

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5977

63rd Legislature
2014 Regular Session

Passed by the Senate March 10, 2014
YEAS 49 NAYS 0

President of the Senate

Passed by the House March 6, 2014
YEAS 96 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5977** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5977

AS AMENDED BY THE HOUSE

Passed Legislature - 2014 Regular Session

State of Washington 63rd Legislature 2014 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Hobbs and Fain)

READ FIRST TIME 01/24/14.

1 AN ACT Relating to the regulation of service contracts and
2 protection product guarantees; and amending RCW 48.110.020 and
3 48.110.030.

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

5 **Sec. 1.** RCW 48.110.020 and 2013 c 117 s 1 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter.

8 (1) "Administrator" means the person who is responsible for the
9 administration of the service contracts, the service contracts plan, or
10 the protection product guarantees.

11 (2) "Commissioner" means the insurance commissioner of this state.

12 (3) "Consumer" means an individual who buys any tangible personal
13 property that is primarily for personal, family, or household use.

14 (4) "Home heating fuel service contract" means a contract or
15 agreement for a separately stated consideration for a specific duration
16 to perform the repair, replacement, or maintenance of a home heating
17 fuel supply system including the fuel tank and all visible pipes, caps,
18 lines, and associated parts or the indemnification for repair,

1 replacement, or maintenance for operational or structural failure due
2 to a defect in materials or workmanship, or normal wear and tear.

3 (5) "Incidental costs" means expenses specified in the guarantee
4 incurred by the protection product guarantee holder related to damages
5 to other property caused by the failure of the protection product to
6 perform as provided in the guarantee. "Incidental costs" may include,
7 without limitation, insurance policy deductibles, rental vehicle
8 charges, the difference between the actual value of the stolen vehicle
9 at the time of theft and the cost of a replacement vehicle, sales
10 taxes, registration fees, transaction fees, and mechanical inspection
11 fees. Incidental costs may be paid under the provisions of the
12 protection product guarantee in either a fixed amount specified in the
13 protection product guarantee or sales agreement, or by the use of a
14 formula itemizing specific incidental costs incurred by the protection
15 product guarantee holder to be paid.

16 (6) "Maintenance agreement" means a contract of limited duration
17 that provides for scheduled maintenance only.

18 (7) "Motor vehicle" means any vehicle subject to registration under
19 chapter 46.16A RCW.

20 (8) "Person" means an individual, partnership, corporation,
21 incorporated or unincorporated association, joint stock company,
22 reciprocal insurer, syndicate, or any similar entity or combination of
23 entities acting in concert.

24 (9) "Premium" means the consideration paid to an insurer for a
25 reimbursement insurance policy.

26 (10) "Protection product" means any (~~product~~) protective
27 chemical, substance, device, or system offered or sold with a guarantee
28 to repair or replace another product or pay incidental costs upon the
29 failure of the product to perform pursuant to the terms of the
30 protection product guarantee. Protection product does not include fuel
31 additives, oil additives, or other chemical products applied to the
32 engine, transmission, or fuel system of a motor vehicle.

33 (11) "Protection product guarantee" means a written agreement by a
34 protection product guarantee provider to repair or replace another
35 product or pay incidental costs upon the failure of the protection
36 product to perform pursuant to the terms of the protection product
37 guarantee. The reimbursement of incidental costs promised under a

1 protection product guarantee must be tied to the purchase of a physical
2 product that is formulated or designed to make the specified loss or
3 damage from a specific cause less likely to occur.

4 (12) "Protection product guarantee holder" means a person who is
5 the purchaser or permitted transferee of a protection product
6 guarantee.

7 (13) "Protection product guarantee provider" means a person who is
8 contractually obligated to the protection product guarantee holder
9 under the terms of the protection product guarantee. Protection
10 product guarantee provider does not include an authorized insurer
11 providing a reimbursement insurance policy.

12 (14) "Protection product seller" means the person who sells the
13 protection product to the consumer.

14 (15) "Provider fee" means the consideration paid by a consumer for
15 a service contract.

16 (16) "Reimbursement insurance policy" means a policy of insurance
17 that is issued to a service contract provider or a protection product
18 guarantee provider to provide reimbursement to the service contract
19 provider or the protection product guarantee provider or to pay on
20 behalf of the service contract provider or the protection product
21 guarantee provider all contractual obligations incurred by the service
22 contract provider or the protection product guarantee provider under
23 the terms of the insured service contracts or protection product
24 guarantees issued or sold by the service contract provider or the
25 protection product guarantee provider.

26 (17) "Road hazard" means a hazard that is encountered while driving
27 a motor vehicle. Road hazards may include but are not limited to
28 potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or
29 composite scraps.

30 (18)(a) "Service contract" means a contract or agreement entered
31 into at any time for consideration over and above the lease or purchase
32 price of the property for any specific duration to perform the repair,
33 replacement, or maintenance of property or the indemnification for
34 repair, replacement, or maintenance for operational or structural
35 failure due to a defect in materials or workmanship((τ)) or normal wear
36 and tear. Service contracts may provide for the repair, replacement,
37 or maintenance of property for damage resulting from power surges and
38 accidental damage from handling, with or without additional provision

1 for incidental payment of indemnity under limited circumstances,
2 including towing, rental, emergency road services, or other expenses
3 relating to the failure of the product or of a component part thereof.

4 (b) "Service contract" also includes a contract or agreement sold
5 for separately stated consideration for a specific duration to perform
6 any one or more of the following services:

7 (i) The repair or replacement of tires and/or wheels damaged as a
8 result of coming into contact with road hazards (~~including but not~~
9 limited to potholes, rocks, wood debris, metal parts, glass, plastic,
10 curbs, or composite scraps)). However, a contract or agreement meeting
11 the definition under this subsection (~~((+17+))~~) (18)(b) in which the
12 party obligated to perform is either a tire or wheel manufacturer or a
13 motor vehicle manufacturer is exempt from the requirements of this
14 chapter;

15 (ii) The removal of dents, dings, or creases on a motor vehicle
16 that can be repaired using the process of paintless dent removal
17 without affecting the existing paint finish and without replacing
18 vehicle body panels, sanding, bonding, or painting;

19 (iii) The repair of chips or cracks in, or the replacement of,
20 motor vehicle windshields as a result of damage caused by road hazards;

21 (iv) The replacement of a motor vehicle key or key fob in the event
22 that the key or key fob becomes inoperable or is lost or stolen;

23 (v) Services provided pursuant to a protection product guarantee;
24 and

25 (vi) Other services approved by rule of the commissioner that are
26 not inconsistent with the provisions of this chapter.

27 (c) "Service contract" does not include coverage for:

28 (i) Repair or replacement due to damage to the interior surfaces or
29 to the exterior paint or finish of a vehicle. However, coverage for
30 these types of damage may be offered in connection with the sale of a
31 protection product as defined in this section; or

32 (ii) Fuel additives, oil additives, or other chemical products
33 applied to the engine, transmission, or fuel system of a motor vehicle.

34 (~~((+18+))~~) (19) "Service contract holder" or "contract holder" means
35 a person who is the purchaser or holder of a service contract.

36 (~~((+19+))~~) (20) "Service contract provider" means a person who is
37 contractually obligated to the service contract holder under the terms
38 of the service contract.

1 ~~((+20+))~~ (21) "Service contract seller" means the person who sells
2 the service contract to the consumer.

3 ~~((+21+))~~ (22) "Warranty" means a warranty made solely by the
4 manufacturer, importer, or seller of property or services without
5 consideration; that is not negotiated or separated from the sale of the
6 product and is incidental to the sale of the product; and that
7 guarantees indemnity for defective parts, mechanical or electrical
8 breakdown, labor, or other remedial measures, such as repair or
9 replacement of the property or repetition of services.

10 **Sec. 2.** RCW 48.110.030 and 2011 c 47 s 16 are each amended to read
11 as follows:

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

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

21 (a) All basic organizational documents of the service contract
22 provider, including any articles of incorporation, articles of
23 association, partnership agreement, trade name certificate, trust
24 agreement, shareholder agreement, bylaws, and other applicable
25 documents, and all amendments to those documents;

26 (b) The identities of the service contract provider's executive
27 officer or officers directly responsible for the service contract
28 provider's service contract business, and, if more than fifty percent
29 of the service contract provider's gross revenue is derived from the
30 sale of service contracts, the identities of the service contract
31 provider's directors and stockholders having beneficial ownership of
32 ten percent or more of any class of securities;

33 (c) Audited annual financial statements or other financial reports
34 acceptable to the commissioner for the two most recent years which
35 prove that the applicant is solvent and any information the
36 commissioner may require in order to review the current financial
37 condition of the applicant. If the service contract provider is

1 relying on RCW 48.110.050(2)(c) to assure the faithful performance of
2 its obligations to service contract holders, then the audited financial
3 statements of the service contract provider's parent company must also
4 be filed. In lieu of submitting audited financial statements, a
5 service contract provider relying on RCW 48.110.050(2)(a) or
6 48.110.075(2)(a) to assure the faithful performance of its obligations
7 to service contract holders may comply with the requirements of this
8 subsection (2)(c) by submitting annual financial statements of the
9 applicant that are certified as accurate by two or more officers of the
10 applicant;

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

13 (e) Any other pertinent information required by the 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. Service
18 upon the commissioner as attorney constitutes effective legal service
19 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 interest
24 or to the assets or liabilities of the service contract provider, and
25 remains in effect for as long as there could be any cause of action
26 against the service contract provider arising out of any of the service
27 contract provider's contracts or obligations in this state.

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

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

37 (5) A registration issued under this section is valid, unless
38 surrendered, suspended, or revoked by the commissioner, or not renewed

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

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

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