
ENGROSSED SUBSTITUTE HOUSE BILL 2355

State of Washington 64th Legislature 2016 Regular Session

By House Business & Financial Services (originally sponsored by Representatives Kirby, Vick, and Blake)

READ FIRST TIME 01/25/16.

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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