

HOUSE BILL REPORT

EHB 2309

As Passed House:
February 12, 2018

Title: An act relating to service contract providers.

Brief Description: Concerning service contract providers.

Sponsors: Representatives Kirby and Vick.

Brief History:

Committee Activity:

Business & Financial Services: 1/10/18, 1/26/18 [DP].

Floor Activity:

Passed House: 2/12/18, 97-0.

Brief Summary of Engrossed Bill

- Amends financial responsibility requirements applicable to service contract providers and product protection guarantee providers.
- Amends the list of service contract products not prohibited by law.
- Defines "wholly owned subsidiary" for the purposes of a motor vehicle manufacturer or import distributor motor vehicle service contract.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 11 members: Representatives Kirby, Chair; Reeves, Vice Chair; Vick, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Barkis, Bergquist, Blake, Jenkin, McCabe, Santos and Stanford.

Staff: Robbi Kesler (786-7153).

Background:

Service Contract Providers.

A service contract is a contract or agreement entered into at any time for consideration over and above the lease or purchase price of the property, for any specific duration, to perform

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the repair, replacement, or maintenance for operational or structural failure due to defect in materials or workmanship, or normal wear and tear. Service contract providers may cover, in whole or in part, residential water, sewer, utilities, or similar systems with or without coverage of appliances or from sharing contract revenue with local governments or other third parties for endorsement or marketing services.

Insurance and insurance transactions are governed by the Insurance Code (Code). Among other things, the Code requires that: (1) insurers meet certain financial requirements; and (2) agents, solicitors, and brokers of insurance comply with specified licensing standards. Financial and criminal penalties may result from noncompliance.

Certain products and transactions, such as service contracts, that generally fall within the definition of insurance have been addressed by exemptions from the Code or the creation of a specific regulatory structure. Service contract providers are not required to comply with the same capitalization and reserve requirements, reporting and solvency oversight, and claims handling practices as are required of an insurer selling a traditional insurance product.

The Office of the Insurance Commissioner (Commissioner) may refuse to issue a registration if he or she determines that the service contract provider:

- is not competent;
- is not trustworthy;
- is not financially responsible; or
- has had a license denied or revoked for cause in any state.

Protection Product Guarantee Providers.

A protection product is a substance, device, or system that is designed to protect another product from damage, such as a coating intended to protect paint from sun damage. A protection product guarantee is an agreement to replace or repair the product that the protection product was designed to protect, or pay incidental costs resulting from its damage.

As with service contract providers, the Commissioner may refuse to issue a registration if he or she determines that the protection product guarantee provider:

- is not competent;
- is not trustworthy;
- is not financially responsible; or
- has had a license denied or revoked for cause in any state.

Financial Responsibility for Service Contract Providers and Protection Product Guarantee Providers.

Service contract providers and protection product guarantee providers may choose one of the following options to ensure that all obligations and liabilities are paid:

- Option A: insure its service contracts with a reimbursement insurance policy, to be approved by the Commissioner;
- Option B: maintain a funded reserve account that includes a portion of the gross consideration received for all service contracts and give the Commissioner a financial security deposit; or
- Option C: maintain, or have a parent company that maintains a net worth or stockholder's equity of \$100 million or more.

Motor Vehicle Service Contracts.

Providers of service contracts specifically relating to motor vehicles are subject to similar requirements as other service contract providers with some exemptions.

Summary of Engrossed Bill:

Service Contract Providers.

Plumbing, electrical, and heating and cooling systems are added to the list of items that are not prohibited from coverage.

Financial Responsibility for Service Contract Providers and Product Protection Guarantee Providers.

The solvency standard for service contract and product protection guarantee providers that insure their contracts is defined as providers that maintain a minimum net worth or stockholders' equity of \$200,000 or more. Minimum net worth shall be calculated in accordance with generally accepted accounting principles set forth by the financial accounting standards board or statutory accounting principles.

Service contract providers that maintain a funded reserve or maintain a net worth or stockholder's equity of \$100 million in order to prove financial responsibility shall use generally accepted accounting principles set forth by the financial accounting standards but must exclude goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies. However, the accounting may include receivables from an affiliated company if the affiliated company provides a written irrevocable guarantee to assure repayment of all receivables, and the guaranteeing organization has a net worth of stockholder's equity in excess of \$100 million. The service contract and product protection guarantee providers must show an ability to pay its debts when debts become due.

Motor Vehicle Service Contracts.

Wholly owned subsidiaries of a motor vehicle manufacturer or import distributor is defined as a company that is ultimately owned, directly or indirectly, 100 percent by single or multiple motor vehicle manufacturers or import distributors.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Service contract companies must be approved by the Commissioner, even though they are not an insurance product. Often companies operating as service contract companies in other states come to Washington and find that the state laws classify them as insurance companies. This bill is a technical cleanup of a bill from a couple of years

ago. This does not offer a specific exemption for each type of service contract provider. The goal is to protect consumers and allow these companies to make these services available to consumers in the state. This is a continuation of the efforts made in 2016. The regulation of this industry should be consistent from state to state. The language regarding minimum net worth requirements makes it more clear what is required to enter the market. This creates a clear line to determine what is required to do business in this state.

(Opposed) None.

(Other) The Commissioner is not opposed, but does have some concerns. The calculation for fiscal responsibility in sections three and four may undermine the Commissioner's regulatory authority. These concerns may be able to be worked out, would like additional time to work on this bill.

Persons Testifying: (In support) Representative Kirby, prime sponsor; Mel Sorensen, Service Contract Industry Council and Property Casualty Insurers Association of America; Stephen McDaniel, Service Contract Industry Council; and Steve Gano, CNA Insurance.

(Other) Lonnie Johns-Brown, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying: None.