
HOUSE BILL 2553

State of Washington 59th Legislature 2006 Regular Session

By Representatives Kirby and Morrell; by request of Insurance
Commissioner

Read first time 01/10/2006. Referred to Committee on Financial
Institutions & Insurance.

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; repealing
6 RCW 48.96.005, 48.96.010, 48.96.020, 48.96.025, 48.96.030, 48.96.040,
7 48.96.045, 48.96.047, 48.96.050, 48.96.060, 48.96.900, and 48.96.901;
8 and prescribing penalties.

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

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

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

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

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

8 (1) The following are exempt from this title:

9 (a) Warranties;

10 (b) Maintenance agreements; and

11 (c) Service contracts:

12 (i) Paid for with separate and additional consideration;

13 (ii) Issued at the point of sale, or within sixty days of the
14 original purchase date of the property; and

15 (iii) On tangible property when the tangible property for which the
16 service contract is sold has a purchase price of fifty dollars or less,
17 exclusive of sales tax.

18 (2) This chapter does not apply to:

19 (a) ~~((Vehicle service contracts which are governed under chapter
20 48.96 RCW;~~

21 ~~(b))~~) Vehicle mechanical breakdown insurance; and

22 ~~((c))~~) (b) Service contracts on tangible personal property
23 purchased by persons who are not consumers.

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

26 The definitions in this section apply throughout this chapter.

27 (1) "Administrator" means the person who is responsible for the
28 administration of the service contracts ~~((or))~~, the service contracts
29 plan, or the guarantee protection products.

30 (2) "Commissioner" means the insurance commissioner of this state.

31 (3) "Consumer" means an individual who buys any tangible personal
32 property that is primarily for personal, family, or household use.

33 (4) "Incidental costs" means expenses specified in the guarantee
34 incurred by the guarantee protection product purchaser related to
35 damages to other property directly and solely caused by the failure of
36 the guarantee protection product to perform as provided in the

1 guarantee. "Incidental costs" may include, without limitation,
2 insurance policy deductibles, rental vehicle charges, the difference
3 between the actual value of the stolen vehicle at the time of theft and
4 the cost of a replacement vehicle, sales taxes, registration fees,
5 transaction fees, and mechanical inspection fees.

6 (5) "Guarantee protection product" means any product for which a
7 significant element of that product is a guarantee to repair or replace
8 another product upon the failure of the guarantee product to perform as
9 desired by the parties.

10 (6) "Guarantee protection product provider" means a person who is
11 contractually obligated to the guarantee protection product purchaser
12 under the terms of the guarantee protections product sale.

13 (7) "Guarantee protection product purchaser" means a person who is
14 the purchaser of a guarantee protection product.

15 (8) "Guarantee protection product seller" means the person who
16 sells the guarantee protection product to the consumer.

17 (9) "Maintenance agreement" means a contract of limited duration
18 that provides for scheduled maintenance only.

19 ~~((+5))~~ (10) "Motor vehicle" means any vehicle subject to
20 registration under chapter 46.16 RCW.

21 (11) "Person" means an individual, partnership, corporation,
22 incorporated or unincorporated association, joint stock company,
23 reciprocal insurer, syndicate, or any similar entity or combination of
24 entities acting in concert.

25 ~~((+6))~~ (12) "Premium" means the consideration paid to an insurer
26 for a reimbursement insurance policy.

27 ~~((+7))~~ (13) "Provider fee" means the consideration paid by a
28 consumer for a service contract.

29 ~~((+8))~~ (14) "Reimbursement insurance policy" means a policy of
30 insurance that is issued to a service contract provider or a guarantee
31 protection product provider to provide reimbursement to the service
32 contract provider or the guarantee protection product provider or to
33 pay on behalf of the service contract provider or the guarantee
34 protection product provider all contractual obligations incurred by the
35 service contract provider or the guarantee protection product provider
36 under the terms of the insured service contracts or guarantee
37 protection products issued or sold by the service contract provider or
38 the guarantee protection product provider.

1 (~~(9)~~) (15) "Service contract" means a contract or agreement for
2 (~~a separately stated~~) consideration over and above the lease or
3 purchase price of the property for a specific duration to perform the
4 repair, replacement, or maintenance of property or the indemnification
5 for repair, replacement, or maintenance for operational or structural
6 failure due to a defect in materials or workmanship, or normal wear and
7 tear. Service contracts may provide for the repair, replacement, or
8 maintenance of property for damage resulting from power surges and
9 accidental damage from handling, with or without additional provision
10 for indemnity payments for incidental damages to other property
11 directly and solely caused by the failure of the property which is the
12 subject of the service contract, provided the indemnity payment per
13 incident does not exceed the purchase price of the property that is the
14 subject of the service contract.

15 (~~(10)~~) (16) "Service contract holder" or "contract holder" means
16 a person who is the purchaser or holder of a service contract.

17 (~~(11)~~) (17) "Service contract provider" means a person who is
18 contractually obligated to the service contract holder under the terms
19 of the service contract.

20 (~~(12)~~) (18) "Service contract seller" means the person who sells
21 the service contract to the consumer.

22 (~~(13)~~) (19) "Warranty" means a warranty made solely by the
23 manufacturer, importer, or seller of property or services without
24 consideration; that is not negotiated or separated from the sale of the
25 product and is incidental to the sale of the product; and that
26 guarantees indemnity for defective parts, mechanical or electrical
27 breakdown, labor, or other remedial measures, such as repair or
28 replacement of the property or repetition of services.

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

31 (1) A person may not act as, or offer to act as, or hold himself or
32 herself out to be a service contract provider in this state, nor may a
33 service contract be sold to a consumer in this state, unless the
34 service contract provider has a valid registration as a service
35 contract provider issued by the commissioner.

36 (2) Applicants to be a service contract provider must make an

1 application to the commissioner upon a form to be furnished by the
2 commissioner. The application must include or be accompanied by the
3 following information and documents:

4 (a) All basic organizational documents of the service contract
5 provider, including any articles of incorporation, articles of
6 association, partnership agreement, trade name certificate, trust
7 agreement, shareholder agreement, bylaws, and other applicable
8 documents, and all amendments to those documents;

9 (b) The identities of the service contract provider's executive
10 officer or officers directly responsible for the service contract
11 provider's service contract business, and, if more than fifty percent
12 of the service contract provider's gross revenue is derived from the
13 sale of service contracts, the identities of the service contract
14 provider's directors and stockholders having beneficial ownership of
15 ten percent or more of any class of securities;

16 (c) Audited annual financial statements or other financial reports
17 acceptable to the commissioner for the two most recent years which
18 prove that the applicant is solvent and any information the
19 commissioner may require in order to review the current financial
20 condition of the applicant. If the service contract provider is
21 relying on RCW 48.110.050(2) (~~((a) or~~) (c) to assure the faithful
22 performance of its obligations to service contract holders, then the
23 audited financial statements of the service contract provider's parent
24 company (~~(may be substituted for the audited financial statements of~~
25 ~~the service contract provider)~~) must also be filed;

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

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

29 (3) The applicant shall appoint the commissioner as its attorney to
30 receive service of legal process in any action, suit, or proceeding in
31 any court. This appointment is irrevocable and shall bind the service
32 contract provider or any successor in interest, shall remain in effect
33 as long as there is in force in this state any contract or any
34 obligation arising therefrom related to residents of this state, and
35 shall be processed in accordance with RCW 48.05.210.

36 (4) The commissioner may refuse to issue a registration if the
37 commissioner determines that the service contract provider, or any
38 individual responsible for the conduct of the affairs of the service

1 contract provider under subsection (2)(b) of this section, is not
2 competent, trustworthy, financially responsible, or has had a license
3 as a service contract provider or similar license denied or revoked for
4 cause by any state.

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

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

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

20 (1) Every registered service contract provider (~~((that is assuring~~
21 ~~its faithful performance of its obligations to its service contract~~
22 ~~holders by complying with RCW 48.110.050(2)(b))~~) must file an annual
23 report for the preceding calendar year with the commissioner on or
24 before March 1st of each year, or within any extension of time the
25 commissioner for good cause may grant. The report must be in the form
26 and contain those matters as the commissioner prescribes and shall be
27 verified by at least two officers of the service contract provider.

28 (2) At the time of filing the report, the service contract provider
29 must pay a filing fee of twenty dollars which shall be deposited into
30 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 is
34 a need to more closely monitor the financial activities of the service
35 contract provider. Monthly financial statements must be filed in the
36 commissioner's office no later than the twenty-fifth day of the month
37 following the month for which the financial report is being filed.

1 These monthly financial reports are the internal financial statements
2 of the service contract provider. The monthly financial reports that
3 are filed with the commissioner constitute information that might be
4 damaging to the service contract provider if made available to its
5 competitors, and therefore shall be kept confidential by the
6 commissioner. This information may not be made public or be subject to
7 subpoena, other than by the commissioner and then only for the purpose
8 of enforcement actions taken by the commissioner.

9 **Sec. 6.** RCW 48.110.050 and 1999 c 112 s 6 are each amended to read
10 as follows:

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

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

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

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

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

32 (i) The insurer or risk retention group must, at the time the
33 policy is filed with the commissioner, and continuously thereafter, be
34 rated "B++" or better by A.M. Best Company, Inc., maintain surplus as
35 to policyholders and paid-in capital of at least fifteen million
36 dollars, and annually file audited financial statements with the
37 commissioner; and

1 (ii) The commissioner may authorize an insurer or risk retention
2 group that has surplus as to policyholders and paid-in capital of less
3 than fifteen million dollars, but at least equal to ten million
4 dollars, to issue the insurance required by this subsection if the
5 insurer or risk retention group demonstrates to the satisfaction of the
6 commissioner that the company maintains a ratio of direct written
7 premiums, wherever written, to surplus as to policyholders and paid-in
8 capital of not less than three to one;

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

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

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

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

24 (C) Cash;

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

27 (E) Another form of security prescribed by rule by the
28 commissioner; or

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

31 (ii) Upon request, provide the commissioner with a copy of the
32 service contract provider's or the service contract provider's parent
33 company's most recent form 10-K or form 20-F filed with the securities
34 and exchange commission within the last calendar year, or if the
35 company does not file with the securities and exchange commission, a
36 copy of the service contract provider's or the service contract
37 provider's parent company's audited financial statements, which shows
38 a net worth of the service contract provider or its parent company of

1 at least one hundred million dollars. If the service contract
2 provider's parent company's form 10-K, form 20-F, or audited financial
3 statements are filed with the commissioner to meet the service contract
4 provider's financial stability requirement, then the parent company
5 shall agree to guarantee the obligations of the service contract
6 provider relating to service contracts sold by the service contract
7 provider in this state. A copy of the guarantee shall be filed with
8 the commissioner. The guarantee shall be irrevocable as long as there
9 is in force in this state any contract or any obligation arising from
10 service contracts guaranteed, unless the parent company has made
11 arrangements approved by the commissioner to satisfy its obligations
12 under the guarantee.

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

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

34 ~~(5) The marketing, sale, offering for sale, issuance, making,~~
35 ~~proposing to make, and administration of service contracts by service~~
36 ~~contract providers and related service contract sellers,~~
37 ~~administrators, and other persons complying with this chapter are~~
38 ~~exempt from the other provisions of this title, except chapter 48.04~~

1 ~~RCW and as otherwise provided in this chapter.)~~ This section does not
2 apply to service contracts on motor vehicles or to guarantee protection
3 products.

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

6 (1) Reimbursement insurance policies insuring service contracts or
7 guarantee protection products issued, sold, or offered for sale in this
8 state or sold to consumers in this state shall state that the insurer
9 that issued the reimbursement insurance policy shall reimburse or pay
10 on behalf of the service contract provider or the guarantee protection
11 product provider all sums the service contract provider or the
12 guarantee protection product provider is legally obligated to pay,
13 including but not limited to the refund of the full purchase price of
14 the service contract or guarantee protection product to the service
15 contract holder or guarantee protection product purchaser or shall
16 provide the service which the service contract provider or the
17 guarantee protection product provider is legally obligated to perform
18 according to the service contract provider's or guarantee protection
19 product provider's contractual obligations under the service contracts
20 or guarantee protection products issued or sold by the service contract
21 provider or the guarantee protection product provider.

22 (2) The reimbursement insurance policy shall fully insure the
23 obligations of the service contract provider or guarantee protection
24 product provider, rather than partially insure, or insure only in the
25 event of service contract provider or guarantee protection product
26 provider default.

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

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

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

1 (2) Service contracts insured under a reimbursement insurance
2 policy under RCW 48.110.050(2)(a) and 48.110.060 shall not be issued,
3 sold, or offered for sale in this state or sold to residents of this
4 state unless the service contract conspicuously contains a statement in
5 substantially the following form: "Obligations of the service contract
6 provider under this service contract are insured under a service
7 contract reimbursement insurance policy." The service contract shall
8 also conspicuously state the name and address of the issuer of the
9 reimbursement (~~{insurance}~~) insurance policy and state that the
10 service contract holder is entitled to apply directly to the
11 reimbursement insurance company.

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

17 (4) Service contracts shall state the name and address of the
18 service contract provider and shall identify any administrator if
19 different from the service contract provider, the service contract
20 seller, and the service contract holder to the extent that the name of
21 the service contract holder has been furnished by the service contract
22 holder. The identities of such parties are not required to be
23 preprinted on the service contract and may be added to the service
24 contract at the time of sale.

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

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

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

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

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

3 (10) Service contracts shall state the terms, restrictions, or
4 conditions governing cancellation of the service contract prior to the
5 termination or expiration date of the service contract by either the
6 service contract provider or by the service contract holder, which
7 rights can be no more restrictive than provided in RCW 48.110.050(3).
8 The service contract provider of the service contract shall mail a
9 written notice to the service contract holder at the last known address
10 of the service contract holder contained in the records of the service
11 contract provider at least twenty-one days prior to cancellation by the
12 service contract provider. The notice shall state the effective date
13 of the cancellation and the true and actual reason for the
14 cancellation.

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

19 (12) Service contracts shall state whether or not the service
20 contract provides for or excludes consequential damages or preexisting
21 conditions.

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

23 (14) Service contracts shall not contain a provision which requires
24 that any civil action brought in connection with the service contract
25 must be brought in the courts of a jurisdiction other than this state.
26 Service contracts that authorize binding arbitration to resolve claims
27 or disputes (~~may~~) must allow for arbitration proceedings to be held
28 at a location in closest proximity to the service contract holder's
29 permanent residence.

30 This section does not apply to service contracts on motor vehicles
31 or to guarantee protection products.

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

34 (1) A service contract provider or guarantee protection product
35 provider shall not use in its name the words insurance, casualty,
36 guaranty, surety, mutual, or any other words descriptive of the
37 insurance, casualty, guaranty, or surety business; or a name

1 deceptively similar to the name or description of any insurance or
2 surety corporation, or to the name of any other service contract
3 provider or guarantee protection product provider. This subsection
4 does not apply to a company that was using any of the prohibited
5 language in its name prior to January 1, 1999. However, a company
6 using the prohibited language in its name shall conspicuously disclose
7 in its service contracts or guarantee protection products the following
8 statement: "This agreement is not an insurance contract."

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

12 (3) A service contract provider or guarantee protection product
13 provider or ((~~its~~)) their representatives shall not in ((~~its~~)) their
14 service contracts or guarantee protection products or literature make,
15 permit, or cause to be made any false or misleading statement, or
16 deliberately omit any material statement that would be considered
17 misleading if omitted.

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

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

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

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

29 (a) Copies of each type of service contract or guarantee protection
30 product sold;

31 (b) The name and address of each service contract holder or
32 guarantee protection product purchaser, to the extent that the name and
33 address have been furnished by the service contract holder or guarantee
34 protection product purchaser;

35 (c) A list of the locations where the service contracts or
36 guarantee protection products are marketed, sold, or offered for sale;
37 and

1 (d) Written claim files that contain at least the dates, amounts,
2 and descriptions of claims related to the service contracts or
3 guarantee protection products.

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

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

13 (5) A service contract provider or guarantee protection product
14 provider discontinuing business in this state shall maintain its
15 records until it furnishes the commissioner satisfactory proof that it
16 has discharged all obligations to service contract holders or guarantee
17 protection product purchasers in this state.

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

20 As applicable, an insurer that issued a reimbursement insurance
21 policy shall not terminate the policy until a notice of termination in
22 accordance with RCW 48.18.290 has been given to the service contract
23 provider or guarantee product provider and has been delivered to the
24 commissioner. The termination of a reimbursement insurance policy does
25 not reduce the issuer's responsibility for service contracts or
26 guarantee products issued by service contract providers or guarantee
27 product providers prior to the effective date of the termination.

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

30 (1) Service contract providers or guarantee product providers are
31 considered to be the agent of the insurer which issued the
32 reimbursement insurance policy for purposes of obligating the insurer
33 to service contract holders or guarantee product providers in
34 accordance with the service contract or guarantee product and this
35 chapter. Payment of the provider fee by the consumer to the service
36 contract seller or guarantee product seller, service contract provider

1 or guarantee product provider, or administrator constitutes payment by
2 the consumer to the service contract provider or guarantee product
3 provider and to the insurer which issued the reimbursement insurance
4 policy. In cases where a service contract provider or guarantee
5 product provider is acting as an administrator and enlists other
6 service contract providers or guarantee product providers, the service
7 contract provider or guarantee product provider acting as the
8 administrator shall notify the insurer of the existence and identities
9 of the other service contract providers or guarantee product providers.

10 (2) (~~Chapter 112, Laws of 1999~~) This chapter does not prevent or
11 limit the right of an insurer which issued a reimbursement insurance
12 policy to seek indemnification or subrogation against a service
13 contract provider or guarantee product provider if the issuer pays or
14 is obligated to pay the service contract holder or guarantee product
15 purchaser sums that the service contract provider or guarantee product
16 provider was obligated to pay under the provisions of the service
17 contract or guarantee product.

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

20 (1) The commissioner may conduct investigations of service contract
21 providers or guarantee product providers, administrators, service
22 contract sellers or guarantee product sellers, insurers, and other
23 persons to enforce this chapter and protect service contract holders or
24 guarantee product purchasers in this state. Upon request of the
25 commissioner, the service contract provider or guarantee product
26 provider shall make all accounts, books, and records concerning service
27 contracts or guarantee products sold by the service contract provider
28 or guarantee product provider available to the commissioner which are
29 necessary to enable the commissioner to determine compliance or
30 noncompliance with this chapter.

31 (2) The commissioner may take actions under RCW 48.02.080 or
32 48.04.050 which are necessary or appropriate to enforce this chapter
33 and the commissioner's rules and orders, and to protect service
34 contract holders or guarantee product purchasers in this state.

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

1 (1) The commissioner may, subject to chapter 48.04 RCW, deny,
2 suspend, or revoke the registration of a service contract provider or
3 guarantee product provider if the commissioner finds that the service
4 contract provider or guarantee product provider:

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

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

12 (c) Has, without just cause, refused to pay proper claims or
13 perform services arising under its contracts or has, without just
14 cause, caused service contract holders or guarantee product purchasers
15 to accept less than the amount due them or caused service contract
16 holders or guarantee product purchasers to employ attorneys or bring
17 suit against the service contract provider or guarantee product
18 provider to secure full payment or settlement of claims;

19 (d) Is affiliated with or under the same general management or
20 interlocking directorate or ownership as another service contract
21 provider or guarantee product provider which unlawfully transacts
22 business in this state without having a registration;

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

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

28 (g) Is under suspension or revocation in another state with respect
29 to its service contract business or guarantee product business;

30 (h) Has made a material misstatement in its application for
31 registration;

32 (i) Has obtained or attempted to obtain a registration through
33 misrepresentation or fraud;

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

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

1 (1) Has failed to respond promptly to any inquiry from the
2 insurance commissioner relative to service contract or guarantee
3 product business. A lack of response within fifteen business days from
4 receipt of an inquiry is untimely. A response must be in writing,
5 unless otherwise indicated in the inquiry.

6 (2) The commissioner may, without advance notice or hearing
7 thereon, immediately suspend the registration of a service contract
8 provider or guarantee product provider if the commissioner finds that
9 any of the following circumstances exist:

10 (a) The provider is insolvent;

11 (b) A proceeding for receivership, conservatorship, rehabilitation,
12 or other delinquency proceeding regarding the service contract provider
13 or guarantee product provider has been commenced in any state; or

14 (c) The financial condition or business practices of the service
15 contract provider or guarantee product provider otherwise pose an
16 imminent threat to the public health, safety, or welfare of the
17 residents of this state.

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

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

25 The legislature finds that the practices covered by this chapter
26 are matters vitally affecting the public interest for the purpose of
27 applying the consumer protection act, chapter 19.86 RCW. Violations of
28 this chapter are not reasonable in relation to the development and
29 preservation of business. A violation of this chapter is an unfair or
30 deceptive act or practice in the conduct of trade or commerce and an
31 unfair method of competition, as specifically contemplated by RCW
32 19.86.020, and is a violation of the consumer protection act, chapter
33 19.86 RCW. Any service contract holder or guarantee product purchaser
34 injured as a result of a violation of a provision of this chapter shall
35 be entitled to maintain an action pursuant to chapter 19.86 RCW against
36 the service contract provider or guarantee product provider and the

1 insurer issuing the applicable service contract or guarantee product
2 reimbursement (~~(insurance)~~) insurance policy and shall be entitled to
3 all of the rights and remedies afforded by that chapter.

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

6 This chapter applies to all service contracts, other than on motor
7 vehicles, sold or offered for sale ninety or more days after July 25,
8 1999. This chapter applies to all service contracts on motor vehicles
9 and guarantee products sold or offered for sale after September 30,
10 2006.

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

13 (1) This section applies to guarantee product providers.

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

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

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

32 (i) The insurer or risk retention group must, at the time the
33 policy is filed with the commissioner, and continuously thereafter, be
34 rated "B++" or better by A.M. Best Company, Inc., maintain surplus as
35 to policyholders and paid-in capital of at least fifteen million

1 dollars, and annually file audited financial statements with the
2 commissioner; and

3 (ii) The commissioner may authorize an insurer or risk retention
4 group that has surplus as to policyholders and paid-in capital of less
5 than fifteen million dollars, but at least equal to ten million
6 dollars, to issue the insurance required by this subsection if the
7 insurer or risk retention group demonstrates to the satisfaction of the
8 commissioner that the company maintains a ratio of direct written
9 premiums, wherever written, to surplus as to policyholders and paid-in
10 capital of not less than three to one.

11 (3) Applicants to be a guarantee protection product provider shall
12 make an application to the commissioner upon a form to be furnished by
13 the commissioner. The application shall include or be accompanied by
14 the following information and documents:

15 (a) The names of the guarantee protection product provider's
16 executive officer or officers directly responsible for the guarantee
17 protection product provider's guarantee protection product business and
18 their biographical affidavits on a form prescribed by the commissioner;

19 (b) The name, address, and telephone number of any administrators
20 designated by the guarantee protection product provider to be
21 responsible for the administration of guarantee protection products in
22 this state;

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

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

27 (e) Any other pertinent information required by the commissioner;
28 and

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

30 (4) The applicant shall appoint the commissioner as its attorney to
31 receive service of legal process in any action, suit, or proceeding in
32 any court. This appointment is irrevocable and shall bind the
33 guarantee protection product provider or any successor in interest,
34 shall remain in effect as long as there is in force in this state any
35 guarantee protection product or any obligation arising therefrom
36 related to residents of this state, and shall be processed in
37 accordance with RCW 48.05.210.

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

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

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

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

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

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

25 (a) The service contract provider has either demonstrated its
26 financial responsibility or assured the faithful performance of the
27 service contract provider's obligations to its service contract holders
28 by insuring all service contracts under a reimbursement insurance
29 policy issued by an insurer holding a certificate of authority from the
30 commissioner or a risk retention group, as defined in 15 U.S.C. Sec.
31 3901(a)(4), as long as that risk retention group is in full compliance
32 with the federal liability risk retention act of 1986 (15 U.S.C. Sec.
33 3901 et seq.), is in good standing in its domiciliary jurisdiction, and
34 properly registered with the commissioner under chapter 48.92 RCW. The
35 insurance required by this subsection must meet the following
36 requirements:

1 (i) The insurer or risk retention group must, at the time the
2 policy is filed with the commissioner, and continuously thereafter, be
3 rated "B++" or better by A.M. Best Company, Inc., maintain surplus as
4 to policyholders and paid-in capital of at least fifteen million
5 dollars, and annually file audited financial statements with the
6 commissioner; and

7 (ii) The commissioner may authorize an insurer or risk retention
8 group that has surplus as to policyholders and paid-in capital of less
9 than fifteen million dollars, but at least equal to ten million
10 dollars, to issue the insurance required by this subsection if the
11 insurer or risk retention group demonstrates to the satisfaction of the
12 commissioner that the company maintains a ratio of direct written
13 premiums, wherever written, to surplus as to policyholders and paid-in
14 capital of not less than three to one;

15 (b) The service contract conspicuously states that the obligations
16 of the provider to the service contract holder are guaranteed under the
17 reimbursement insurance policy, the name and address of the issuer of
18 the reimbursement insurance policy, the applicable policy number, and
19 the means by which a service contract holder may file a claim under the
20 policy;

21 (c) The service contract conspicuously and unambiguously states the
22 name and address of the service contract provider and identifies any
23 administrator if different from the service contract provider, the
24 service contract seller, and the service contract holder. The identity
25 of the service contract seller and the service contract holder are not
26 required to be preprinted on the service contract and may be added to
27 the service contract at the time of sale;

28 (d) The service contract states the purchase price of the service
29 contract and the terms under which the service contract is sold. The
30 purchase price is not required to be preprinted on the service contract
31 and may be negotiated at the time of sale;

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

34 (i) Any material conditions that the service contract holder must
35 meet to maintain coverage under the contract including, but not limited
36 to, any maintenance schedule to which the service contract holder must
37 adhere, any requirement placed on the service contract holder for

1 documenting repair or maintenance work, any duty to protect against any
2 further damage, and any procedure to which the service contract holder
3 must adhere for filing claims;

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

5 (iii) Any time or mileage limitations;

6 (iv) That the implied warranty of merchantability on the motor
7 vehicle is not waived if the contract has been purchased within ninety
8 days of the purchase date of the motor vehicle from a provider who also
9 sold the motor vehicle covered by the contract;

10 (v) Any exclusions of coverage; and

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

14 (f) The service contract states the procedure to obtain service or
15 to file a claim, including but not limited to the procedures for
16 obtaining prior approval for repair work, the toll-free telephone
17 number if prior approval is necessary for service, and the procedure
18 for obtaining emergency repairs performed outside of normal business
19 hours or for obtaining twenty-four-hour telephone assistance;

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

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

24 (i) The service contract states whether or not the service contract
25 provides for or excludes consequential damages or preexisting
26 conditions.

27 (3) Service contracts shall not contain a provision which requires
28 that any civil action brought in connection with the service contract
29 must be brought in the courts of a jurisdiction other than this state.
30 Service contracts that authorize binding arbitration to resolve claims
31 or disputes must allow for arbitration proceedings to be held at a
32 location in closest proximity to the service contract holder's
33 permanent residence.

34 (4)(a) At a minimum, every provider shall permit the service
35 contract holder to return the contract within thirty days of its
36 purchase if no claim has been made under the contract, and shall refund
37 to the holder the full purchase price of the contract unless the

1 service contract holder returns the contract ten or more days after its
2 purchase, in which case the provider may charge a cancellation fee not
3 exceeding twenty-five dollars.

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

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

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

14 (e) If a service contract holder returns the contract in accordance
15 with this section, the insurer issuing the reimbursement insurance
16 policy covering the contract shall refund to the provider the full
17 premium by the provider for the contract if canceled within thirty days
18 or a pro rata refund if canceled after thirty days.

19 (5) Service contracts shall not contain a provision which excludes
20 coverage for nonmanufacturer parts which were on the motor vehicle at
21 the date of the purchase of the service contract.

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

26 (7) A contract provider has only sixty days from the date of the
27 sale of the service contract to the holder to determine whether or not
28 the vehicle qualifies under the provider's program for that vehicle.
29 After sixty days the vehicle qualifies for the service contract that
30 was issued and the service contract provider may not cancel the
31 contract and is fully obligated under the terms of the contract sold to
32 the service contract holder.

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

35 (1) Except for service contract providers or guarantee product
36 providers, persons marketing, selling, or offering to sell service

1 contracts or guarantee products for providers are exempt from the
2 registration requirements of RCW 48.110.030.

3 (2) The marketing, sale, offering for sale, issuance, making,
4 proposing to make, and administration of service contracts or guarantee
5 products by service contract providers or guarantee products providers
6 and related service contract or guarantee product sellers,
7 administrators, and other persons complying with this chapter are
8 exempt from the other provisions of this title, except chapters 48.04
9 and 48.30 RCW and as otherwise provided in this chapter.

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

12 (1) If the service contract provider or guarantee product provider
13 is using reimbursement insurance policy to satisfy the requirements of
14 RCW 48.110.050(2)(a) or section 17(2)(b) or 18(2)(a) of this act, then
15 the reimbursement insurance policy shall be filed with and approved by
16 the commissioner in accordance with and pursuant to the requirements of
17 chapter 48.18 RCW.

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

22 (3) The commissioner shall disapprove any motor vehicle service
23 contract form if:

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

27 (b) The form contains or incorporates by reference any
28 inconsistent, ambiguous, or misleading clauses, or exceptions and
29 conditions;

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

32 (d) The purchase of the contract is being solicited by deceptive
33 advertising.

34 NEW SECTION. **Sec. 21.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 22.** The following acts or parts of acts are
4 each repealed:

- 5 (1) RCW 48.96.005 (Purpose) and 1990 c 239 s 2;
- 6 (2) RCW 48.96.010 (Definitions) and 1987 c 99 s 1;
- 7 (3) RCW 48.96.020 (Reimbursement policy required for sale of
8 service contract) and 1987 c 99 s 2;
- 9 (4) RCW 48.96.025 (Reimbursement policy--Insurer's responsibility)
10 and 1990 c 239 s 3;
- 11 (5) RCW 48.96.030 (Reimbursement policy--Required provisions) and
12 1990 c 239 s 6 & 1987 c 99 s 3;
- 13 (6) RCW 48.96.040 (Service contract--Required statements) and 1990
14 c 239 s 7 & 1987 c 99 s 4;
- 15 (7) RCW 48.96.045 (Service contract--Notice to holder) and 1990 c
16 239 s 4;
- 17 (8) RCW 48.96.047 (Service contract--Holder's right to return) and
18 1990 c 239 s 5;
- 19 (9) RCW 48.96.050 (Service contracts--Excluded parties) and 1990 c
20 239 s 8 & 1987 c 99 s 5;
- 21 (10) RCW 48.96.060 (Noncompliance as unfair competition, trade
22 practice--Remedies) and 1990 c 239 s 9 & 1987 c 99 s 6;
- 23 (11) RCW 48.96.900 (Application of chapter--Date) and 1987 c 99 s
24 7; and
- 25 (12) RCW 48.96.901 (Effective date--1990 c 239 §§ 2-10) and 1990 c
26 239 s 11.

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