

HOUSE BILL REPORT

SSB 5977

As Reported by House Committee On: Business & Financial Services

Title: An act relating to the regulation of service contracts and protection product guarantees.

Brief Description: Addressing the regulation of service contracts and protection product guarantees.

Sponsors: Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senators Hobbs and Fain).

Brief History:

Committee Activity:

Business & Financial Services: 2/21/14, 2/25/14 [DPA].

Brief Summary of Substitute Bill (As Amended by Committee)

- Expands the scope of services allowed under a "service contract."
- Clarifies the definition of a "protection product."
- Permits service contract providers to submit certified financial statements to demonstrate financial responsibility in lieu of audited financial statements.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass as amended. Signed by 15 members: Representatives Kirby, Chair; Ryu, Vice Chair; Parker, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Blake, Fagan, Habib, Hawkins, Hudgins, G. Hunt, Hurst, Kochmar, MacEwen, Santos and Stanford.

Staff: Linda Merelle (786-7092).

Background:

Service Contracts.

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.

Certain transactions that fall within the definition of insurance have been addressed by exemptions from the Insurance Code (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. In 1990 the Legislature created a chapter in the Code to regulate motor vehicle service contracts. In 1999 a chapter in the Code was created for the regulation of service contracts. In 2006 the Legislature overhauled the service contract chapter, included provisions for motor vehicle service contracts and "protection products," and repealed the motor vehicle service contracts chapter.

After the 2006 overhaul, a "service contract" was defined as "a contract to perform the repair, replacement, or maintenance of property or the payment for the repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear." In 2010 the scope of the definition of a "service contract" was expanded to include contracts and agreements purchased separately and for a specific duration to perform the repair or replacement of tires or wheels damaged as a result of coming into contact with road hazards. Examples of "road hazards" included potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps. The expanded definition provided that parties obligated to perform under service contracts relating to damage to tires or wheels as a result of road hazards were exempt from requirements under the Revised Code of Washington chapter governing service contracts.

A "protection product" is any product that is offered or sold with a guarantee to repair or replace another product or pay incidental costs upon the failure of the product to perform pursuant to the terms of the protection product guarantee.

A "protection product guarantee" is a written agreement by a protection product guarantee provider to repair or replace another product or pay incidental costs upon the failure of the protection product or to pay incidental costs upon the failure of the protection product to perform pursuant to the terms of the protection product guarantee.

Registration and Regulation of Service Contract Providers.

Service contract providers must register with the Insurance Commissioner (Commissioner). Persons selling and marketing service contracts are not required to register with the Commissioner unless they are service contract providers.

A service contract provider must meet requirements regarding financial responsibility, recordkeeping, form filings, disclosures, and provisions that allow a consumer to return the contract and obtain a refund within 30 days of purchase, if no claim is made.

The Commissioner may suspend or revoke the registration of a service contract provider for failure to comply with the specific requirements.

Penalties for Violations.

The Commissioner may take enforcement actions for violations of the service provider statutes. A violation of the service contract chapter is also a violation of the Consumer Protection Act.

Exemptions.

Service contracts that: (1) are paid for with separate and additional consideration; (2) are issued at the point of sale or within 60 days of the original purchase date of the property; and (3) pertain to tangible property that costs less than \$50, not including sales tax, are exempt from the requirements under the chapter governing service contracts.

Summary of Amended Bill:

The definition of a "protection product" is modified to specifically apply to a protective chemical, substance, device, or system and to expressly exclude fuel additives, oil additives, or other chemical products applied to the engine, transmission, or fuel system of a motor vehicle.

A definition for "road hazards" is added and is defined as "a hazard that is encountered while driving a motor vehicle, and may include potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps."

The definition of "service contract" is modified to include a contract or agreement for:

- the removal of dents, dings, or creases on a motor vehicle that can be repaired using a process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting;
- the repair of chips or cracks in, or the replacement of windshields as a result of damage caused by road hazards;
- the replacement of a motor vehicle key or key fob;
- services provided pursuant to a protection product guarantee; and
- other services approved by rule of the Commissioner, not inconsistent with the chapter governing service contracts.

The definition of a "service contract" expressly excludes coverage of repair or placement due to damage to the interior surfaces or to the exterior paint or finish of a vehicle. Coverage for these kinds of services may be offered in connection with the sale of a protection product. A service contract may not include coverage for fuel additives, oil additives, or other chemical products applied to the engine, transmission, or fuel system of a motor vehicle.

The exemptions for tire and wheel manufacturers from the requirements of the services contract chapter apply to the additional services allowed under a service contract.

Instead of submitting audited financial statements, applicants for service contract provider registrations may meet the requirements of assuring the faithful performance of their obligations to service contract holders by submitting annual financial statements that are certified as being accurate by two or more officers of the service contract provider.

Amended Bill Compared to Substitute Bill:

Applicants for service contract provider registrations may meet the financial responsibility requirements by submitting certified financial statements rather than audited financial statements.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Applicants for registration as service contract providers were frustrated by the requirement that they submit audited financial statements. All of the products under their contracts are backed by an insurance company, and there is no risk. The requirement of audited financial statements is unnecessary and expensive. Often, a service contract provider is a subsidiary created within a family of companies. The name brand of the family of companies may have audited financial statements but not the applicant for a service provider registration in Washington. A previous version of this bill passed by this committee exempted service providers. The current bill does not exempt them, but it requires them to provide financial statements that have been certified as being accurate by two directors of the entity. This is a cost-effective compromise. Washington is the only state that requires an applicant to submit audited financial statements as a requirement for registration even though the service contracts are covered by an insurance contract.

(Opposed) None.

Persons Testifying: Mel Sorensen, Motor Vehicle Ancillary Products Association and Service Contract Industry Council.

Persons Signed In To Testify But Not Testifying: None.