

SHB 2135 - S COMM AMD

By Committee on Financial Institutions, Housing & Insurance

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."

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1 On page 1, line 2 of the title, after "guarantees;" strike the
2 remainder of the title and insert "and amending RCW 48.110.020 and
3 48.110.030."

EFFECT: Allows an applicant for a service contract provider registration to meet the requirement of assuring the faithful performance of their obligations to service contract holders by submitting annual financial statements, certified as accurate by two or more officers of the service contract provider, in place of submitting annual audited financial statements for the two most recent years.

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