
ENGROSSED HOUSE BILL 2309

State of Washington

65th Legislature

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By Representatives Kirby and Vick

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1 AN ACT Relating to service contract providers; amending RCW
2 48.110.017, 48.110.030, 48.110.055, 48.110.130, and 48.110.902; and
3 adding a new section to chapter 48.110 RCW.

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

5 **Sec. 1.** RCW 48.110.017 and 2013 c 117 s 2 are each amended to
6 read as follows:

7 This chapter does not prohibit a service contract provider from
8 covering, in whole or in part, residential water, sewer, plumbing,
9 electrical, heating and cooling systems, utilities, or similar
10 systems, including items intended to be attached to or installed in
11 any real property, with or without coverage of appliances, or from
12 sharing contract revenue with local governments or other third
13 parties for endorsements and marketing services.

14 **Sec. 2.** RCW 48.110.030 and 2016 c 224 s 1 are each amended to
15 read as follows:

16 (1) A person may not act as, or offer to act as, or hold himself
17 or herself out to be a service contract provider in this state, nor
18 may a service contract be sold to a consumer in this state, unless
19 the service contract provider has a valid registration as a service
20 contract provider issued by the commissioner.

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

5 (a) All basic organizational documents of the service contract
6 provider, including any articles of incorporation, articles of
7 association, partnership agreement, trade name certificate, trust
8 agreement, shareholder agreement, bylaws, and other applicable
9 documents, and all amendments to those documents;

10 (b) The identities of the service contract provider's executive
11 officer or officers directly responsible for the service contract
12 provider's service contract business, and, if more than fifty percent
13 of the service contract provider's gross revenue is derived from the
14 sale of service contracts, the identities of the service contract
15 provider's directors and stockholders having beneficial ownership of
16 ten percent or more of any class of securities;

17 (c)(i) For service contract providers relying on RCW
18 48.110.050(2) (a) or (b) or 48.110.075(2)(a) to assure the faithful
19 performance of its obligations to service contract holders, the most
20 recent audited annual financial statements, if available, or the most
21 recent audited financial statements which prove that the applicant
22 (~~is solvent~~) has and maintains a minimum net worth or stockholder's
23 equity of two hundred thousand dollars or more calculated in
24 accordance with section 6 of this act and the ability to pay its
25 debts when debts become due. In lieu of submitting audited financial
26 statements, a service contract provider relying on RCW
27 48.110.050(2)(a) or 48.110.075(2)(a) to assure the faithful
28 performance of its obligations to service contract holders may comply
29 with the requirements of this subsection (2)(c)(i) by submitting the
30 most recent annual financial statements, if available, or the most
31 recent financial statements of the applicant that are certified as
32 accurate by two or more officers of the applicant; or

33 (ii) For service contract providers relying on RCW
34 48.110.050(2)(c) to assure the faithful performance of its
35 obligations to service contract holders, the most recent audited
36 annual financial statements, if available, or the most recent audited
37 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 annual financial
6 statements, if available, or the most recent audited financial
7 statements or form 10-K or form 20-F filed with the securities and
8 exchange commission of the service contract provider's parent company
9 must be filed and the applicant need not submit its own financial
10 statements or demonstrate a minimum net worth or stockholder's
11 equity; and

12 (d) An application fee of two hundred fifty dollars, which must
13 be deposited into the general fund.

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, trustworthy, (~~financially responsible~~) cannot
36 demonstrate a minimum net worth or stockholder's equity and the
37 ability to pay its debts when debts become due in accordance with the
38 applicable requirements of subsection (2)(c) of this section, or has
39 had a license as a service contract provider or similar license
40 denied or revoked 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. 3.** RCW 48.110.055 and 2016 c 224 s 4 are each amended to
15 read as follows:

16 (1) This section applies to protection product guarantee
17 providers.

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

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

24 (b) Either demonstrated its financial responsibility or assured
25 the faithful performance of the protection product guarantee
26 provider's obligations to its protection product guarantee holders by
27 insuring all protection product guarantees under a reimbursement
28 insurance policy issued by an insurer holding a certificate of
29 authority from the commissioner or a risk retention group, as defined
30 in 15 U.S.C. Sec. 3901(a)(4), as long as that risk retention group is
31 in full compliance with the federal liability risk retention act of
32 1986 (15 U.S.C. Sec. 3901 et seq.), is in good standing in its
33 domiciliary jurisdiction, and properly registered with the
34 commissioner under chapter 48.92 RCW. The insurance required by this
35 subsection must meet the following requirements:

36 (i) The insurer or risk retention group must, at the time the
37 policy is filed with the commissioner, and continuously thereafter,
38 maintain surplus as to policyholders and paid-in capital of at least

1 fifteen million dollars and annually file audited financial
2 statements with the commissioner; and

3 (ii) The commissioner may authorize an insurer or risk retention
4 group that has surplus as to policyholders and paid-in capital of
5 less than fifteen million dollars, but at least equal to ten million
6 dollars, to issue the insurance required by this subsection if the
7 insurer or risk retention group demonstrates to the satisfaction of
8 the commissioner that the company maintains a ratio of direct written
9 premiums, wherever written, to surplus as to policyholders and paid-
10 in capital of not more than three to one.

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

15 (a) The names of the protection product guarantee provider's
16 executive officer or officers directly responsible for the protection
17 product guarantee provider's protection product guarantee business
18 and their biographical affidavits on a form prescribed by the
19 commissioner;

20 (b) The name, address, and telephone number of any administrators
21 designated by the protection product guarantee provider to be
22 responsible for the administration of protection product guarantees
23 in this state;

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

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

28 (e) The most recent annual financial statements, if available, or
29 the most recent financial statements certified as accurate by two or
30 more officers of the applicant which prove that the applicant (~~is~~
31 ~~solvent~~) has and maintains a minimum net worth or stockholder's
32 equity of two hundred thousand dollars or more calculated in
33 accordance with section 6 of this act and the ability to pay its
34 debts when debts become due; and

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

36 (4) Each registered protection product guarantee provider must
37 appoint the commissioner as the protection product guarantee
38 provider's attorney to receive service of legal process issued
39 against the protection product guarantee provider in this state upon
40 causes of action arising within this state. Service upon the

1 commissioner as attorney constitutes effective legal service upon the
2 protection product guarantee provider.

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

6 (b) The appointment is irrevocable, binds any successor in
7 interest or to the assets or liabilities of the protection product
8 guarantee provider, and remains in effect for as long as there could
9 be any cause of action against the protection product guarantee
10 provider arising out of any of the protection product guarantee
11 provider's contracts or obligations in this state.

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

14 (5) The commissioner may refuse to issue a registration if the
15 commissioner determines that the protection product guarantee
16 provider, or any individual responsible for the conduct of the
17 affairs of the protection product guarantee provider under subsection
18 (3)(a) of this section, is not competent, trustworthy, (~~financially~~
19 ~~responsible~~) cannot demonstrate a minimum net worth or stockholder's
20 equity in accordance with the applicable requirements of subsection
21 (3)(e) of this section and the ability to pay its debts when debts
22 become due, or has had a license as a protection product guarantee
23 provider or similar license denied or revoked for cause by any state.

24 (6) A registration issued under this section is valid, unless
25 surrendered, suspended, or revoked by the commissioner, or not
26 renewed for so long as the protection product guarantee provider
27 continues in business in this state and remains in compliance with
28 this chapter. A registration is subject to renewal annually on the
29 first day of July upon application of the protection product
30 guarantee provider and payment of a fee of two hundred fifty dollars.
31 If not so renewed, the registration expires on the June 30th next
32 preceding.

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

38 **Sec. 4.** RCW 48.110.130 and 2006 c 274 s 14 are each amended to
39 read as follows:

1 (1) The commissioner may, subject to chapter 48.04 RCW, deny,
2 suspend, or revoke the registration of a service contract provider or
3 protection product guarantee provider if the commissioner finds that
4 the service contract provider or protection product guarantee
5 provider:

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

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

13 (c) Has, without just cause, refused to pay proper claims or
14 perform services arising under its contracts or has, without just
15 cause, caused service contract holders or protection product
16 guarantee holders to accept less than the amount due them or caused
17 service contract holders or protection product guarantee holders to
18 employ attorneys or bring suit against the service contract provider
19 or protection product guarantee provider to secure full payment or
20 settlement of claims;

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

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

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

30 (g) Is under suspension or revocation in another state with
31 respect to its service contract business or protection product
32 business;

33 (h) Has made a material misstatement in its application for
34 registration;

35 (i) Has obtained or attempted to obtain a registration through
36 misrepresentation or fraud;

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

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

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

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

13 ~~((a))~~ (i) The provider ~~((is insolvent))~~ either does not
14 maintain the minimum net worth required by this chapter or cannot pay
15 its debts when debts become due, or both;

16 ~~((b))~~ (ii) A proceeding for receivership, conservatorship,
17 rehabilitation, or other delinquency proceeding regarding the service
18 contract provider or protection product guarantee provider has been
19 commenced in any state; or

20 ~~((c))~~ (iii) The ~~((financial condition or))~~ business practices
21 of the service contract provider or protection product guarantee
22 provider otherwise pose an imminent threat to the public health,
23 safety, or welfare of the residents of this state.

24 (b) However, nothing in this subsection shall in any way be
25 construed to limit the authority of the commissioner to take action
26 against a service contract provider or a protection product guarantee
27 provider granted by this chapter.

28 (3) If the commissioner finds that grounds exist for the
29 suspension or revocation of a registration issued under this chapter,
30 the commissioner may, in lieu of suspension or revocation, impose a
31 fine upon the service contract provider or protection product
32 guarantee provider in an amount not more than two thousand dollars
33 per violation.

34 **Sec. 5.** RCW 48.110.902 and 2016 c 224 s 5 are each amended to
35 read as follows:

36 (1) RCW 48.110.030 (2)(a) and (b), (3), and (4), 48.110.040,
37 48.110.060, 48.110.100, 48.110.110, 48.110.075 (2)(a) and (b) and
38 (4)(e), and 48.110.073 (1) and (2) do not apply to motor vehicle
39 service contracts issued by a motor vehicle manufacturer or import

1 distributor covering vehicles manufactured or imported by the motor
2 vehicle manufacturer or import distributor. (~~For purposes of this~~
3 ~~section, "motor vehicle service contract" includes a contract or~~
4 ~~agreement sold for separately stated consideration for a specific~~
5 ~~duration to perform any of the services set forth in RCW~~
6 ~~48.110.020(18)(b).)~~)

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

9 (3) RCW 48.110.030 (2)(a) through (c), (3), and (4), 48.110.040,
10 and 48.110.073(2) do not apply to wholly owned subsidiaries of motor
11 vehicle manufacturers or import distributors. For purposes of this
12 subsection, a company is considered a wholly owned subsidiary as long
13 as it is ultimately owned, directly or indirectly, one hundred
14 percent by single or multiple motor vehicle manufacturers or import
15 distributors.

16 (4) The adoption of chapter 274, Laws of 2006 does not imply that
17 a vehicle protection product warranty was insurance prior to October
18 1, 2006.

19 (5) For purposes of this section, "motor vehicle service
20 contract" includes a contract or agreement sold for separately stated
21 consideration for a specific duration to perform any of the services
22 set forth in RCW 48.110.020(18)(b).

23 NEW SECTION. Sec. 6. A new section is added to chapter 48.110
24 RCW to read as follows:

25 (1) A service contract provider relying on RCW 48.110.050(2)(a)
26 or 48.110.075(2)(a) to assure the faithful performance of its
27 obligations to service contract holders shall calculate the minimum
28 net worth or stockholder's equity required by this chapter in
29 accordance with generally accepted accounting principles as set forth
30 by the financial accounting standards board. A service contract
31 provider must follow generally accepted accounting principles, as set
32 forth by the financial accounting standards board, in regard to
33 either unearned service contract fees or expected service contract
34 claims, or both, when determining its net worth. A service contract
35 provider relying on RCW 48.110.050(2)(a) or 48.110.075(2)(a) may
36 elect to use statutory accounting principles in lieu of generally
37 accepted accounting principles if it so chooses.

38 (2) A service contract provider relying on RCW 48.110.050(2) (b)
39 or (c) to assure the faithful performance of its obligations to

1 service contract holders shall calculate the minimum net worth or
2 stockholder's equity required by this chapter in accordance with
3 generally accepted accounting principles as set forth by the
4 financial accounting standards board but must exclude from its assets
5 all intangible assets including, but not limited to, goodwill,
6 franchises, customer lists, patents or trademarks, and receivables
7 from or advances to officers, directors, employees, salesmen, and
8 affiliated companies when calculating net worth or stockholder's
9 equity. However, a service contract provider relying on RCW
10 48.110.050(2) (b) or (c) may include receivables from affiliated
11 companies if the affiliated company provides a written irrevocable
12 guarantee to assure repayment of all receivables to the service
13 contract provider and the guaranteeing organization has a net worth
14 or stockholder's equity in excess of one hundred million dollars and
15 submits a statement from a certified public accountant attesting that
16 the net worth or stockholder's equity of the guaranteeing
17 organization meets or exceeds the requirements of this subsection.

18 (3) A protection product guarantee provider that has elected to
19 assure the faithful performance of its obligations to its protection
20 product guarantee holders by insuring all protection product
21 guarantees under a reimbursement insurance policy in accordance with
22 RCW 48.110.055(2)(b) shall calculate the minimum net worth or
23 stockholder's equity required by this chapter in accordance with
24 generally accepted accounting principles as set forth by the
25 financial accounting standards board. A protection product guarantee
26 provider will follow generally accepted accounting principles, as set
27 forth by the financial accounting standards board, in regard to
28 either unearned protection product guarantee contract fees or
29 expected protection product guarantee contract claims, or both, when
30 determining net worth. A protection product guarantee provider may
31 elect to use statutory accounting principles in lieu of generally
32 accepted accounting principles.

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