

HOUSE BILL REPORT

ESHB 3032

As Passed House:
February 13, 2010

Title: An act relating to defining normal wear and tear for a motor vehicle for the purpose of a service contract.

Brief Description: Defining normal wear and tear for a motor vehicle for the purpose of a service contract.

Sponsors: House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Simpson and Bailey).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/26/10 [DPS].

Floor Activity:

Passed House: 2/13/10, 95-0.

<p>Brief Summary of Engrossed Substitute Bill</p> <ul style="list-style-type: none">• Expands the definition of "service contract."
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HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Hurst, McCoy, Nelson, Santos and Simpson.

Minority Report: Do not pass. Signed by 1 member: Representative Parker, Assistant Ranking Minority Member.

Staff: Jon Hedegard (786-7127).

Background:

Certain transactions that fall within the definition of insurance have been addressed by exemptions from the Insurance Code (Code) or the creation of a specific regulatory structure.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Entities regulated under these chapters may not be required to comply with the same capitalization and reserve requirements, reporting and solvency oversight, and claims handling practices as are required of an insurer selling a traditional insurance product.

In 1990 the Legislature created a chapter in the Code to regulate motor vehicle service contracts. In 1999 a chapter in the Code was created for the regulation of service contracts. In 2006 the Legislature overhauled the service contract chapter, included motor vehicle service contracts and "protection products," and repealed the motor vehicle service contracts chapter.

A "service contract" is a contract to perform the repair, replacement, or maintenance of property or the payment for the repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear.

Registration.

Service contract providers must register with the Insurance Commissioner (Commissioner). Persons selling and marketing service contracts are not required to register with the Commissioner unless they are service contract providers. The Commissioner may suspend or revoke the registration of a service contract provider for failure to comply with the specific requirements.

Regulatory Oversight.

A service contract provider must meet requirements regarding:

- financial responsibility;
- record-keeping;
- form filings;
- disclosures; and
- refunds to consumers within 30 days of purchase if no claim is made.

Penalties for Violations.

The Commissioner may take enforcement actions for violations of the service provider statutes. A violation of the service contract chapter is also a violation of the Consumer Protection Act.

Summary of Engrossed Substitute Bill:

The definition of "service contract" is modified to include a contract or agreement sold for separate consideration for the repair or replacement of tires or wheels damaged as a result of coming into contact with ordinary road hazards including but not limited to potholes, rocks, wood debris, metal parts, glass, plastic, or composite scraps.

Tire or wheel manufacturers and motor vehicle manufacturers are exempt from the requirements of the chapter.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill allows for the regulation and availability of a product. There was some discussion about the best way to address this subject. The proposed substitute bill addresses that discussion between service contract providers and the Commissioner. The service contract regulation has evolved over the years. There was a major overhaul of the regulatory framework in 2006. Tires and wheels have been part of popular programs in other states. Legislation like this bill has passed in California, Texas, Ohio, and other states. The bill was broader originally. The Commissioner was not prepared to address all of the parts of the bill, so the original bill was scaled back in the proposed substitute. The Service Contract Industry Council includes auto dealers and manufacturers and they strongly support this approach. The Commissioner expressed concerns about a stand-alone product without this type of legislation. This bill does not require any new layer of regulation. Service contracts must be regulated today. The bill does not change any of the components of that regulation in any way. It merely clarifies that this particular product can be offered. These products may be delivered through dealers in many cases. Service contract providers can't provide this product in this state today. No one can offer any service contract without the regulatory oversight of the Commissioner today. The whole point of the bill is to allow the sale of these products. The Commissioner will not allow the sale without specific legislative authorization. None of these concerns were raised in any other state.

(With concerns) There are some language concerns with the bill. This bill and the proposed substitute bill indicate that there should be greater regulation in this area. That is not the belief of auto dealers (dealers) who offer this type of product. The bill may result in dealers being pushed out in favor of third-party service contract providers. The bill does not expand who can offer this product; it contracts the market by requiring regulatory oversight. The Commissioner would have to register those businesses that want to offer this product. Many dealers would not be able to meet the financial and regulatory standards. It does not appear that consumers are having problems, so greater regulation is unnecessary. The dealers do not read the bill in the same way as others. The dealers believe that they can offer a product today that is not regulated. This bill would require regulation. The dealers and the Commissioner had disagreed on some matters regarding the Commissioner's authority; this bill would clearly give the Commissioner the authority to regulate these products.

(Opposed) None.

Persons Testifying: (In support) Representative Simpson, prime sponsor; and Mel Sorensen, Service Contract Industry Council.

(With concerns) Scott Hazlegrove, Washington State Auto Dealers Association.

Persons Signed In To Testify But Not Testifying: None.