

SSB 5977 - H COMM AMD

By Committee on Business & Financial Services

ADOPTED 03/06/2014

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

3 "Sec. 1. RCW 48.110.020 and 2013 c 117 s 1 are each amended to  
4 read as follows:

5 The definitions in this section apply throughout this chapter.

6 (1) "Administrator" means the person who is responsible for the  
7 administration of the service contracts, the service contracts plan, or  
8 the protection product guarantees.

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

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

12 (4) "Home heating fuel service contract" means a contract or  
13 agreement for a separately stated consideration for a specific duration  
14 to perform the repair, replacement, or maintenance of a home heating  
15 fuel supply system including the fuel tank and all visible pipes, caps,  
16 lines, and associated parts or the indemnification for repair,  
17 replacement, or maintenance for operational or structural failure due  
18 to a defect in materials or workmanship, or normal wear and tear.

19 (5) "Incidental costs" means expenses specified in the guarantee  
20 incurred by the protection product guarantee holder related to damages  
21 to other property caused by the failure of the protection product to  
22 perform as provided in the guarantee. "Incidental costs" may include,  
23 without limitation, insurance policy deductibles, rental vehicle  
24 charges, the difference between the actual value of the stolen vehicle  
25 at the time of theft and the cost of a replacement vehicle, sales  
26 taxes, registration fees, transaction fees, and mechanical inspection  
27 fees. Incidental costs may be paid under the provisions of the  
28 protection product guarantee in either a fixed amount specified in the  
29 protection product guarantee or sales agreement, or by the use of a

1 formula itemizing specific incidental costs incurred by the protection  
2 product guarantee holder to be paid.

3 (6) "Maintenance agreement" means a contract of limited duration  
4 that provides for scheduled maintenance only.

5 (7) "Motor vehicle" means any vehicle subject to registration under  
6 chapter 46.16A RCW.

7 (8) "Person" means an individual, partnership, corporation,  
8 incorporated or unincorporated association, joint stock company,  
9 reciprocal insurer, syndicate, or any similar entity or combination of  
10 entities acting in concert.

11 (9) "Premium" means the consideration paid to an insurer for a  
12 reimbursement insurance policy.

13 (10) "Protection product" means any (~~product~~) protective  
14 chemical, substance, device, or system offered or sold with a guarantee  
15 to repair or replace another product or pay incidental costs upon the  
16 failure of the product to perform pursuant to the terms of the  
17 protection product guarantee. Protection product does not include fuel  
18 additives, oil additives, or other chemical products applied to the  
19 engine, transmission, or fuel system of a motor vehicle.

20 (11) "Protection product guarantee" means a written agreement by a  
21 protection product guarantee provider to repair or replace another  
22 product or pay incidental costs upon the failure of the protection  
23 product to perform pursuant to the terms of the protection product  
24 guarantee. The reimbursement of incidental costs promised under a  
25 protection product guarantee must be tied to the purchase of a physical  
26 product that is formulated or designed to make the specified loss or  
27 damage from a specific cause less likely to occur.

28 (12) "Protection product guarantee holder" means a person who is  
29 the purchaser or permitted transferee of a protection product  
30 guarantee.

31 (13) "Protection product guarantee provider" means a person who is  
32 contractually obligated to the protection product guarantee holder  
33 under the terms of the protection product guarantee. Protection  
34 product guarantee provider does not include an authorized insurer  
35 providing a reimbursement insurance policy.

36 (14) "Protection product seller" means the person who sells the  
37 protection product to the consumer.

1 (15) "Provider fee" means the consideration paid by a consumer for  
2 a service contract.

3 (16) "Reimbursement insurance policy" means a policy of insurance  
4 that is issued to a service contract provider or a protection product  
5 guarantee provider to provide reimbursement to the service contract  
6 provider or the protection product guarantee provider or to pay on  
7 behalf of the service contract provider or the protection product  
8 guarantee provider all contractual obligations incurred by the service  
9 contract provider or the protection product guarantee provider under  
10 the terms of the insured service contracts or protection product  
11 guarantees issued or sold by the service contract provider or the  
12 protection product guarantee provider.

13 (17) "Road hazard" means a hazard that is encountered while driving  
14 a motor vehicle. Road hazards may include but are not limited to  
15 potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or  
16 composite scraps.

17 (18)(a) "Service contract" means a contract or agreement entered  
18 into at any time for consideration over and above the lease or purchase  
19 price of the property for any specific duration to perform the repair,  
20 replacement, or maintenance of property or the indemnification for  
21 repair, replacement, or maintenance for operational or structural  
22 failure due to a defect in materials or workmanship((~~7~~)) or normal wear  
23 and tear. Service contracts may provide for the repair, replacement,  
24 or maintenance of property for damage resulting from power surges and  
25 accidental damage from handling, with or without additional provision  
26 for incidental payment of indemnity under limited circumstances,  
27 including towing, rental, emergency road services, or other expenses  
28 relating to the failure of the product or of a component part thereof.

29 (b) "Service contract" also includes a contract or agreement sold  
30 for separately stated consideration for a specific duration to perform  
31 any one or more of the following services:

32 (i) The repair or replacement of tires and/or wheels damaged as a  
33 result of coming into contact with road hazards ((~~including but not~~  
34 limited to potholes, rocks, wood debris, metal parts, glass, plastic,  
35 curbs, or composite scraps)). However, a contract or agreement meeting  
36 the definition under this subsection ((~~+17~~)) (18)(b) in which the  
37 party obligated to perform is either a tire or wheel manufacturer or a

1 motor vehicle manufacturer is exempt from the requirements of this  
2 chapter;

3 (ii) The removal of dents, dings, or creases on a motor vehicle  
4 that can be repaired using the process of paintless dent removal  
5 without affecting the existing paint finish and without replacing  
6 vehicle body panels, sanding, bonding, or painting;

7 (iii) The repair of chips or cracks in, or the replacement of,  
8 motor vehicle windshields as a result of damage caused by road hazards;

9 (iv) The replacement of a motor vehicle key or key fob in the event  
10 that the key or key fob becomes inoperable or is lost or stolen;

11 (v) Services provided pursuant to a protection product guarantee;  
12 and

13 (vi) Other services approved by rule of the commissioner that are  
14 not inconsistent with the provisions of this chapter.

15 (c) "Service contract" does not include coverage for:

16 (i) Repair or replacement due to damage to the interior surfaces or  
17 to the exterior paint or finish of a vehicle. However, coverage for  
18 these types of damage may be offered in connection with the sale of a  
19 protection product as defined in this section; or

20 (ii) Fuel additives, oil additives, or other chemical products  
21 applied to the engine, transmission, or fuel system of a motor vehicle.

22 ~~((+18+))~~ (19) "Service contract holder" or "contract holder" means  
23 a person who is the purchaser or holder of a service contract.

24 ~~((+19+))~~ (20) "Service contract provider" means a person who is  
25 contractually obligated to the service contract holder under the terms  
26 of the service contract.

27 ~~((+20+))~~ (21) "Service contract seller" means the person who sells  
28 the service contract to the consumer.

29 ~~((+21+))~~ (22) "Warranty" means a warranty made solely by the  
30 manufacturer, importer, or seller of property or services without  
31 consideration; that is not negotiated or separated from the sale of the  
32 product and is incidental to the sale of the product; and that  
33 guarantees indemnity for defective parts, mechanical or electrical  
34 breakdown, labor, or other remedial measures, such as repair or  
35 replacement of the property or repetition of services.

36 **Sec. 2.** RCW 48.110.030 and 2011 c 47 s 16 are each amended to read  
37 as follows:

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

6 (2) Applicants to be a service contract provider must make an  
7 application to the commissioner upon a form to be furnished by the  
8 commissioner. The application must include or be accompanied by the  
9 following information and documents:

10 (a) All basic organizational documents of the service contract  
11 provider, including any articles of incorporation, articles of  
12 association, partnership agreement, trade name certificate, trust  
13 agreement, shareholder agreement, bylaws, and other applicable  
14 documents, and all amendments to those documents;

15 (b) The identities of the service contract provider's executive  
16 officer or officers directly responsible for the service contract  
17 provider's service contract business, and, if more than fifty percent  
18 of the service contract provider's gross revenue is derived from the  
19 sale of service contracts, the identities of the service contract  
20 provider's directors and stockholders having beneficial ownership of  
21 ten percent or more of any class of securities;

22 (c) Audited annual financial statements or other financial reports  
23 acceptable to the commissioner for the two most recent years which  
24 prove that the applicant is solvent and any information the  
25 commissioner may require in order to review the current financial  
26 condition of the applicant. If the service contract provider is  
27 relying on RCW 48.110.050(2)(c) to assure the faithful performance of  
28 its obligations to service contract holders, then the audited financial  
29 statements of the service contract provider's parent company must also  
30 be filed. In lieu of submitting audited financial statements, a  
31 service contract provider relying on RCW 48.110.050(2)(a) or  
32 48.110.075(2)(a) to assure the faithful performance of its obligations  
33 to service contract holders may comply with the requirements of this  
34 subsection (2)(c) by submitting annual financial statements of the  
35 applicant that are certified as accurate by two or more officers of the  
36 applicant;

37 (d) An application fee of two hundred fifty dollars, which must be  
38 deposited into the general fund; and

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

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

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

11 (b) The appointment is irrevocable, binds any successor in interest  
12 or to the assets or liabilities of the service contract provider, and  
13 remains in effect for as long as there could be any cause of action  
14 against the service contract provider arising out of any of the service  
15 contract provider's contracts or obligations in 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, or has had a license  
23 as a service contract provider or similar license denied or revoked for  
24 cause by any state.

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

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

1 Correct the title.

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