
SUBSTITUTE SENATE BILL 6309

State of Washington

64th Legislature

2016 Regular Session

By Senate Financial Institutions & Insurance (originally sponsored by Senators Angel and Hobbs)

READ FIRST TIME 01/28/16.

1 AN ACT Relating to registered service contract and protection
2 product guarantee providers; and amending RCW 48.110.030, 48.110.050,
3 48.110.055, 48.110.073, 48.110.130, 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) (~~(Audited annual)~~) The most recent financial statements or
9 other financial reports acceptable to the commissioner (~~(for the two~~
10 ~~most recent years which prove that the applicant is solvent and any~~
11 ~~information the commissioner may require in order to review the~~
12 ~~current financial condition of the applicant. If the service contract~~
13 ~~provider is relying on RCW 48.110.050(2)(c) to assure the faithful~~
14 ~~performance of its obligations to service contract holders, then the~~
15 ~~audited financial statements of the service contract provider's~~
16 ~~parent company must also be filed. In lieu of submitting audited~~
17 ~~financial statements, a service contract provider relying on RCW~~
18 ~~48.110.050(2)(a) or 48.110.075(2)(a) to assure the faithful~~
19 ~~performance of its obligations to service contract holders may comply~~
20 ~~with the requirements of this subsection (2)(c) by submitting annual~~
21 ~~financial statements of the applicant that are certified as accurate~~
22 ~~by two or more officers of the applicant;)) that demonstrate the
23 solvency of the applicant as follows:~~

24 (i) For service contract providers relying on RCW
25 48.110.050(2)(b) to assure the faithful performance of its
26 obligations to service contract holders, the applicant must submit
27 audited financial statements that prove that the applicant has and
28 maintains a net worth or stockholder's equity of two hundred thousand
29 dollars or more;

30 (ii) For service contract providers relying on RCW
31 48.110.050(2)(a) or 48.110.075(2)(a) to assure the faithful
32 performance of its obligations to service contract holders, the
33 applicant must submit audited financial statements or financial
34 statements that are certified as accurate by two or more officers of
35 the applicant that prove that the applicant has and maintains a net
36 worth or stockholder's equity of two hundred thousand dollars or
37 more; or

38 (iii) For service contract providers relying on RCW
39 48.110.050(2)(c) to assure the faithful performance of its
40 obligations to service contract holders, the applicant must submit

1 the most recent audited financial statements or form 10-K or form 20-
2 F filed with the securities and exchange commission which prove that
3 the applicant has and maintains a net worth or stockholder's equity
4 of one hundred million dollars or more. However, if the service
5 contract provider is relying on its parent company's net worth or
6 stockholder's equity to meet the requirements of RCW 48.110.050(2)(c)
7 and the service contract provider has provided the commissioner with
8 a written guarantee by the parent company in accordance with RCW
9 48.110.050(2)(c), then the most recent audited financial statements
10 or form 10-K or form 20-F filed with the securities and exchange
11 commission of the service contract provider's parent company must be
12 filed and the applicant need not submit its own financial statements
13 or demonstrate a minimum net worth or stockholder's equity; and

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

16 ~~(e) Any other pertinent information required by the~~
17 ~~commissioner)).~~

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

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

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

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

35 (4) The commissioner may refuse to issue a registration if the
36 commissioner determines that the service contract provider, or any
37 individual responsible for the conduct of the affairs of the service
38 contract provider under subsection (2)(b) of this section, is not
39 competent(~~(r)~~); not trustworthy(~~(r financially responsible, or)~~); has
40 had a license as a service contract provider or similar license

1 denied or revoked for cause by any state; or cannot demonstrate a net
2 worth or stockholder's equity in accordance with the applicable
3 requirements of subsection (2)(c) of this section.

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

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

17 **Sec. 2.** RCW 48.110.050 and 2006 c 274 s 6 are each amended to
18 read as follows:

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

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

24 (b) Provided a copy of the service contract to the service
25 contract holder within a reasonable period of time from the date of
26 purchase.

27 (2) In order to either demonstrate its financial responsibility
28 or assure the faithful performance of the service contract provider's
29 obligations to its service contract holders, every service contract
30 provider shall comply with the requirements of one of the following:

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

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

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

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

20 (ii) Place in trust with the commissioner a financial security
21 deposit, having a value of not less than five percent of the gross
22 consideration received, less claims paid, on the sale of the service
23 contract for all service contracts issued and in force, but not less
24 than twenty-five thousand dollars, consisting of one of the
25 following:

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

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

30 (C) Cash;

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

33 (E) Another form of security prescribed by rule by the
34 commissioner; or

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

37 (ii) Upon request, provide the commissioner with a copy of the
38 service contract provider's or, if using the net worth or
39 stockholder's equity of its parent company to satisfy the one hundred
40 million dollar requirement, the service contract provider's parent

1 company's most recent form 10-K or form 20-F filed with the
2 securities and exchange commission within the last calendar year, or
3 if the company does not file with the securities and exchange
4 commission, a copy of the service contract provider's or, if using
5 the net worth or stockholder's equity of its parent company to
6 satisfy the one hundred million dollar requirement, the service
7 contract provider's parent company's most recent audited financial
8 statements, which shows a net worth of the service contract provider
9 or its parent company of at least one hundred million dollars. If the
10 service contract provider's parent company's form 10-K, form 20-F, or
11 audited financial statements are filed with the commissioner to meet
12 the service contract provider's financial stability requirement, then
13 the parent company shall agree to guarantee the obligations of the
14 service contract provider relating to service contracts sold by the
15 service contract provider in this state. A copy of the guarantee
16 shall be filed with the commissioner. The guarantee shall be
17 irrevocable as long as there is in force in this state any contract
18 or any obligation arising from service contracts guaranteed, unless
19 the parent company has made arrangements approved by the commissioner
20 to satisfy its obligations under the guarantee.

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

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

1 **Sec. 3.** RCW 48.110.055 and 2011 c 47 s 17 are each amended to
2 read as follows:

3 (1) This section applies to protection product guarantee
4 providers.

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

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

11 (b) Either demonstrated its financial responsibility or assured
12 the faithful performance of the protection product guarantee
13 provider's obligations to its protection product guarantee holders by
14 insuring all protection product guarantees under a reimbursement
15 insurance policy issued by an insurer holding a certificate of
16 authority from the commissioner or a risk retention group, as defined
17 in 15 U.S.C. Sec. 3901(a)(4), as long as that risk retention group is
18 in full compliance with the federal liability risk retention act of
19 1986 (15 U.S.C. Sec. 3901 et seq.), is in good standing in its
20 domiciliary jurisdiction, and properly registered with the
21 commissioner under chapter 48.92 RCW. The insurance required by this
22 subsection must 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 written
34 premiums, wherever written, to surplus as to policyholders and paid-
35 in capital of not more than three to one.

36 (3) Applicants to be a protection product guarantee provider must
37 make an application to the commissioner upon a form to be furnished
38 by the commissioner. The application must include or be accompanied
39 by the following information and documents:

1 (a) The names of the protection product guarantee provider's
2 executive officer or officers directly responsible for the protection
3 product guarantee provider's protection product guarantee business
4 and their biographical affidavits on a form prescribed by the
5 commissioner;

6 (b) The name, address, and telephone number of any administrators
7 designated by the protection product guarantee provider to be
8 responsible for the administration of protection product guarantees
9 in this state;

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

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

14 (e) (~~Any other pertinent information required by the~~
15 ~~commissioner~~) Financial statements certified as accurate by two or
16 more officers of the applicant which prove that the applicant has and
17 maintains a net worth or stockholder's equity of two hundred thousand
18 dollars or more; and

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

20 (4) Each registered protection product guarantee provider must
21 appoint the commissioner as the protection product guarantee
22 provider's attorney to receive service of legal process issued
23 against the protection product guarantee provider in this state upon
24 causes of action arising within this state. Service upon the
25 commissioner as attorney constitutes effective legal service upon the
26 protection product guarantee provider.

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

30 (b) The appointment is irrevocable, binds any successor in
31 interest or to the assets or liabilities of the protection product
32 guarantee provider, and remains in effect for as long as there could
33 be any cause of action against the protection product guarantee
34 provider arising out of any of the protection product guarantee
35 provider's contracts or obligations in this state.

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

38 (5) The commissioner may refuse to issue a registration if the
39 commissioner determines that the protection product guarantee
40 provider, or any individual responsible for the conduct of the

1 affairs of the protection product guarantee provider under subsection
2 (3)(a) of this section, is not competent(~~((τ))~~); not trustworthy(~~((τ~~
3 ~~financially responsible, or~~)); has had a license as a protection
4 product guarantee provider or similar license denied or revoked for
5 cause by any state; or cannot demonstrate a net worth or
6 stockholder's equity in accordance with the applicable requirements
7 of subsection (3)(e) of this section.

8 (6) A registration issued under this section is valid, unless
9 surrendered, suspended, or revoked by the commissioner, or not
10 renewed for so long as the protection product guarantee provider
11 continues in business in this state and remains in compliance with
12 this chapter. A registration is subject to renewal annually on the
13 first day of July upon application of the protection product
14 guarantee provider and payment of a fee of two hundred fifty dollars.
15 If not so renewed, the registration expires on the June 30th next
16 preceding.

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

22 **Sec. 4.** RCW 48.110.073 and 2006 c 274 s 20 are each amended to
23 read as follows:

24 (1) If the service contract provider or protection product
25 guarantee provider is using (~~{the}~~) the reimbursement insurance
26 policy to satisfy the requirements of RCW 48.110.050(2)(a),
27 48.110.055(2)(b), or 48.110.075(2)(a), then the reimbursement
28 insurance policy shall be filed with and approved by the commissioner
29 in accordance with and pursuant to the requirements of chapter 48.18
30 RCW. Reimbursement insurance policy rates shall be filed with and
31 approved by the commissioner in accordance with and pursuant to the
32 requirements of chapter 48.19 RCW only if the insured service
33 contract provider is domiciled in this state.

34 (2) All service contracts forms covering motor vehicles must be
35 filed with and approved by the commissioner prior to the service
36 contract forms being used, issued, delivered, sold, or marketed in
37 this state or to residents of this state.

38 (3) All service contracts forms covering motor vehicles being
39 used, issued, delivered, sold, or marketed in this state or to

1 residents of this state by motor vehicle manufacturers or import
2 distributors or wholly owned subsidiaries thereof must be filed with
3 the commissioner for approval within sixty days after the motor
4 vehicle manufacturer or import distributor or wholly owned subsidiary
5 thereof begins using the service contracts forms.

6 (4) The commissioner shall disapprove any motor vehicle service
7 contract form if:

8 (a) The form is in any respect in violation of, or does not
9 comply with, this chapter or any applicable order or regulation of
10 the commissioner issued under this chapter;

11 (b) The form contains or incorporates by reference any
12 inconsistent, ambiguous, or misleading clauses, or exceptions and
13 conditions;

14 (c) The form has any title, heading, or other indication of its
15 provisions that is misleading; or

16 (d) The purchase of the contract is being solicited by deceptive
17 advertising.

18 **Sec. 5.** RCW 48.110.130 and 2006 c 274 s 14 are each amended to
19 read as follows:

20 (1) The commissioner may, subject to chapter 48.04 RCW, deny,
21 suspend, or revoke the registration of a service contract provider or
22 protection product guarantee provider if the commissioner finds that
23 the service contract provider or protection product guarantee
24 provider:

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

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

32 (c) Has, without just cause, refused to pay proper claims or
33 perform services arising under its contracts or has, without just
34 cause, caused service contract holders or protection product
35 guarantee holders to accept less than the amount due them or caused
36 service contract holders or protection product guarantee holders to
37 employ attorneys or bring suit against the service contract provider
38 or protection product guarantee provider to secure full payment or
39 settlement of claims;

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

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

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

10 (g) Is under suspension or revocation in another state with
11 respect to its service contract business or protection product
12 business;

13 (h) Has made a material misstatement in its application for
14 registration;

15 (i) Has obtained or attempted to obtain a registration through
16 misrepresentation or fraud;

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

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

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

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

31 (a) The provider (~~is insolvent~~) does not maintain the minimum
32 net worth required by this chapter;

33 (b) A proceeding for receivership, conservatorship,
34 rehabilitation, or other delinquency proceeding regarding the service
35 contract provider or protection product guarantee provider has been
36 commenced in any state; or

37 (c) The (~~financial condition or~~) business practices of the
38 service contract provider or protection product guarantee provider
39 otherwise pose an imminent threat to the public health, safety, or
40 welfare of the residents of this state.

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

7 **Sec. 6.** RCW 48.110.902 and 2006 c 274 s 21 are each amended to
8 read as follows:

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

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

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

24 (4) The adoption of chapter 274, Laws of 2006 does not imply that
25 a vehicle protection product warranty was insurance prior to October
26 1, 2006.

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