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ENGROSSED SUBSTITUTE SENATE BILL 6309

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State of Washington

64th Legislature

2016 Regular Session

By Senate Financial Institutions & Insurance (originally sponsored by Senators Angel and Hobbs)

READ FIRST TIME 01/28/16.

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

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

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

15 ~~(e) Any other pertinent information required by the~~  
16 ~~commissioner)).~~

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

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

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

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

34 (4) The commissioner may refuse to issue a registration if the  
35 commissioner determines that the service contract provider, or any  
36 individual responsible for the conduct of the affairs of the service  
37 contract provider under subsection (2)(b) of this section, is not  
38 competent, trustworthy, financially responsible, or has had a license  
39 as a service contract provider or similar license denied or revoked  
40 for cause by any state.

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))~~ The most recent annual financial statements, if  
22 available, or the most recent financial statements certified as  
23 accurate by two or more officers of the applicant which prove that  
24 the applicant is solvent; 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, trustworthy, financially  
10 responsible, or has had a license as a protection product guarantee  
11 provider or similar license denied or revoked for cause by any state.

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

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

26 **Sec. 5.** RCW 48.110.902 and 2006 c 274 s 21 are each amended to  
27 read as follows:

28 (1) RCW 48.110.030 (2)(a) and (b), (3), and (4), 48.110.040,  
29 48.110.060, 48.110.100, 48.110.110, 48.110.075 (2)(a) and (b) and  
30 (4)(e), and 48.110.073 (1) and (2) do not apply to motor vehicle  
31 service contracts issued by a motor vehicle manufacturer or import  
32 distributor covering vehicles manufactured or imported by the motor  
33 vehicle manufacturer or import distributor. For purposes of this  
34 section, "motor vehicle service contract" includes a contract or  
35 agreement sold for separately stated consideration for a specific  
36 duration to perform any of the services set forth in RCW  
37 48.110.020(18)(b).

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

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

4           (4) The adoption of chapter 274, Laws of 2006 does not imply that  
5 a vehicle protection product warranty was insurance prior to October  
6 1, 2006.

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