policy or policies;

18 (d) A copy of each protection product guarantee the protection
19 product guarantee provider proposes to use in this state;

20 (e) ~~((Any other pertinent information required by the~~
21 ~~commissioner)) Financial statements certified as accurate by two or
22 more officers of the applicant which prove that the applicant has and
23 maintains a net worth or stockholder's equity of two hundred thousand
24 dollars or more; and~~

25 (f) A nonrefundable application fee of two hundred fifty dollars.

26 (4) Each registered protection product guarantee provider must
27 appoint the commissioner as the protection product guarantee
28 provider's attorney to receive service of legal process issued
29 against the protection product guarantee provider in this state upon
30 causes of action arising within this state. Service upon the
31 commissioner as attorney constitutes effective legal service upon the
32 protection product guarantee provider.

33 (a) With the appointment the protection product guarantee
34 provider must designate the person to whom the commissioner must
35 forward legal process so served upon him or her.

36 (b) The appointment is irrevocable, binds any successor in
37 interest or to the assets or liabilities of the protection product
38 guarantee provider, and remains in effect for as long as there could
39 be any cause of action against the protection product guarantee

1 provider arising out of any of the protection product guarantee
2 provider's contracts or obligations in this state.

3 (c) The service of process must be accomplished and processed in
4 the manner prescribed under RCW 48.02.200.

5 (5) The commissioner may refuse to issue a registration if the
6 commissioner determines that the protection product guarantee
7 provider, or any individual responsible for the conduct of the
8 affairs of the protection product guarantee provider under subsection
9 (3)(a) of this section, is not competent(~~(τ)~~); not trustworthy(~~(τ~~
10 ~~financially responsible, or~~)); has had a license as a protection
11 product guarantee provider or similar license denied or revoked for
12 cause by any state; or cannot demonstrate a net worth or
13 stockholder's equity in accordance with the applicable requirements
14 of subsection (3)(e) of this section.

15 (6) A registration issued under this section is valid, unless
16 surrendered, suspended, or revoked by the commissioner, or not
17 renewed for so long as the protection product guarantee provider
18 continues in business in this state and remains in compliance with
19 this chapter. A registration is subject to renewal annually on the
20 first day of July upon application of the protection product
21 guarantee provider and payment of a fee of two hundred fifty dollars.
22 If not so renewed, the registration expires on the June 30th next
23 preceding.

24 (7) A protection product guarantee provider must keep current the
25 information required to be disclosed in its registration under this
26 section by reporting all material changes or additions within thirty
27 days after the end of the month in which the change or addition
28 occurs.

29 **Sec. 5.** RCW 48.110.073 and 2006 c 274 s 20 are each amended to
30 read as follows:

31 (1) If the service contract provider or protection product
32 guarantee provider is using (~~{the}~~) the reimbursement insurance
33 policy to satisfy the requirements of RCW 48.110.050(2)(a),
34 48.110.055(2)(b), or 48.110.075(2)(a), then the reimbursement
35 insurance policy shall be filed with and approved by the commissioner
36 in accordance with and pursuant to the requirements of chapter 48.18
37 RCW. Reimbursement insurance policy rates shall be filed with and
38 approved by the commissioner in accordance with and pursuant to the

1 requirements of chapter 48.19 RCW only if the insured service
2 contract provider is domiciled in this state.

3 (2) All service contracts forms covering motor vehicles must be
4 filed with and approved by the commissioner prior to the service
5 contract forms being used, issued, delivered, sold, or marketed in
6 this state or to residents of this state.

7 (3) All service contracts forms covering motor vehicles being
8 used, issued, delivered, sold, or marketed in this state or to
9 residents of this state by motor vehicle manufacturers or import
10 distributors or wholly owned subsidiaries thereof must be filed with
11 the commissioner for approval within sixty days after the motor
12 vehicle manufacturer or import distributor or wholly owned subsidiary
13 thereof begins using the service contracts forms.

14 (4) The commissioner shall disapprove any motor vehicle service
15 contract form if:

16 (a) The form is in any respect in violation of, or does not
17 comply with, this chapter or any applicable order or regulation of
18 the commissioner issued under this chapter;

19 (b) The form contains or incorporates by reference any
20 inconsistent, ambiguous, or misleading clauses, or exceptions and
21 conditions;

22 (c) The form has any title, heading, or other indication of its
23 provisions that is misleading; or

24 (d) The purchase of the contract is being solicited by deceptive
25 advertising.

26 **Sec. 6.** RCW 48.110.130 and 2006 c 274 s 14 are each amended to
27 read as follows:

28 (1) The commissioner may, subject to chapter 48.04 RCW, deny,
29 suspend, or revoke the registration of a service contract provider or
30 protection product guarantee provider if the commissioner finds that
31 the service contract provider or protection product guarantee
32 provider:

33 (a) Has violated this chapter or the commissioner's rules and
34 orders;

35 (b) Has refused to be investigated or to produce its accounts,
36 records, and files for investigation, or if any of its officers have
37 refused to give information with respect to its affairs or refused to
38 perform any other legal obligation as to an investigation, when
39 required by the commissioner;

1 (c) Has, without just cause, refused to pay proper claims or
2 perform services arising under its contracts or has, without just
3 cause, caused service contract holders or protection product
4 guarantee holders to accept less than the amount due them or caused
5 service contract holders or protection product guarantee holders to
6 employ attorneys or bring suit against the service contract provider
7 or protection product guarantee provider to secure full payment or
8 settlement of claims;

9 (d) Is affiliated with or under the same general management or
10 interlocking directorate or ownership as another service contract
11 provider or protection product guarantee provider which unlawfully
12 transacts business in this state without having a registration;

13 (e) At any time fails to meet any qualification for which
14 issuance of the registration could have been refused had such failure
15 then existed and been known to the commissioner;

16 (f) Has been convicted of, or has entered a plea of guilty or
17 nolo contendere to, a felony;

18 (g) Is under suspension or revocation in another state with
19 respect to its service contract business or protection product
20 business;

21 (h) Has made a material misstatement in its application for
22 registration;

23 (i) Has obtained or attempted to obtain a registration through
24 misrepresentation or fraud;

25 (j) Has, in the transaction of business under its registration,
26 used fraudulent, coercive, or dishonest practices;

27 (k) Has failed to pay any judgment rendered against it in this
28 state regarding a service contract or protection product guarantee
29 within sixty days after the judgment has become final; or

30 (l) Has failed to respond promptly to any inquiry from the
31 insurance commissioner relative to service contract or protection
32 product business. A lack of response within fifteen business days
33 from receipt of an inquiry is untimely. A response must be in
34 writing, unless otherwise indicated in the inquiry.

35 (2) The commissioner may, without advance notice or hearing
36 thereon, immediately suspend the registration of a service contract
37 provider or protection product guarantee provider if the commissioner
38 finds that any of the following circumstances exist:

39 (a) The provider (~~is insolvent~~) does not maintain the minimum
40 net worth required by this chapter;

1 (b) A proceeding for receivership, conservatorship,
2 rehabilitation, or other delinquency proceeding regarding the service
3 contract provider or protection product guarantee provider has been
4 commenced in any state; or

5 (c) The (~~financial condition or~~) business practices of the
6 service contract provider or protection product guarantee provider
7 otherwise pose an imminent threat to the public health, safety, or
8 welfare of the residents of this state.

9 (3) If the commissioner finds that grounds exist for the
10 suspension or revocation of a registration issued under this chapter,
11 the commissioner may, in lieu of suspension or revocation, impose a
12 fine upon the service contract provider or protection product
13 guarantee provider in an amount not more than two thousand dollars
14 per violation.

15 **Sec. 7.** RCW 48.110.902 and 2006 c 274 s 21 are each amended to
16 read as follows:

17 (1) RCW 48.110.030 (2)(a) and (b), (3), and (4), 48.110.040,
18 48.110.060, 48.110.100, 48.110.110, 48.110.075 (2)(a) and (b) and
19 (4)(e), and 48.110.073 (1) and (2) do not apply to motor vehicle
20 service contracts issued by a motor vehicle manufacturer or import
21 distributor covering vehicles manufactured or imported by the motor
22 vehicle manufacturer or import distributor. For purposes of this
23 section, "motor vehicle service contract" includes a contract or
24 agreement sold for separately stated consideration for a specific
25 duration to perform any of the services set forth in RCW
26 48.110.020(18)(b).

27 (2) RCW 48.110.030(2)(c) does not apply to a publicly traded
28 motor vehicle manufacturer or import distributor.

29 (3) RCW 48.110.030 (2)(a) through (c), (3), and (4), 48.110.040,
30 and 48.110.073(2) do not apply to wholly owned subsidiaries of motor
31 vehicle manufacturers or import distributors.

32 (4) The adoption of chapter 274, Laws of 2006 does not imply that
33 a vehicle protection product warranty was insurance prior to October
34 1, 2006.

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