

SHB 2355 - H AMD 759

By Representative Kirby

WITHDRAWN 02/16/2016

1 Strike everything after the enacting clause and insert the
2 following:

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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;

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

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

28 (ii) For service contract providers relying on RCW
29 48.110.050(2)(c) to assure the faithful performance of its
30 obligations to service contract holders, the most recent audited
31 annual financial statements, if available, the most recent audited
32 financial statements, or form 10-K or form 20-F filed with the
33 securities and exchange commission which prove that the applicant
34 has and maintains a net worth or stockholder's equity of one hundred

1 million dollars or more. However, if the service contract provider
2 is relying on its parent company's net worth or stockholder's equity
3 to 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 financial statements
7 or form 10-K or form 20-F filed with the securities and exchange
8 commission of the service contract provider's parent company must be
9 filed and the applicant need not submit its own financial statements
10 or demonstrate a minimum net worth or stockholder's equity; and

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

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

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

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

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

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

32 (4) The commissioner may refuse to issue a registration if the
33 commissioner determines that the service contract provider, or any
34 individual responsible for the conduct of the affairs of the service

1 contract provider under subsection (2)(b) of this section, is not
2 competent, trustworthy, financially responsible, or has had a
3 license as a service contract provider or similar license denied or
4 revoked for cause by any state.

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

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

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

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

29 (b)(i) A service contract provider relying on RCW
30 48.110.050(2)(a) or 48.110.075(2)(a) to assure the faithful
31 performance of its obligations to service contract holders may not
32 be required to submit audited financial statements of the service
33 contract provider as part of its annual reports. If requested by the
34 commissioner, a service contract provider relying on those

1 provisions must provide a copy of the most recent annual financial
2 statements of the service contract provider or its parent company
3 certified as accurate by two officers of the service contract
4 provider or its parent company.

5 (ii) A service contract provider relying on its parent company's
6 net worth to meet the requirements of RCW 48.110.050(2)(c) to assure
7 the faithful performance of its obligations to service contract
8 holders must submit as part of its annual report the most recent
9 audited financial statements or form 10-K or form 20-F filed with
10 the United States securities and exchange commission of the service
11 contract provider's parent company if requested by the commissioner
12 but need not submit its own audited financial statements.

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

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

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

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

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

6 (b) Provided a copy of the service contract to the service
7 contract holder within a reasonable period of time from the date of
8 purchase.

9 (2) In order to either demonstrate its financial responsibility
10 or assure the faithful performance of the service contract
11 provider's obligations to its service contract holders, every
12 service contract provider shall comply with the requirements of one
13 of the following:

14 (a) Insure all service contracts under a reimbursement insurance
15 policy issued by an insurer holding a certificate of authority from
16 the commissioner or a risk retention group, as defined in 15 U.S.C.
17 Sec. 3901(a)(4), as long as that risk retention group is in full
18 compliance with the federal liability risk retention act of 1986 (15
19 U.S.C. Sec. 3901 et seq.), is in good standing in its domiciliary
20 jurisdiction, and is properly registered with the commissioner under
21 chapter 48.92 RCW. The insurance required by this subsection must
22 meet the following requirements:

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

28 (ii) The commissioner may authorize an insurer or risk retention
29 group that has surplus as to policyholders and paid-in capital of
30 less than fifteen million dollars, but at least equal to ten million
31 dollars, to issue the insurance required by this subsection if the
32 insurer or risk retention group demonstrates to the satisfaction of
33 the commissioner that the company maintains a ratio of direct

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

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

9 (ii) Place in trust with the commissioner a financial security
10 deposit, having a value of not less than five percent of the gross
11 consideration received, less claims paid, on the sale of the service
12 contract for all service contracts issued and in force, but not less
13 than twenty-five thousand dollars, consisting of one of the
14 following:

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

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

19 (C) Cash;

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

22 (E) Another form of security prescribed by rule by the
23 commissioner; or

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

26 (ii) Upon request, provide the commissioner with a copy of the
27 service contract provider's or, if using the net worth or
28 stockholder's equity of its parent company to satisfy the one
29 hundred million dollar requirement, the service contract provider's
30 parent company's most recent form 10-K or form 20-F filed with the
31 securities and exchange commission within the last calendar year, or
32 if the company does not file with the securities and exchange
33 commission, a copy of the service contract provider's or, if using
34 the net worth or stockholder's equity of its parent company to

1 satisfy the one hundred million dollar requirement, the service
2 contract provider's parent company's most recent audited financial
3 statements, which shows a net worth of the service contract provider
4 or its parent company of at least one hundred million dollars. If
5 the service contract provider's parent company's form 10-K, form 20-
6 F, or audited financial statements are filed with the commissioner
7 to meet the service contract provider's financial stability
8 requirement, then the parent company shall agree to guarantee the
9 obligations of the service contract provider relating to service
10 contracts sold by the service contract provider in this state. A
11 copy of the guarantee shall be filed with the commissioner. The
12 guarantee shall be irrevocable as long as there is in force in this
13 state any contract or any obligation arising from service contracts
14 guaranteed, unless the parent company has made arrangements approved
15 by the commissioner to satisfy its obligations under the guarantee.

16 (3) Service contracts shall require the service contract
17 provider to permit the service contract holder to return the service
18 contract within twenty days of the date the service contract was
19 mailed to the service contract holder or within ten days of delivery
20 if the service contract is delivered to the service contract holder
21 at the time of sale, or within a longer time period permitted under
22 the service contract. Upon return of the service contract to the
23 service contract provider within the applicable period, if no claim
24 has been made under the service contract prior to the return to the
25 service contract provider, the service contract is void and the
26 service contract provider shall refund to the service contract
27 holder, or credit the account of the service contract holder with
28 the full purchase price of the service contract. The right to void
29 the service contract provided in this subsection is not transferable
30 and shall apply only to the original service contract purchaser. A
31 ten percent penalty per month shall be added to a refund of the
32 purchase price that is not paid or credited within thirty days after
33 return of the service contract to the service contract provider.

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

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

6 (1) This section applies to protection product guarantee
7 providers.

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

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

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

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

31 (ii) The commissioner may authorize an insurer or risk retention
32 group that has surplus as to policyholders and paid-in capital of
33 less than fifteen million dollars, but at least equal to ten million
34 dollars, to issue the insurance required by this subsection if the

1 insurer or risk retention group demonstrates to the satisfaction of
2 the commissioner that the company maintains a ratio of direct
3 written premiums, wherever written, to surplus as to policyholders
4 and paid-in capital of not more than three to one.

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

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

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

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

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

22 (e) (~~Any other pertinent information required by the~~
23 ~~commissioner~~) The most recent annual financial statements, if
24 available, or the most recent financial statements certified as
25 accurate by two or more officers of the applicant which prove that
26 the applicant is solvent; and

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

29 (4) Each registered protection product guarantee provider must
30 appoint the commissioner as the protection product guarantee
31 provider's attorney to receive service of legal process issued
32 against the protection product guarantee provider in this state upon
33 causes of action arising within this state. Service upon the
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1 commissioner as attorney constitutes effective legal service upon
2 the 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
18 subsection (3)(a) of this section, is not competent, trustworthy,
19 financially responsible, or has had a license as a protection
20 product guarantee provider or similar license denied or revoked for
21 cause by any state.

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

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

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

6 (1) RCW 48.110.030 (2)(a) and (b), (3), and (4), 48.110.040,
7 48.110.060, 48.110.100, 48.110.110, 48.110.075 (2)(a) and (b) and
8 (4)(e), and 48.110.073 (1) and (2) do not apply to motor vehicle
9 service contracts issued by a motor vehicle manufacturer or import
10 distributor covering vehicles manufactured or imported by the motor
11 vehicle manufacturer or import distributor. For purposes of this
12 section, "motor vehicle service contract" includes a contract or
13 agreement sold for separately stated consideration for a specific
14 duration to perform any of the services set forth in RCW
15 48.110.020(18)(b).

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

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

21 (4) The adoption of chapter 274, Laws of 2006 does not imply that a
22 vehicle protection product warranty was insurance prior to October 1,
23 2006."

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EFFECT:

- For service contract provider applicants relying on the insurance policy or reserve account method of financial responsibility, requires audited annual financial statements "if available" or the most recent audited financial statements proving that the applicant is solvent and strikes the requirement that the applicant maintain a minimum net worth of \$200,000.
- For provider applicants relying on the insurance method, permits submission of the most recent annual financial statements if available or the most recent financial statements.
- For provider applicants relying on the net worth method, requires audited annual financial statements "if available" or the most recent audited financial statements.

- Adds authority for the Insurance Commissioner to refuse to issue a registration for an applicant the Commissioner determines to be not financially responsible.
- Strikes authority for Commissioner to refuse to issue a registration for an applicant who cannot demonstrate a net worth required when relying on the net worth method of financial responsibility.
- For protection product guarantee provider applicants, requires applicants to submit annual financial statements only if available or the most recent financial statements to prove that the applicant is solvent. Strikes requirement that the applicant prove a minimum net worth of \$200,000. Adds authority for the Insurance Commissioner to refuse a registration to an applicant the Commissioner determines is not financially responsible and strikes authority to refuse for failure to prove a minimum net worth.

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