

# HOUSE BILL REPORT

## SHB 2218

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**As Passed House:**  
January 27, 2012

**Title:** An act relating to service contracts.

**Brief Description:** Regulating service contracts.

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

**Brief History:**

**Committee Activity:**

Business & Financial Services: 1/12/12, 1/17/12 [DPS].

**Floor Activity:**

Passed House: 1/27/12, 95-0.

**Brief Summary of Substitute Bill**

- Modifies the definition of "service contract."
- Clarifies that certain products are and certain contractual arrangements are not prohibited.

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### HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Condotta, Hudgins, Hurst, Parker, Pedersen, Rivers, Ryu and Stanford.

**Staff:** Jon Hedegard (786-7127).

**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.

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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. Persons regulated under these chapters may not have to be licensed or have the same degree of training. Service contracts are one of the types of products that are regulated less stringently than insurance products under the code.

A "service contract" is a contract for separate consideration for a specific duration to:

- repair, replace, or maintain property; or
- indemnify for the repair, replacement, or maintenance of property.

#### Registration.

A service contract provider must register with the Insurance Commissioner (Commissioner). Application procedures, requirements, and fees are set forth. The Commissioner may suspend or revoke the registration of a service contract provider for failure to comply with the specific requirements.

#### Financial Responsibility for Service Contract Providers.

A service contract provider may choose one of the following options to ensure that all obligations and liabilities are paid:

- insure its service contracts with a reimbursement insurance policy;
- maintain a reserve account that includes a portion of the gross consideration received for all service contracts and give the Commissioner a financial security deposit;
- use a risk retention group to insure the contracts of a service contract with a reimbursement insurer policy; or
- maintain or have the parent company maintain a net worth or stockholder's equity of \$100 million.

#### Recordkeeping.

A service contract provider must keep accurate accounts and records including:

- the name and address of the person who purchased a protection product;
- a list of locations where the service contract is sold or marketed; and
- written claims files with the dates, amounts, and descriptions of claims related to service contracts.

#### Investigations and Enforcement.

The Commissioner may investigate a service contract provider. Upon the Commissioner's request, a service contract provider must make the books, accounts, and records available to the Commissioner. The Commissioner may take actions to enforce the chapter and the Commissioner's rules and orders. A violation of the service contract laws is a violation of the Consumer Protection Act. A purchaser of a service contract may bring suit for a violation.

#### Exemption from the Insurance Code.

There are a number of products exempt from regulation under the Code.

Persons selling and marketing service contracts are not required to register with or be licensed by the Commissioner unless they are service contract providers.

**Summary of Substitute Bill:**

The definition of "service contract" is modified to also include a contract of any duration entered into at or after the sale or lease of the subject property.

A service contract provider is not prohibited from covering residential water, sewer, utilities, or similar systems or from sharing contract revenue with local governments or other third parties for endorsements and marketing services.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) A few years ago this chapter was overhauled in an effort to avoid a steady stream of bills related to niche products. In the future, there should be a more comprehensive approach rather than a product-by-product approach. At this time, there is a single type of product that is offered nationally that is not available in the state. The product does not warrant regulation as insurance. It is more appropriately regulated as a service contract. This is a complicated area but a solution can be crafted that works for all stakeholders. A company applied to the Office of the Insurance Commissioner (OIC) to become a licensed service contractor. The company partners with the National League of Cities and currently sells this product in 45 states. Residents can pay to cover their water or utility lines. A resident can opt in or opt out at any time. If a city is helping facilitate that sale it may get a royalty. After several months, the OIC turned down the application. The OIC raised several issues, including the nature of the property, the monthly billing, the timing of the sale, and the royalty. This company does not want to be exempt from regulation; it wants appropriate regulation. There is a proposed substitute House bill that was intended to simplify the concepts. If that does not satisfy other stakeholders, perhaps other language can resolve their concerns.

(With concerns) The OIC believes that the language in the statute regarding tangible personal property would make statutory changes necessary before that product could be available. The OIC would recommend a higher financial standard. Currently, a service contractor can use a reimbursement policy. That may be a good path. The OIC is neutral on the rest of the bill. Certain products provided by contractors are not service contracts under existing law. These products should not be regulated. The bill and the draft proposed substitute are too broad. The concerns of the proponents should be addressed but they should be addressed in a more narrow fashion. A reference to real property can lead to concerns. Commercial developments have similar concerns about the reference to real property. This bill does not seem to apply to commercial developments but it should be clearer.

(Opposed) None.

**Persons Testifying:** (In support) Representative Kirby, prime sponsor; and John Conniff, Utility Service Partners.

(With concerns) Drew Bouton, Office of the Insurance Commissioner; Jim King, Washington State Heating, Ventilation, Air Conditioning, and Refrigeration Association; Gary Smith, Independent Business Association; and Larry Stevens, Mechanical Contractors Association of Western Washington and National Electrical Contractors Association.

**Persons Signed In To Testify But Not Testifying:** None.