

HB 2309 - H AMD 855

By Representative Kirby

ADOPTED 02/12/2018

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

3 "Sec. 1. RCW 48.110.017 and 2013 c 117 s 2 are each amended to
4 read as follows:

5 This chapter does not prohibit a service contract provider from
6 covering, in whole or in part, residential water, sewer, plumbing,
7 electrical, heating and cooling systems, utilities, or similar
8 systems, including items intended to be attached to or installed in
9 any real property, with or without coverage of appliances, or from
10 sharing contract revenue with local governments or other third
11 parties for endorsements and marketing services.

12 **Sec. 2.** RCW 48.110.030 and 2016 c 224 s 1 are each amended to
13 read as follows:

14 (1) A person may not act as, or offer to act as, or hold himself
15 or herself out to be a service contract provider in this state, nor
16 may a service contract be sold to a consumer in this state, unless
17 the service contract provider has a valid registration as a service
18 contract provider issued by the commissioner.

19 (2) Applicants to be a service contract provider must make an
20 application to the commissioner upon a form to be furnished by the
21 commissioner. The application must include or be accompanied by the
22 following information and documents:

23 (a) All basic organizational documents of the service contract
24 provider, including any articles of incorporation, articles of
25 association, partnership agreement, trade name certificate, trust
26 agreement, shareholder agreement, bylaws, and other applicable
27 documents, and all amendments to those documents;

28 (b) The identities of the service contract provider's executive
29 officer or officers directly responsible for the service contract
30 provider's service contract business, and, if more than fifty percent
31 of the service contract provider's gross revenue is derived from the

1 sale of service contracts, the identities of the service contract
2 provider's directors and stockholders having beneficial ownership of
3 ten percent or more of any class of securities;

4 (c)(i) For service contract providers relying on RCW
5 48.110.050(2) (a) or (b) or 48.110.075(2)(a) to assure the faithful
6 performance of its obligations to service contract holders, the most
7 recent audited annual financial statements, if available, or the most
8 recent audited financial statements which prove that the applicant
9 (~~is solvent~~) has and maintains a minimum net worth or stockholder's
10 equity of two hundred thousand dollars or more calculated in
11 accordance with section 6 of this act and the ability to pay its
12 debts when debts become due. In lieu of submitting audited financial
13 statements, a service contract provider relying on RCW
14 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.

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

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

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

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

18 (4) The commissioner may refuse to issue a registration if the
19 commissioner determines that the service contract provider, or any
20 individual responsible for the conduct of the affairs of the service
21 contract provider under subsection (2)(b) of this section, is not
22 competent, trustworthy, (~~financially responsible~~) cannot
23 demonstrate a minimum net worth or stockholder's equity and the
24 ability to pay its debts when debts become due in accordance with the
25 applicable requirements of subsection (2)(c) of this section, or has
26 had a license as a service contract provider or similar license
27 denied or revoked for cause by any state.

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

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

1 **Sec. 3.** RCW 48.110.055 and 2016 c 224 s 4 are each amended to
2 read as follows:

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

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

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

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

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

28 (ii) The commissioner may authorize an insurer or risk retention
29 group that has surplus as to policyholders and paid-in capital of
30 less than fifteen million dollars, but at least equal to ten million
31 dollars, to issue the insurance required by this subsection if the
32 insurer or risk retention group demonstrates to the satisfaction of
33 the commissioner that the company maintains a ratio of direct written
34 premiums, wherever written, to surplus as to policyholders and paid-
35 in capital of not more than three to one.

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

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

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

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

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

14 (e) The most recent annual financial statements, if available, or
15 the most recent financial statements certified as accurate by two or
16 more officers of the applicant which prove that the applicant (~~is~~
17 ~~solvent~~) has and maintains a minimum net worth or stockholder's
18 equity of two hundred thousand dollars or more calculated in
19 accordance with section 6 of this act and the ability to pay its
20 debts when debts become due; and

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

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

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

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

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

1 (5) The commissioner may refuse to issue a registration if the
2 commissioner determines that the protection product guarantee
3 provider, or any individual responsible for the conduct of the
4 affairs of the protection product guarantee provider under subsection
5 (3)(a) of this section, is not competent, trustworthy, (~~financially~~
6 ~~responsible~~) cannot demonstrate a minimum net worth or stockholder's
7 equity in accordance with the applicable requirements of subsection
8 (3)(e) of this section and the ability to pay its debts when debts
9 become due, or has had a license as a protection product guarantee
10 provider or similar license denied or revoked for cause by any state.

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

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

25 **Sec. 4.** RCW 48.110.130 and 2006 c 274 s 14 are each amended to
26 read as follows:

27 (1) The commissioner may, subject to chapter 48.04 RCW, deny,
28 suspend, or revoke the registration of a service contract provider or
29 protection product guarantee provider if the commissioner finds that
30 the service contract provider or protection product guarantee
31 provider:

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

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

1 (c) Has, without just cause, refused to pay proper claims or
2 perform services arising under its contracts or has, without just
3 cause, caused service contract holders or protection product
4 guarantee holders to accept less than the amount due them or caused
5 service contract holders or protection product guarantee holders to
6 employ attorneys or bring suit against the service contract provider
7 or protection product guarantee provider to secure full payment or
8 settlement of claims;

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

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

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

18 (g) Is under suspension or revocation in another state with
19 respect to its service contract business or protection product
20 business;

21 (h) Has made a material misstatement in its application for
22 registration;

23 (i) Has obtained or attempted to obtain a registration through
24 misrepresentation or fraud;

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

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

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

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

1 ~~((a))~~ (i) The provider ~~((is insolvent))~~ either does not
2 maintain the minimum net worth required by this chapter or cannot pay
3 its debts when debts become due, or both;

4 ~~((b))~~ (ii) A proceeding for receivership, conservatorship,
5 rehabilitation, or other delinquency proceeding regarding the service
6 contract provider or protection product guarantee provider has been
7 commenced in any state; or

8 ~~((c))~~ (iii) The ~~((financial condition or))~~ business practices
9 of the service contract provider or protection product guarantee
10 provider otherwise pose an imminent threat to the public health,
11 safety, or welfare of the residents of this state.

12 (b) However, nothing in this subsection shall in any way be
13 construed to limit the authority of the commissioner to take action
14 against a service contract provider or a protection product guarantee
15 provider granted by this chapter.

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

22 **Sec. 5.** RCW 48.110.902 and 2016 c 224 s 5 are each amended to
23 read as follows:

24 (1) RCW 48.110.030 (2)(a) and (b), (3), and (4), 48.110.040,
25 48.110.060, 48.110.100, 48.110.110, 48.110.075 (2)(a) and (b) and
26 (4)(e), and 48.110.073 (1) and (2) do not apply to motor vehicle
27 service contracts issued by a motor vehicle manufacturer or import
28 distributor covering vehicles manufactured or imported by the motor
29 vehicle manufacturer or import distributor. ~~((For purposes of this~~
30 ~~section, "motor vehicle service contract" includes a contract or~~
31 ~~agreement sold for separately stated consideration for a specific~~
32 ~~duration to perform any of the services set forth in RCW~~
33 ~~48.110.020(18)(b).))~~

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

36 (3) RCW 48.110.030 (2)(a) through (c), (3), and (4), 48.110.040,
37 and 48.110.073(2) do not apply to wholly owned subsidiaries of motor
38 vehicle manufacturers or import distributors. For purposes of this
39 subsection, a company is considered a wholly owned subsidiary as long

1 as it is ultimately owned, directly or indirectly, one hundred
2 percent by single or multiple motor vehicle manufacturers or import
3 distributors.

4 (4) The adoption of chapter 274, Laws of 2006 does not imply that
5 a vehicle protection product warranty was insurance prior to October
6 1, 2006.

7 (5) For purposes of this section, "motor vehicle service
8 contract" includes a contract or agreement sold for separately stated
9 consideration for a specific duration to perform any of the services
10 set forth in RCW 48.110.020(18)(b).

11 NEW SECTION. Sec. 6. A new section is added to chapter 48.110
12 RCW to read as follows:

13 (1) A service contract provider relying on RCW 48.110.050(2)(a)
14 or 48.110.075(2)(a) to assure the faithful performance of its
15 obligations to service contract holders shall calculate the minimum
16 net worth or stockholder's equity required by this chapter in
17 accordance with generally accepted accounting principles as set forth
18 by the financial accounting standards board. A service contract
19 provider must follow generally accepted accounting principles, as set
20 forth by the financial accounting standards board, in regard to
21 either unearned service contract fees or expected service contract
22 claims, or both, when determining its net worth. A service contract
23 provider relying on RCW 48.110.050(2)(a) or 48.110.075(2)(a) may
24 elect to use statutory accounting principles in lieu of generally
25 accepted accounting principles if it so chooses.

26 (2) A service contract provider relying on RCW 48.110.050(2) (b)
27 or (c) to assure the faithful performance of its obligations to
28 service contract holders shall calculate the minimum net worth or
29 stockholder's equity required by this chapter in accordance with
30 generally accepted accounting principles as set forth by the
31 financial accounting standards board but must exclude from its assets
32 all intangible assets including, but not limited to, goodwill,
33 franchises, customer lists, patents or trademarks, and receivables
34 from or advances to officers, directors, employees, salesmen, and
35 affiliated companies when calculating net worth or stockholder's
36 equity. However, a service contract provider relying on RCW
37 48.110.050(2) (b) or (c) may include receivables from affiliated
38 companies if the affiliated company provides a written irrevocable
39 guarantee to assure repayment of all receivables to the service

1 contract provider and the guaranteeing organization has a net worth
2 or stockholder's equity in excess of one hundred million dollars and
3 submits a statement from a certified public accountant attesting that
4 the net worth or stockholder's equity of the guaranteeing
5 organization meets or exceeds the requirements of this subsection.

6 (3) A protection product guarantee provider that has elected to
7 assure the faithful performance of its obligations to its protection
8 product guarantee holders by insuring all protection product
9 guarantees under a reimbursement insurance policy in accordance with
10 RCW 48.110.055(2)(b) shall calculate the minimum net worth or
11 stockholder's equity required by this chapter in accordance with
12 generally accepted accounting principles as set forth by the
13 financial accounting standards board. A protection product guarantee
14 provider will follow generally accepted accounting principles, as set
15 forth by the financial accounting standards board, in regard to
16 either unearned protection product guarantee contract fees or
17 expected protection product guarantee contract claims, or both, when
18 determining net worth. A protection product guarantee provider may
19 elect to use statutory accounting principles in lieu of generally
20 accepted accounting principles."

21 Correct the title.

EFFECT: Makes the following changes to service contract provider regulations:

(1) Specifies the service contract and protection product guarantee provider's net worth threshold is a minimum standard.

(2) Requires the service contract and protection product guarantee provider to demonstrate ability to pay its debts.

(3) Specifies the Office of the Insurance Commissioner's authority to take action against a service contract and protection product guarantee provider in accordance with the chapter.

(4) Requires service contract and protection product guarantee providers to use generally accepted accounting standards in regard to unearned contract fees or expected contract claims.

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