

SENATE BILL REPORT

SHB 2218

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 21, 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: Passed House: 1/27/12, 95-0.

Committee Activity: Financial Institutions, Housing & Insurance: 2/21/12 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Fain, Haugen and Keiser.

Staff: Edward Redmond (786-7471)

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. 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 Bill: The definition of service contract is amended 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.

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: Service contract providers in this state have to register with the Office of Insurance Commissioner (OIC) and if they meet certain requirements, they get to do business in this state. This bill clarifies that a particular product offered in 45 other states, is not an insurance product and is appropriately regulated as a service contract. This bill arises out of an application filed with the Office of Insurance Commissioner (OIC) last year. It is a program pursued with the National League of Cities to cover water and sewer lines; it lets customers sign up for month to month contracts, which they can later drop if they decide they do not like it. After applying, OIC concluded it did not have the authority to issue the license because the current statute is unclear. This bill clarifies the statute. Many contractor groups had concerns with the original bill. Today, there are no outstanding concerns with this bill.

Persons Testifying: PRO: Representative Kirby, prime sponsor; John Conniff, Utility Service; Jim King, WA State Heating, Ventilation, and Air Conditioning and Refrigeration Assn.