

SHB 2355 - H AMD 761

By Representative Kirby

ADOPTED 02/16/2016

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

3 "Sec. 1. RCW 48.110.030 and 2014 c 82 s 2 are each amended to
4 read as follows:

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

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

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

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

26 (c)(i) For service contract providers relying on RCW
27 48.110.050(2) (a) or (b) or 48.110.075(2)(a) to assure the faithful
28 performance of its obligations to service contract holders, the most
29 recent audited annual financial statements ((~~or other financial~~
30 reports acceptable to the commissioner for the two most recent
31 years)), if available, or the most recent audited financial
32 statements which prove that the applicant is solvent ((~~and any~~

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

20 (ii) For service contract providers relying on RCW
21 48.110.050(2)(c) to assure the faithful performance of its
22 obligations to service contract holders, the most recent audited
23 annual financial statements, if available, or the most recent audited
24 financial statements or form 10-K or form 20-F filed with the
25 securities and exchange commission which prove that the applicant has
26 and maintains a net worth or stockholder's equity of one hundred
27 million dollars or more. However, if the service contract provider is
28 relying on its parent company's net worth or stockholder's equity to
29 meet the requirements of RCW 48.110.050(2)(c) and the service
30 contract provider has provided the commissioner with a written
31 guarantee by the parent company in accordance with RCW
32 48.110.050(2)(c), then the most recent audited annual financial
33 statements, if available, or the most recent audited financial
34 statements or form 10-K or form 20-F filed with the securities and
35 exchange commission of the service contract provider's parent company
36 must be filed and the applicant need not submit its own financial
37 statements or demonstrate a minimum net worth or stockholder's
38 equity; and

39 (d) An application fee of two hundred fifty dollars, which must
40 be deposited into the general fund(;-and

1 ~~(e) Any other pertinent information required by the~~
2 ~~commissioner~~)).

3 (3) Each registered service contract provider must appoint the
4 commissioner as the service contract provider's attorney to receive
5 service of legal process issued against the service contract provider
6 in this state upon causes of action arising within this state.
7 Service upon the commissioner as attorney constitutes effective legal
8 service upon the service contract provider.

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

12 (b) The appointment is irrevocable, binds any successor in
13 interest or to the assets or liabilities of the service contract
14 provider, and remains in effect for as long as there could be any
15 cause of action against the service contract provider arising out of
16 any of the service contract provider's contracts or obligations in
17 this state.

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

20 (4) The commissioner may refuse to issue a registration if the
21 commissioner determines that the service contract provider, or any
22 individual responsible for the conduct of the affairs of the service
23 contract provider under subsection (2)(b) of this section, is not
24 competent, trustworthy, financially responsible, or has had a license
25 as a service contract provider or similar license denied or revoked
26 for cause by any state.

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

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

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

3 (1)(a) Every registered service contract provider must file an
4 annual report for the preceding calendar year with the commissioner
5 on or before March 1st of each year, or within any extension of time
6 the commissioner for good cause may grant. The report must be in the
7 form and contain those matters as the commissioner prescribes and
8 shall be verified by at least two officers of the service contract
9 provider.

10 (b)(i) A service contract provider relying on RCW
11 48.110.050(2)(a) or 48.110.075(2)(a) to assure the faithful
12 performance of its obligations to service contract holders may not be
13 required to submit audited financial statements of the service
14 contract provider as part of its annual reports. If requested by the
15 commissioner, a service contract provider relying on those provisions
16 must provide a copy of the most recent annual financial statements of
17 the service contract provider or its parent company certified as
18 accurate by two officers of the service contract provider or its
19 parent company.

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

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

31 (3) As part of any investigation by the commissioner, the
32 commissioner may require a service contract provider to file monthly
33 financial reports whenever, in the commissioner's discretion, there
34 is a need to more closely monitor the financial activities of the
35 service contract provider. Monthly financial statements must be filed
36 in the commissioner's office no later than the twenty-fifth day of
37 the month following the month for which the financial report is being
38 filed. These monthly financial reports are the internal financial
39 statements of the service contract provider. The monthly financial
40 reports that are filed with the commissioner constitute information

1 that might be damaging to the service contract provider if made
2 available to its competitors, and therefore shall be kept
3 confidential by the commissioner. This information may not be made
4 public or be subject to subpoena, other than by the commissioner and
5 then only for the purpose of enforcement actions taken by the
6 commissioner.

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

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

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

14 (b) Provided a copy of the service contract to the service
15 contract holder within a reasonable period of time from the date of
16 purchase.

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

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

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

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

1 the commissioner that the company maintains a ratio of direct written
2 premiums, wherever written, to surplus as to policyholders and paid-
3 in capital of not more than three to one;

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

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

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

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

20 (C) Cash;

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

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

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

27 (ii) Upon request, provide the commissioner with a copy of the
28 service contract provider's or, if using the net worth or
29 stockholder's equity of its parent company to satisfy the one hundred
30 million dollar requirement, the service contract provider's parent
31 company's most recent form 10-K or form 20-F filed with the
32 securities and exchange commission within the last calendar year, or
33 if the company does not file with the securities and exchange
34 commission, a copy of the service contract provider's or, if using
35 the net worth or stockholder's equity of its parent company to
36 satisfy the one hundred million dollar requirement, the service
37 contract provider's parent company's most recent audited financial
38 statements, which shows a net worth of the service contract provider
39 or its parent company of at least one hundred million dollars. If the
40 service contract provider's parent company's form 10-K, form 20-F, or

1 audited financial statements are filed with the commissioner to meet
2 the service contract provider's financial stability requirement, then
3 the parent company shall agree to guarantee the obligations of the
4 service contract provider relating to service contracts sold by the
5 service contract provider in this state. A copy of the guarantee
6 shall be filed with the commissioner. The guarantee shall be
7 irrevocable as long as there is in force in this state any contract
8 or any obligation arising from service contracts guaranteed, unless
9 the parent company has made arrangements approved by the commissioner
10 to satisfy its obligations under the guarantee.

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

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

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

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

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

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

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

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

20 (ii) The commissioner may authorize an insurer or risk retention
21 group that has surplus as to policyholders and paid-in capital of
22 less than fifteen million dollars, but at least equal to ten million
23 dollars, to issue the insurance required by this subsection if the
24 insurer or risk retention group demonstrates to the satisfaction of
25 the commissioner that the company maintains a ratio of direct written
26 premiums, wherever written, to surplus as to policyholders and paid-
27 in capital of not more than three to one.

28 (3) Applicants to be a protection product guarantee provider must
29 make an application to the commissioner upon a form to be furnished
30 by the commissioner. The application must include or be accompanied
31 by the following information and documents:

32 (a) The names of the protection product guarantee provider's
33 executive officer or officers directly responsible for the protection
34 product guarantee provider's protection product guarantee business
35 and their biographical affidavits on a form prescribed by the
36 commissioner;

37 (b) The name, address, and telephone number of any administrators
38 designated by the protection product guarantee provider to be
39 responsible for the administration of protection product guarantees
40 in this state;

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

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

5 (e) (~~Any other pertinent information required by the~~
6 ~~commissioner~~) The most recent annual financial statements, if
7 available, or the most recent financial statements certified as
8 accurate by two or more officers of the applicant which prove that
9 the applicant is solvent; and

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

11 (4) Each registered protection product guarantee provider must
12 appoint the commissioner as the protection product guarantee
13 provider's attorney to receive service of legal process issued
14 against the protection product guarantee provider in this state upon
15 causes of action arising within this state. Service upon the
16 commissioner as attorney constitutes effective legal service upon the
17 protection product guarantee provider.

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

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

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

29 (5) The commissioner may refuse to issue a registration if the
30 commissioner determines that the protection product guarantee
31 provider, or any individual responsible for the conduct of the
32 affairs of the protection product guarantee provider under subsection
33 (3)(a) of this section, is not competent, trustworthy, financially
34 responsible, or has had a license as a protection product guarantee
35 provider or similar license denied or revoked for cause by any state.

36 (6) A registration issued under this section is valid, unless
37 surrendered, suspended, or revoked by the commissioner, or not
38 renewed for so long as the protection product guarantee provider
39 continues in business in this state and remains in compliance with
40 this chapter. A registration is subject to renewal annually on the

1 first day of July upon application of the protection product
2 guarantee provider and payment of a fee of two hundred fifty dollars.
3 If not so renewed, the registration expires on the June 30th next
4 preceding.

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

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

12 (1) RCW 48.110.030 (2)(a) and (b), (3), and (4), 48.110.040,
13 48.110.060, 48.110.100, 48.110.110, 48.110.075 (2)(a) and (b) and
14 (4)(e), and 48.110.073 (1) and (2) do not apply to motor vehicle
15 service contracts issued by a motor vehicle manufacturer or import
16 distributor covering vehicles manufactured or imported by the motor
17 vehicle manufacturer or import distributor. For purposes of this
18 section, "motor vehicle service contract" includes a contract or
19 agreement sold for separately stated consideration for a specific
20 duration to perform any of the services set forth in RCW
21 48.110.020(18)(b).

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

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

27 (4) The adoption of chapter 274, Laws of 2006 does not imply that
28 a vehicle protection product warranty was insurance prior to October
29 1, 2006."

30 Correct the title.

EFFECT: (1) For service contract provider applicants relying on
the insurance policy or reserve account method of financial
responsibility, requires audited annual financial statements "if
available" or the most recent audited financial statements proving
that the applicant is solvent and strikes the requirement that the
applicant maintain a minimum net worth of \$200,000.

(2) For provider applicants relying on the insurance method,
permits submission of the most recent annual financial statements if
available or the most recent financial statements.

(3) For provider applicants relying on the net worth method, requires audited annual financial statements "if available" or the most recent audited financial statements.

(4) Adds authority for the Insurance Commissioner to refuse to issue a registration for an applicant the Commissioner determines to be not financially responsible.

(5) Strikes authority for Commissioner to refuse to issue a registration for an applicant who cannot demonstrate a net worth required when relying on the net worth method of financial responsibility.

(6) For protection product guarantee provider applicants, requires applicants to submit annual financial statements only if available or the most recent financial statements to prove that the applicant is solvent. Strikes requirement that the applicant prove a minimum net worth of \$200,000. Adds authority for the Insurance Commissioner to refuse a registration to an applicant the Commissioner determines is not financially responsible and strikes authority to refuse for failure to prove a minimum net worth.

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