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**SUBSTITUTE HOUSE BILL 2553**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Kirby and Morrell; by request of Insurance Commissioner)

READ FIRST TIME 2/3/06.

1       AN ACT Relating to regulating service contracts and guarantee  
2 protection products; amending RCW 48.110.010, 48.110.015, 48.110.020,  
3 48.110.030, 48.110.040, 48.110.050, 48.110.060, 48.110.070, 48.110.080,  
4 48.110.090, 48.110.100, 48.110.110, 48.110.120, 48.110.130, 48.110.140,  
5 and 48.110.900; adding new sections to chapter 48.110 RCW; creating a  
6 new section; repealing RCW 48.96.005, 48.96.010, 48.96.020, 48.96.025,  
7 48.96.030, 48.96.040, 48.96.045, 48.96.047, 48.96.050, 48.96.060,  
8 48.96.900, and 48.96.901; prescribing penalties; and providing an  
9 effective date.

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

11       **Sec. 1.** RCW 48.110.010 and 1999 c 112 s 1 are each amended to read  
12 as follows:

13       The legislature finds that increasing numbers of businesses are  
14 selling service contracts for repair, replacement, and maintenance of  
15 motor vehicles, appliances, computers, electronic equipment, and other  
16 consumer products. There are risks that contract obligors will close  
17 or otherwise be unable to fulfill their contract obligations that could  
18 result in unnecessary and preventable losses to citizens of this state.  
19 The legislature declares that it is necessary to establish standards

1 that will safeguard the public from possible losses arising from the  
2 conduct or cessation of the business of service contract obligors or  
3 the mismanagement of funds paid for service contracts. The purpose of  
4 this chapter is to create a legal framework within which service  
5 contracts may be sold in this state and to set forth requirements for  
6 conducting a service contract business.

7 **Sec. 2.** RCW 48.110.015 and 2000 c 208 s 1 are each amended to read  
8 as follows:

- 9 (1) The following are exempt from this title:
  - 10 (a) Warranties;
  - 11 (b) Maintenance agreements; and
  - 12 (c) Service contracts:
    - 13 (i) Paid for with separate and additional consideration;
    - 14 (ii) Issued at the point of sale, or within sixty days of the
    - 15 original purchase date of the property; and
    - 16 (iii) On tangible property when the tangible property for which the
    - 17 service contract is sold has a purchase price of fifty dollars or less,
    - 18 exclusive of sales tax.
- 19 (2) This chapter does not apply to:
  - 20 (a) (~~Vehicle service contracts which are governed under chapter~~
  - 21 ~~48.96 RCW;~~
  - 22 ~~(b)~~) Vehicle mechanical breakdown insurance; and
  - 23 (~~(c)~~) (b) Service contracts on tangible personal property
  - 24 purchased by persons who are not consumers.

25 **Sec. 3.** RCW 48.110.020 and 2000 c 208 s 2 are each amended to read  
26 as follows:

- 27 The definitions in this section apply throughout this chapter.
- 28 (1) "Administrator" means the person who is responsible for the
  - 29 administration of the service contracts (~~(c)~~), the service contracts
  - 30 plan, or the protection product guarantees.
  - 31 (2) "Commissioner" means the insurance commissioner of this state.
  - 32 (3) "Consumer" means an individual who buys any tangible personal
  - 33 property that is primarily for personal, family, or household use.
  - 34 (4) "Incidental costs" means expenses specified in the guarantee
  - 35 incurred by the protection product guarantee holder related to damages
  - 36 to other property caused by the failure of the protection product to

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

11 (5) "Protection product" means any product offered or sold with a  
12 guarantee to repair or replace another product or pay incidental costs  
13 upon the failure of the product to perform pursuant to the terms of the  
14 protection product guarantee.

15 (6) "Protection product guarantee" means a written agreement by a  
16 protection product guarantee provider to repair or replace another  
17 product or pay incidental costs upon the failure of the protection  
18 product to perform pursuant to the terms of the protection product  
19 guarantee.

20 (7) "Protection product guarantee provider" means a person who is  
21 contractually obligated to the protection product guarantee holder  
22 under the terms of the protection product guarantee.

23 (8) "Protection product guarantee holder" means a person who is the  
24 purchaser or holder of a protection product guarantee.

25 (9) "Protection product guarantee seller" means the person who  
26 sells the protection product guarantee to the consumer.

27 (10) "Maintenance agreement" means a contract of limited duration  
28 that provides for scheduled maintenance only.

29 ~~((+5))~~ (11) "Motor vehicle" means any vehicle subject to  
30 registration under chapter 46.16 RCW.

31 (12) "Person" means an individual, partnership, corporation,  
32 incorporated or unincorporated association, joint stock company,  
33 reciprocal insurer, syndicate, or any similar entity or combination of  
34 entities acting in concert.

35 ~~((+6))~~ (13) "Premium" means the consideration paid to an insurer  
36 for a reimbursement insurance policy.

37 ~~((+7))~~ (14) "Provider fee" means the consideration paid by a  
38 consumer for a service contract.

1           ~~((+8))~~ (15) "Reimbursement insurance policy" means a policy of  
2 insurance that is issued to a service contract provider or a protection  
3 product guarantee provider to provide reimbursement to the service  
4 contract provider or the protection product guarantee provider or to  
5 pay on behalf of the service contract provider or the protection  
6 product guarantee provider all contractual obligations incurred by the  
7 service contract provider or the protection product guarantee provider  
8 under the terms of the insured service contracts or protection product  
9 guarantees issued or sold by the service contract provider or the  
10 protection product guarantee provider.

11           ~~((+9))~~ (16) "Service contract" means a contract or agreement for  
12 ~~((a separately stated))~~ consideration over and above the lease or  
13 purchase price of the property for a specific duration to perform the  
14 repair, replacement, or maintenance of property or the indemnification  
15 for repair, replacement, or maintenance for operational or structural  
16 failure due to a defect in materials or workmanship, or normal wear and  
17 tear. Service contracts may provide for the repair, replacement, or  
18 maintenance of property for damage resulting from power surges and  
19 accidental damage from handling, with or without additional provision  
20 for ~~((indemnity payments for incidental damages to other property~~  
21 ~~directly caused by the failure of the property which is the subject of~~  
22 ~~the service contract, provided the indemnity payment per incident does~~  
23 ~~not exceed the purchase price of the property that is the subject of~~  
24 ~~the service contract))~~ incidental payment of indemnity under limited  
25 circumstances, including towing, rental, emergency road services, or  
26 other expenses relating to the failure of the product or of a component  
27 part thereof.

28           ~~((+10))~~ (17) "Service contract holder" or "contract holder" means  
29 a person who is the purchaser or holder of a service contract.

30           ~~((+11))~~ (18) "Service contract provider" means a person who is  
31 contractually obligated to the service contract holder under the terms  
32 of the service contract.

33           ~~((+12))~~ (19) "Service contract seller" means the person who sells  
34 the service contract to the consumer.

35           ~~((+13))~~ (20) "Warranty" means a warranty made solely by the  
36 manufacturer, importer, or seller of property or services without  
37 consideration; that is not negotiated or separated from the sale of the  
38 product and is incidental to the sale of the product; and that

1 guarantees indemnity for defective parts, mechanical or electrical  
2 breakdown, labor, or other remedial measures, such as repair or  
3 replacement of the property or repetition of services.

4 **Sec. 4.** RCW 48.110.030 and 2005 c 223 s 33 are each amended to  
5 read as follows:

6 (1) A person may not act as, or offer to act as, or hold himself or  
7 herself out to be a service contract provider in this state, nor may a  
8 service contract be sold to a consumer in this state, unless the  
9 service contract provider has a valid registration as a service  
10 contract provider issued by the commissioner.

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

15 (a) All basic organizational documents of the service contract  
16 provider, including any articles of incorporation, articles of  
17 association, partnership agreement, trade name certificate, trust  
18 agreement, shareholder agreement, bylaws, and other applicable  
19 documents, and all amendments to those documents;

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

27 (c) Audited annual financial statements or other financial reports  
28 acceptable to the commissioner for the two most recent years which  
29 prove that the applicant is solvent and any information the  
30 commissioner may require in order to review the current financial  
31 condition of the applicant. If the service contract provider is  
32 relying on RCW 48.110.050(2) (~~((a) or~~) (c) to assure the faithful  
33 performance of its obligations to service contract holders, then the  
34 audited financial statements of the service contract provider's parent  
35 company (~~(may be substituted for the audited financial statements of~~  
36 ~~the service contract provider)~~) must also be filed;

1 (d) An application fee of two hundred fifty dollars, which shall be  
2 deposited into the general fund; and

3 (e) Any other pertinent information required by the commissioner.

4 (3) The applicant shall appoint the commissioner as its attorney to  
5 receive service of legal process in any action, suit, or proceeding in  
6 any court. This appointment is irrevocable and shall bind the service  
7 contract provider or any successor in interest, shall remain in effect  
8 as long as there is in force in this state any contract or any  
9 obligation arising therefrom related to residents of this state, and  
10 shall be processed in accordance with RCW 48.05.210.

11 (4) The commissioner may refuse to issue a registration if the  
12 commissioner determines that the service contract provider, or any  
13 individual responsible for the conduct of the affairs of the service  
14 contract provider under subsection (2)(b) of this section, is not  
15 competent, trustworthy, financially responsible, or has had a license  
16 as a service contract provider or similar license denied or revoked for  
17 cause by any state.

18 (5) A registration issued under this section is valid, unless  
19 surrendered, suspended, or revoked by the commissioner, or not renewed  
20 for so long as the service contract provider continues in business in  
21 this state and remains in compliance with this chapter. A registration  
22 is subject to renewal annually on the first day of July upon  
23 application of the service contract provider and payment of a fee of  
24 two hundred dollars, which shall be deposited into the general fund.  
25 If not so renewed, the registration expires on the June 30th next  
26 preceding.

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

31 **Sec. 5.** RCW 48.110.040 and 2005 c 223 s 34 are each amended to  
32 read as follows:

33 (1) Every registered service contract provider (~~(that is assuring~~  
34 ~~its faithful performance of its obligations to its service contract~~  
35 ~~holders by complying with RCW 48.110.050(2)(b))~~) must file an annual  
36 report for the preceding calendar year with the commissioner on or  
37 before March 1st of each year, or within any extension of time the

1 commissioner for good cause may grant. The report must be in the form  
2 and contain those matters as the commissioner prescribes and shall be  
3 verified by at least two officers of the service contract provider.

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

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

22 **Sec. 6.** RCW 48.110.050 and 1999 c 112 s 6 are each amended to read  
23 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 contract  
30 holder within a reasonable period of time from the date of purchase.

31 (2) In order to either demonstrate its financial responsibility or  
32 assure the faithful performance of ((a)) the service contract  
33 provider's obligations to its service contract holders, every service  
34 contract provider shall ((~~be responsible for complying~~)) comply with  
35 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 the

1 commissioner or a risk retention group, as defined in 15 U.S.C. Sec.  
2 3901(a)(4), as long as that risk retention group is in full compliance  
3 with the federal liability risk retention act of 1986 (15 U.S.C. Sec.  
4 3901 et seq.), is in good standing in its domiciliary jurisdiction, and  
5 is properly registered with the commissioner under chapter 48.92 RCW.  
6 The insurance required by this subsection must meet the following  
7 requirements:

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

13 (ii) The commissioner may authorize an insurer or risk retention  
14 group that has surplus as to policyholders and paid-in capital of less  
15 than fifteen million dollars, but at least equal to ten million  
16 dollars, to issue the insurance required by this subsection if the  
17 insurer or risk retention group demonstrates to the satisfaction of the  
18 commissioner that the company maintains a ratio of direct written  
19 premiums, wherever written, to surplus as to policyholders and paid-in  
20 capital of more than three to one;

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

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

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

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

36 (C) Cash;

37 (D) An evergreen letter of credit issued by a qualified financial  
38 institution; or



1 (E) Another form of security prescribed by rule by the  
2 commissioner; or

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

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

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

1 original service contract purchaser. A ten percent penalty per month  
2 shall be added to a refund of the purchase price that is not paid or  
3 credited within thirty days after return of the service contract to the  
4 service contract provider.

5 ~~(4) ((Except for service contract providers, persons marketing,~~  
6 ~~selling, or offering to sell service contracts for providers are exempt~~  
7 ~~from the registration requirements of RCW 48.110.030.~~

8 ~~(5) The marketing, sale, offering for sale, issuance, making,~~  
9 ~~proposing to make, and administration of service contracts by service~~  
10 ~~contract providers and related service contract sellers,~~  
11 ~~administrators, and other persons complying with this chapter are~~  
12 ~~exempt from the other provisions of this title, except chapter 48.04~~  
13 ~~RCW and as otherwise provided in this chapter.)) This section does not~~  
14 ~~apply to service contracts on motor vehicles or to protection product~~  
15 ~~guarantees.~~

16 **Sec. 7.** RCW 48.110.060 and 1999 c 112 s 7 are each amended to read  
17 as follows:

18 (1) Reimbursement insurance policies insuring service contracts or  
19 protection product guarantees issued, sold, or offered for sale in this  
20 state or sold to consumers in this state shall state that the insurer  
21 that issued the reimbursement insurance policy shall reimburse or pay  
22 on behalf of the service contract provider or the protection product  
23 guarantee provider all sums the service contract provider or the  
24 protection product guarantee provider is legally obligated to pay,  
25 including but not limited to the refund of the full purchase price of  
26 the service contract or protection product guarantee to the service  
27 contract holder or protection product guarantee holder or shall provide  
28 the service which the service contract provider or the protection  
29 product guarantee provider is legally obligated to perform according to  
30 the service contract provider's or protection product guarantee  
31 provider's contractual obligations under the service contracts or  
32 protection product guarantees issued or sold by the service contract  
33 provider or the protection product guarantee provider.

34 (2) The reimbursement insurance policy shall fully insure the  
35 obligations of the service contract provider or protection product  
36 guarantee provider, rather than partially insure, or insure only in the

1 event of service contract provider or protection product guarantee  
2 provider default.

3 (3) The reimbursement insurance policy shall state that the service  
4 contract holder or protection product guarantee holder is entitled to  
5 apply directly to the reimbursement insurance company.

6 **Sec. 8.** RCW 48.110.070 and 1999 c 112 s 8 are each amended to read  
7 as follows:

8 (1) Service contracts marketed, sold, offered for sale, issued,  
9 made, proposed to be made, or administered in this state or sold to  
10 residents of this state shall be written, printed, or typed in clear,  
11 understandable language that is easy to read, and disclose the  
12 requirements set forth in this section, as applicable.

13 (2) Service contracts insured under a reimbursement insurance  
14 policy under RCW 48.110.050(2)(a) and 48.110.060 shall not be issued,  
15 sold, or offered for sale in this state or sold to residents of this  
16 state unless the service contract conspicuously contains a statement in  
17 substantially the following form: "Obligations of the service contract  
18 provider under this service contract are insured under a service  
19 contract reimbursement insurance policy." The service contract shall  
20 also conspicuously state the name and address of the issuer of the  
21 reimbursement (~~{insurance}~~) insurance policy and state that the  
22 service contract holder is entitled to apply directly to the  
23 reimbursement insurance company.

24 (3) Service contracts not insured under a reimbursement insurance  
25 policy under RCW 48.110.050(2)(a) and 48.110.060 shall contain a  
26 statement in substantially the following form: "Obligations of the  
27 service contract provider under this contract are backed by the full  
28 faith and credit of the service contract provider."

29 (4) Service contracts shall state the name and address of the  
30 service contract provider and shall identify any administrator if  
31 different from the service contract provider, the service contract  
32 seller, and the service contract holder to the extent that the name of  
33 the service contract holder has been furnished by the service contract  
34 holder. The identities of such parties are not required to be  
35 preprinted on the service contract and may be added to the service  
36 contract at the time of sale.

1 (5) Service contracts shall state the purchase price of the service  
2 contract and the terms under which the service contract is sold. The  
3 purchase price is not required to be preprinted on the service contract  
4 and may be negotiated at the time of sale.

5 (6) Service contracts shall state the procedure to obtain service  
6 or to file a claim, including but not limited to the procedures for  
7 obtaining prior approval for repair work, the toll-free telephone  
8 number if prior approval is necessary for service, and the procedure  
9 for obtaining emergency repairs performed outside of normal business  
10 hours or provide for twenty-four-hour telephone assistance.

11 (7) Service contracts shall state the existence of any deductible  
12 amount, if applicable.

13 (8) Service contracts shall specify the merchandise, parts, and  
14 services to be provided and any limitations, exceptions, or exclusions.

15 (9) Service contracts shall state any restrictions governing the  
16 transferability of the service contract, if applicable.

17 (10) Service contracts shall state the terms, restrictions, or  
18 conditions governing cancellation of the service contract prior to the  
19 termination or expiration date of the service contract by either the  
20 service contract provider or by the service contract holder, which  
21 rights can be no more restrictive than provided in RCW 48.110.050(3).  
22 The service contract provider of the service contract shall mail a  
23 written notice to the service contract holder at the last known address  
24 of the service contract holder contained in the records of the service  
25 contract provider at least twenty-one days prior to cancellation by the  
26 service contract provider. The notice shall state the effective date  
27 of the cancellation and the true and actual reason for the  
28 cancellation.

29 (11) Service contracts shall set forth the obligations and duties  
30 of the service contract holder, including but not limited to the duty  
31 to protect against any further damage and any requirement to follow  
32 owner's manual instructions.

33 (12) Service contracts shall state whether or not the service  
34 contract provides for or excludes consequential damages or preexisting  
35 conditions.

36 (13) Service contracts shall state any exclusions of coverage.

37 (14) Service contracts shall not contain a provision which requires  
38 that any civil action brought in connection with the service contract

1 must be brought in the courts of a jurisdiction other than this state.  
2 Service contracts that authorize binding arbitration to resolve claims  
3 or disputes ((may)) must allow for arbitration proceedings to be held  
4 at a location in closest proximity to the service contract holder's  
5 permanent residence.

6 This section does not apply to service contracts on motor vehicles  
7 or to protection product guarantees.

8 **Sec. 9.** RCW 48.110.080 and 1999 c 112 s 9 are each amended to read  
9 as follows:

10 (1) A service contract provider or protection product guarantee  
11 provider shall not use in its name the words insurance, casualty,  
12 guaranty, surety, mutual, or any other words descriptive of the  
13 insurance, casualty, guaranty, or surety business; or a name  
14 deceptively similar to the name or description of any insurance or  
15 surety corporation, or to the name of any other service contract  
16 provider or protection product guarantee provider. This subsection  
17 does not apply to a company that was using any of the prohibited  
18 language in its name prior to January 1, 1999. However, a company  
19 using the prohibited language in its name shall conspicuously disclose  
20 in its service contracts or protection product guarantees the following  
21 statement: "This agreement is not an insurance contract."

22 (2) Every service contract provider or protection product guarantee  
23 provider shall conduct its business in its own legal name, unless the  
24 commissioner has approved the use of another name.

25 (3) A service contract provider or protection product guarantee  
26 provider or ((its)) their representatives shall not in ((its)) their  
27 service contracts or protection product guarantees or literature make,  
28 permit, or cause to be made any false or misleading statement, or  
29 deliberately omit any material statement that would be considered  
30 misleading if omitted.

31 (4) A person, such as a bank, savings and loan association, lending  
32 institution, manufacturer, or seller shall not require the purchase of  
33 a service contract or protection product guarantee as a condition of a  
34 loan or a condition for the sale of any property.

35 **Sec. 10.** RCW 48.110.090 and 1999 c 112 s 10 are each amended to  
36 read as follows:

1 (1) The service contract provider or protection product guarantee  
2 provider shall keep accurate accounts, books, and records concerning  
3 transactions regulated under this chapter.

4 (2) The service contract provider's or protection product guarantee  
5 provider's accounts, books, and records shall include the following:

6 (a) Copies of each type of service contract or protection product  
7 guarantee sold;

8 (b) The name and address of each service contract holder or  
9 protection product guarantee holder, to the extent that the name and  
10 address have been furnished by the service contract holder or  
11 protection product guarantee holder;

12 (c) A list of the locations where the service contracts or  
13 protection product guarantees are marketed, sold, or offered for sale;  
14 and

15 (d) Written claim files that contain at least the dates, amounts,  
16 and descriptions of claims related to the service contracts or  
17 protection product guarantees.

18 (3) Except as provided in subsection (5) of this section, the  
19 service contract provider or protection product guarantee provider  
20 shall retain all records required to be maintained by subsection (1) of  
21 this section for at least six years after the specified coverage has  
22 expired.

23 (4) The records required under this chapter may be, but are not  
24 required to be, maintained on a computer disk or other recordkeeping  
25 technology. If the records are maintained in other than hard copy, the  
26 records shall be capable of duplication to legible hard copy.

27 (5) A service contract provider or protection product guarantee  
28 provider discontinuing business in this state shall maintain its  
29 records until it furnishes the commissioner satisfactory proof that it  
30 has discharged all obligations to service contract holders or  
31 protection product guarantee holders in this state.

32 **Sec. 11.** RCW 48.110.100 and 1999 c 112 s 11 are each amended to  
33 read as follows:

34 As applicable, an insurer that issued a reimbursement insurance  
35 policy shall not terminate the policy until a notice of termination in  
36 accordance with RCW 48.18.290 has been given to the service contract  
37 provider or protection product guarantee provider and has been

1 delivered to the commissioner. The termination of a reimbursement  
2 insurance policy does not reduce the issuer's responsibility for  
3 service contracts or protection product guarantees issued by service  
4 contract providers or protection product guarantee providers prior to  
5 the effective date of the termination.

6 **Sec. 12.** RCW 48.110.110 and 1999 c 112 s 12 are each amended to  
7 read as follows:

8 (1) Service contract providers or protection product guarantee  
9 providers are considered to be the agent of the insurer which issued  
10 the reimbursement insurance policy for purposes of obligating the  
11 insurer to service contract holders or protection product guarantee  
12 holders in accordance with the service contract or protection product  
13 guarantee holders and this chapter. Payment of the provider fee by the  
14 consumer to the service contract seller or protection product guarantee  
15 seller, service contract provider or protection product guarantee  
16 provider, or administrator constitutes payment by the consumer to the  
17 service contract provider or protection product guarantee provider and  
18 to the insurer which issued the reimbursement insurance policy. In  
19 cases where a service contract provider or protection product guarantee  
20 provider is acting as an administrator and enlists other service  
21 contract providers or protection product guarantee providers, the  
22 service contract provider or protection product guarantee provider  
23 acting as the administrator shall notify the insurer of the existence  
24 and identities of the other service contract providers or protection  
25 product guarantee providers.

26 (2) (~~Chapter 112, Laws of 1999~~) This chapter does not prevent or  
27 limit the right of an insurer which issued a reimbursement insurance  
28 policy to seek indemnification or subrogation against a service  
29 contract provider or protection product guarantee provider if the  
30 issuer pays or is obligated to pay the service contract holder or  
31 protection product guarantee holder sums that the service contract  
32 provider or protection product guarantee provider was obligated to pay  
33 under the provisions of the service contract or protection product  
34 guarantee.

35 **Sec. 13.** RCW 48.110.120 and 1999 c 112 s 13 are each amended to  
36 read as follows:

1 (1) The commissioner may conduct investigations of service contract  
2 providers or protection product guarantee providers, administrators,  
3 service contract sellers or protection product guarantee sellers,  
4 insurers, and other persons to enforce this chapter and protect service  
5 contract holders or protection product guarantee holders in this state.  
6 Upon request of the commissioner, the service contract provider or  
7 protection product guarantee provider shall make all accounts, books,  
8 and records concerning service contracts or protection product  
9 guarantees sold by the service contract provider or protection product  
10 guarantee provider available to the commissioner which are necessary to  
11 enable the commissioner to determine compliance or noncompliance with  
12 this chapter.

13 (2) The commissioner may take actions under RCW 48.02.080 or  
14 48.04.050 which are necessary or appropriate to enforce this chapter  
15 and the commissioner's rules and orders, and to protect service  
16 contract holders or protection product guarantee holders in this state.

17 **Sec. 14.** RCW 48.110.130 and 1999 c 112 s 14 are each amended to  
18 read as follows:

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

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

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

30 (c) Has, without just cause, refused to pay proper claims or  
31 perform services arising under its contracts or has, without just  
32 cause, caused service contract holders or protection product guarantee  
33 holders to accept less than the amount due them or caused service  
34 contract holders or protection product guarantee holders to employ  
35 attorneys or bring suit against the service contract provider or  
36 protection product guarantee provider to secure full payment or  
37 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 issuance  
6 of the registration could have been refused had such failure then  
7 existed and been known to the commissioner;

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

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

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 guarantee business. A lack of response within fifteen business  
25 days 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;

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

36 (c) The financial condition or business practices of the service  
37 contract provider or protection product guarantee provider otherwise

1 pose an imminent threat to the public health, safety, or welfare of the  
2 residents of this state.

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

8 **Sec. 15.** RCW 48.110.140 and 1999 c 112 s 15 are each amended to  
9 read as follows:

10 The legislature finds that the practices covered by this chapter  
11 are matters vitally affecting the public interest for the purpose of  
12 applying the consumer protection act, chapter 19.86 RCW. Violations of  
13 this chapter are not reasonable in relation to the development and  
14 preservation of business. A violation of this chapter is an unfair or  
15 deceptive act or practice in the conduct of trade or commerce and an  
16 unfair method of competition, as specifically contemplated by RCW  
17 19.86.020, and is a violation of the consumer protection act, chapter  
18 19.86 RCW. Any service contract holder or protection product guarantee  
19 holder injured as a result of a violation of a provision of this  
20 chapter shall be entitled to maintain an action pursuant to chapter  
21 19.86 RCW against the service contract provider or protection product  
22 guarantee provider and the insurer issuing the applicable service  
23 contract or protection product guarantee reimbursement (~~(+insurance)~~)  
24 insurance policy and shall be entitled to all of the rights and  
25 remedies afforded by that chapter.

26 **Sec. 16.** RCW 48.110.900 and 1999 c 112 s 17 are each amended to  
27 read as follows:

28 This chapter applies to all service contracts, other than on motor  
29 vehicles, sold or offered for sale ninety or more days after July 25,  
30 1999. This chapter applies to all service contracts on motor vehicles  
31 and protection product guarantees sold or offered for sale after  
32 September 30, 2006.

33 NEW SECTION. **Sec. 17.** A new section is added to chapter 48.110  
34 RCW to read as follows:

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

1 (2) A person shall not act as, or offer to act as, or hold himself  
2 or herself out to be a protection product guarantee provider in this  
3 state, nor may a protection product guarantee be sold to a consumer in  
4 this state, unless the protection product guarantee provider has:

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

7 (b) Either demonstrated its financial responsibility or assured the  
8 faithful performance of the protection product guarantee provider's  
9 obligations to its protection product guarantee holders by insuring all  
10 protection product guarantees under a reimbursement insurance policy  
11 issued by an insurer holding a certificate of authority from the  
12 commissioner or a risk retention group, as defined in 15 U.S.C. Sec.  
13 3901(a)(4), as long as that risk retention group is in full compliance  
14 with the federal liability risk retention act of 1986 (15 U.S.C. Sec.  
15 3901 et seq.), is in good standing in its domiciliary jurisdiction, and  
16 properly registered with the commissioner under chapter 48.92 RCW. The  
17 insurance required by this subsection must meet the following  
18 requirements:

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

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

32 (3) Applicants to be a protection product guarantee provider shall  
33 make an application to the commissioner upon a form to be furnished by  
34 the commissioner. The application shall include or be accompanied by  
35 the following information and documents:

36 (a) The names of the protection product guarantee provider's  
37 executive officer or officers directly responsible for the protection

1 product guarantee provider's protection product guarantee business and  
2 their biographical affidavits on a form prescribed by the commissioner;

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

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

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

11 (e) Any other pertinent information required by the commissioner;  
12 and

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

14 (4) The applicant shall appoint the commissioner as its attorney to  
15 receive service of legal process in any action, suit, or proceeding in  
16 any court. This appointment is irrevocable and shall bind the  
17 protection product guarantee provider or any successor in interest,  
18 shall remain in effect as long as there is in force in this state any  
19 protection product guarantee or any obligation arising therefrom  
20 related to residents of this state, and shall be processed in  
21 accordance with RCW 48.05.210.

22 (5) The commissioner may refuse to issue a registration if the  
23 commissioner determines that the protection product guarantee provider,  
24 or any individual responsible for the conduct of the affairs of the  
25 protection product guarantee provider under subsection (3)(a) of this  
26 section, is not competent, trustworthy, financially responsible, or has  
27 had a license as a protection product guarantee provider or similar  
28 license denied or revoked for cause by any state.

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

37 (7) A protection product guarantee provider shall keep current the

1 information required to be disclosed in its registration under this  
2 section by reporting all material changes or additions within thirty  
3 days after the end of the month in which the change or addition occurs.

4 NEW SECTION. **Sec. 18.** A new section is added to chapter 48.110  
5 RCW to read as follows:

6 (1) This section applies to service contracts on motor vehicles.

7 (2) Service contracts shall not be issued, sold, or offered for  
8 sale in this state or sold to consumers in this state unless:

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

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

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

34 (b) The service contract conspicuously states that the obligations  
35 of the provider to the service contract holder are guaranteed under the  
36 reimbursement insurance policy, the name and address of the issuer of

1 the reimbursement insurance policy, the applicable policy number, and  
2 the means by which a service contract holder may file a claim under the  
3 policy;

4 (c) The service contract conspicuously and unambiguously states the  
5 name and address of the service contract provider and identifies any  
6 administrator if different from the service contract provider, the  
7 service contract seller, and the service contract holder. The identity  
8 of the service contract seller and the service contract holder are not  
9 required to be preprinted on the service contract and may be added to  
10 the service contract at the time of sale;

11 (d) The service contract states the purchase price of the service  
12 contract and the terms under which the service contract is sold. The  
13 purchase price is not required to be preprinted on the service contract  
14 and may be negotiated at the time of sale;

15 (e) The contract contains a conspicuous statement that has been  
16 initialed by the service contract holder and discloses:

17 (i) Any material conditions that the service contract holder must  
18 meet to maintain coverage under the contract including, but not limited  
19 to, any maintenance schedule to which the service contract holder must  
20 adhere, any requirement placed on the service contract holder for  
21 documenting repair or maintenance work, any duty to protect against any  
22 further damage, and any procedure to which the service contract holder  
23 must adhere for filing claims;

24 (ii) The work and parts covered by the contract;

25 (iii) Any time or mileage limitations;

26 (iv) That the implied warranty of merchantability on the motor  
27 vehicle is not waived if the contract has been purchased within ninety  
28 days of the purchase date of the motor vehicle from a provider or  
29 service contract seller who also sold the motor vehicle covered by the  
30 contract;

31 (v) Any exclusions of coverage; and

32 (vi) The contract holder's right to return the contract for a  
33 refund, which right can be no more restrictive than provided for in  
34 subsection (4) of this section;

35 (f) The service contract states the procedure to obtain service or  
36 to file a claim, including but not limited to the procedures for  
37 obtaining prior approval for repair work, the toll-free telephone

1 number if prior approval is necessary for service, and the procedure  
2 for obtaining emergency repairs performed outside of normal business  
3 hours or for obtaining twenty-four-hour telephone assistance;

4 (g) The service contract states the existence of any deductible  
5 amount, if applicable;

6 (h) The service contract states any restrictions governing the  
7 transferability of the service contract, if applicable; and

8 (i) The service contract states whether or not the service contract  
9 provides for or excludes consequential damages or preexisting  
10 conditions.

11 (3) Service contracts shall not contain a provision which requires  
12 that any civil action brought in connection with the service contract  
13 must be brought in the courts of a jurisdiction other than this state.  
14 Service contracts that authorize binding arbitration to resolve claims  
15 or disputes must allow for arbitration proceedings to be held at a  
16 location in closest proximity to the service contract holder's  
17 permanent residence.

18 (4)(a) At a minimum, every provider shall permit the service  
19 contract holder to return the contract within thirty days of its  
20 purchase if no claim has been made under the contract, and shall refund  
21 to the holder the full purchase price of the contract unless the  
22 service contract holder returns the contract ten or more days after its  
23 purchase, in which case the provider may charge a cancellation fee not  
24 exceeding twenty-five dollars.

25 (b) If no claim has been made and a contract holder returns the  
26 contract after thirty days, the provider shall refund the purchase  
27 price pro rata based upon either elapsed time or mileage computed from  
28 the date the contract was purchased and the mileage on that date, less  
29 a cancellation fee not exceeding twenty-five dollars.

30 (c) A ten percent penalty shall be added to any refund that is not  
31 paid within thirty days of return of the contract to the provider.

32 (d) If a contract holder returns the contract under this  
33 subsection, the contract is void from the beginning and the parties are  
34 in the same position as if no contract had been issued.

35 (e) If a service contract holder returns the contract in accordance  
36 with this section, the insurer issuing the reimbursement insurance  
37 policy covering the contract shall refund to the provider the full

1 premium by the provider for the contract if canceled within thirty days  
2 or a pro rata refund if canceled after thirty days.

3 (5) A service contract provider shall not deny a claim for coverage  
4 based upon the service contract holder's failure to properly maintain  
5 the vehicle, unless the failure to maintain the vehicle involved the  
6 failed part or parts.

7 (6) A contract provider has only sixty days from the date of the  
8 sale of the service contract to the holder to determine whether or not  
9 the vehicle qualifies under the provider's program for that vehicle.  
10 After sixty days the vehicle qualifies for the service contract that  
11 was issued and the service contract provider may not cancel the  
12 contract and is fully obligated under the terms of the contract sold to  
13 the service contract holder.

14 NEW SECTION. **Sec. 19.** A new section is added to chapter 48.110  
15 RCW to read as follows:

16 (1) Except for service contract providers or protection product  
17 guarantee providers, persons marketing, selling, or offering to sell  
18 service contracts or protection product guarantees for providers are  
19 exempt from the registration requirements of RCW 48.110.030.

20 (2) The marketing, sale, offering for sale, issuance, making,  
21 proposing to make, and administration of service contracts or  
22 protection product guarantees by service contract providers or  
23 protection product guarantee providers and related service contract or  
24 protection product guarantee sellers, administrators, and other persons  
25 complying with this chapter are exempt from the other provisions of  
26 this title, except chapters 48.04 and 48.30 RCW and as otherwise  
27 provided in this chapter.

28 NEW SECTION. **Sec. 20.** A new section is added to chapter 48.110  
29 RCW to read as follows:

30 (1) If the service contract provider or protection product  
31 guarantee provider is using reimbursement insurance policy to satisfy  
32 the requirements of RCW 48.110.050(2)(a) or section 17(2)(b) or  
33 18(2)(a) of this act, then the reimbursement insurance policy shall be  
34 filed with and approved by the commissioner in accordance with and  
35 pursuant to the requirements of chapter 48.18 RCW.



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

5 (3) The commissioner shall disapprove any motor vehicle service  
6 contract form if:

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

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

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

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

17 NEW SECTION. **Sec. 21.** RCW 48.110.030(2) (a) and (b), 48.110.040,  
18 48.110.060, 48.110.100, 48.110.110, section 18 (2)(a) and (b) and  
19 (4)(e) of this act, and section 20(1) of this act do not apply to motor  
20 vehicle service contracts issued by a motor vehicle manufacturer or  
21 import distributor covering vehicles manufactured or imported by the  
22 motor vehicle manufacturer or import distributor.

23 NEW SECTION. **Sec. 22.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 23.** The following acts or parts of acts are  
28 each repealed:

29 (1) RCW 48.96.005 (Purpose) and 1990 c 239 s 2;

30 (2) RCW 48.96.010 (Definitions) and 1987 c 99 s 1;

31 (3) RCW 48.96.020 (Reimbursement policy required for sale of  
32 service contract) and 1987 c 99 s 2;

33 (4) RCW 48.96.025 (Reimbursement policy--Insurer's responsibility)  
34 and 1990 c 239 s 3;

- 1 (5) RCW 48.96.030 (Reimbursement policy--Required provisions) and  
2 1990 c 239 s 6 & 1987 c 99 s 3;
- 3 (6) RCW 48.96.040 (Service contract--Required statements) and 1990  
4 c 239 s 7 & 1987 c 99 s 4;
- 5 (7) RCW 48.96.045 (Service contract--Notice to holder) and 1990 c  
6 239 s 4;
- 7 (8) RCW 48.96.047 (Service contract--Holder's right to return) and  
8 1990 c 239 s 5;
- 9 (9) RCW 48.96.050 (Service contracts--Excluded parties) and 1990 c  
10 239 s 8 & 1987 c 99 s 5;
- 11 (10) RCW 48.96.060 (Noncompliance as unfair competition, trade  
12 practice--Remedies) and 1990 c 239 s 9 & 1987 c 99 s 6;
- 13 (11) RCW 48.96.900 (Application of chapter--Date) and 1987 c 99 s  
14 7; and
- 15 (12) RCW 48.96.901 (Effective date--1990 c 239 §§ 2-10) and 1990 c  
16 239 s 11.

17 NEW SECTION. **Sec. 24.** This act takes effect October 1, 2006.

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