

# SENATE BILL REPORT

## ESHB 2355

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As of February 24, 2016

**Title:** An act relating to registered service contract and protection product guarantee providers.

**Brief Description:** Concerning registered service contract and protection product guarantee providers.

**Sponsors:** House Committee on Business & Financial Services (originally sponsored by Representatives Kirby, Vick and Blake).

**Brief History:** Passed House: 2/16/16, 92-6.

**Committee Activity:** Financial Institutions & Insurance: 2/24/16.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Staff:** Shani Bauer (786-7468)

**Background:** Insurance and insurance transactions are governed by the Insurance Code (Code). Among other things, the Code requires: (1) that insurers meet certain financial requirements; and (2) that agents, solicitors, and brokers of insurance comply with specified licensing standards. Financial and criminal penalties may result from noncompliance.

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

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. Service contracts are one of the products regulated less stringently than insurance products under the Code.

Service Contract Defined. A service contract is a contract - for separately stated consideration - for a specified duration to perform the repair, replacement, or maintenance of property, or to indemnify a person for the repair, replacement, or maintenance of property. A service contract is also defined to include a contract - for separately stated consideration - for a specified duration to perform one or more of the following motor vehicle related services, among other things:

- the repair or replacement of tires or wheel damage;

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- the removal of certain dents, dings, or creases on a motor vehicle;
- the repair of or replacement of windshields as a result of damage caused by road hazards;
- the replacement of a motor vehicle key or key fob; and
- other services approved by rule of the Insurance Commissioner (Commissioner).

Protection product guarantee is a specific type of service contract to repair, replace, or pay the incidental costs if a product fails to perform as stated in the written contract.

Motor Vehicle Service Contract. A motor vehicle manufacturer or vehicle distributor issuing motor vehicle service contracts is exempt from various registration and regulatory provisions applicable to other service contract providers. Those exemptions include the requirement to submit organizational documents and identities of corporate officers; appointing the Commissioner to receive service of process; the requirement to file an annual report; and various other requirements applicable to service contract providers.

Financial Responsibility of Service Contract Providers. Service contract providers must register with the Commissioner. In order to provide assurance as to its financial viability, a service contract provider applying for registration in Washington must submit audited annual financial statements or other financial reports for the two most recent years which provide that the applicant is solvent. If the provider is relying on the financial status of the provider's parent company, the provider must also submit the financial statements of the parent company.

In order to demonstrate financial responsibility or assure the faithful performance of the service contract provider's obligations to its contract holders, a service contract provider must either:

- insure all service contracts under a reimbursement insurance policy;
- maintain a funded reserve account for its obligations of not less than 40 percent of the gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts; or
- maintain, or have its parent company maintain, a net worth or stockholder's equity of at least \$100 million.

If a service contract provider or protection product guarantee provider is using the reimbursement insurance policy to satisfy its financial responsibility requirements, the policy must be filed with and approved by the Commissioner in accordance with and pursuant to the requirements of Washington law.

**Summary of Bill:** In order to provide assurance as to its financial viability, a service contract provider applying for registration in Washington must submit evidence as follows:

- for providers relying on a reimbursement insurance policy to demonstrate its financial responsibility, the applicant must submit the most recent annual financial statements or, if not available, the most recent financial statements, which prove that the applicant is solvent;
- if the provider is relying on a funded reserve account to demonstrate its financial responsibility, the applicant must submit the most recent audited annual financial

- statements or, if not available, the most recent audited financial statements, which prove that the applicant is solvent; and
- if the provider or its parent company is maintaining net worth or stockholder's equity of at least \$100 million to demonstrate its financial responsibility, the most recent audited annual financial statements or, if not available, the most recent audited financial statements of the provider or the provider's parent company.

The Commissioner may request that a service contract provider submit financial statements to the Commissioner as part of its annual report. If the provider is relying on a reimbursement insurance policy to demonstrate financial responsibility, the provider must submit the most recent annual financial statements certified as accurate by two officers of the provider or its parent company. If the provider maintains net worth to demonstrate financial responsibility, the provider must submit the most recent audited annual financial statements of the provider or its parent company.

An applicant to be a protection product guarantee provider in this state must include the most recent annual financial statements, or if not available, the most recent financial statements, certified as accurate by two or more officers of the applicant which prove that the applicant is solvent.

If an evergreen letter of credit is posted with the Insurance Commissioner as evidence of financial responsibility, the letter must be irrevocable.

Language is added to clarify that a motor vehicle service contract includes a contract sold for separately stated consideration for a specific duration to perform any of the services set out in the definition of a service contract that relate to a motor vehicle.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The language agrees with the version in the House. Thank you for your support of this good bill.

**Persons Testifying:** PRO: Mel Sorensen, Service Contract Industry Council, PCI, Allstate.

**Persons Signed In To Testify But Not Testifying:** PRO: Lonnie Johns-Brown, Office of the Insurance Commissioner; Kathleen Gano, CNA Insurance.