

SENATE BILL REPORT

ESSB 6309

As Passed Senate, February 17, 2016

Title: An act relating to registered service contract and protection product guarantee providers.

Brief Description: Addressing registered service contract and protection product guarantee providers.

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

Brief History:

Committee Activity: Financial Institutions & Insurance: 1/20/16, 1/27/16 [DPS, DNP].
Passed Senate: 2/17/16, 49-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: That Substitute Senate Bill No. 6309 be substituted therefor, and the substitute bill do pass.

Signed by Senators Benton, Chair; Angel, Vice Chair; Fain, Hobbs, Litzow and Roach.

Minority Report: Do not pass.

Signed by Senators Mullet, Ranking Minority Member; Nelson.

Staff: Shani Bauer (786-7468)

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. Service contracts are one of the products regulated less stringently than insurance products under the Code.

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.

Service Contract Defined. A service contract is a contract - for separately stated consideration - for a specified duration to perform the repair, replacement, or maintenance of property or to indemnify a person for the repair, replacement, or maintenance of property. A service contract is also defined to include a contract - for separately stated consideration - for a specified duration to perform one or more of the following motor vehicle related services, among other things:

- the repair or replacement of tires or wheel damage;
- the removal of certain dents, dings, or creases on a motor vehicle;
- the repair of or replacement of windshields as a result of damage caused by road hazards;
- the replacement of a motor vehicle key or key fob; and
- other services approved by rule of the Commissioner.

Protection product guarantee is a specific type of service contract to repair, replace, or pay the incidental costs if a product fails to perform as stated in the written contract.

Motor Vehicle Service Contract. A motor vehicle manufacturer or vehicle distributor issuing motor vehicle service contracts is exempt from various registration and regulatory provisions applicable to other service contract providers. Those exemptions include the requirement to submit organizational documents and identities of corporate officers; appointing the Commissioner to receive service of process; the requirement to file an annual report; and various other requirements applicable to service contract providers.

Financial Responsibility of Service Contract Providers. Service contract providers must register with the Insurance Commissioner (Commissioner). In order to provide assurance as to its financial viability, a service contract provider applying for registration in Washington must submit audited annual financial statements or other financial reports for the two most recent years which provide that the applicant is solvent. If the provider is relying on the financial status of the provider's parent company, the provider must also submit the financial statements of the parent company.

In order to demonstrate financial responsibility or assure the faithful performance of the service contract provider's obligations to its contract holders, a service contract provider must either:

- insure all service contracts under a reimbursement insurance policy;
- maintain a funded reserve account for its obligations of not less than 40 percent of the gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts; or
- maintain, or have its parent company maintain, a net worth or stockholder's equity of at least \$100 million.

If a service contract provider or protection product guarantee provider is using the reimbursement insurance policy to satisfy its financial responsibility requirements, the policy must be filed with and approved by the Commissioner in accordance with and pursuant to the requirements of Washington law.

Summary of Engrossed Substitute Bill: In order to provide assurance as to its financial viability, a service contract provider applying for registration in Washington must submit evidence as follows:

- for providers relying on a reimbursement insurance policy to demonstrate its financial responsibility, the applicant must submit the most recent annual financial statements, or if not available, the most recent financial statements, which prove that the applicant is solvent;
- if the provider is relying on a funded reserve account to demonstrate its financial responsibility, the applicant must submit the most recent audited annual financial statements or if not available, the most recent audited financial statements, which prove that the applicant is solvent;
- if the provider or its parent company is maintaining net worth or stockholder's equity of at least \$100 million to demonstrate its financial responsibility, the most recent audited annual financial statements, or if not available, the most recent audited financial statements of the provider or the provider's parent company.

The Commissioner may request that a service contract provider submit financial statements to the Commissioner as part of its annual report. If the provider is relying on a reimbursement insurance policy to demonstrate financial responsibility, the provider must submit the most recent annual financial statements certified as accurate by two officers of the provider or its parent company. If the provider maintains net worth to demonstrate financial responsibility, the provider must submit the most recent audited annual financial statements of the provider or its parent company.

An applicant to be a protection product guarantee provider in this state must include the most recent annual financial statements, or if not available, the most recent financial statements, certified as accurate by two or more officers of the applicant which prove that the applicant is solvent.

If an evergreen letter of credit is posted with the Commissioner as evidence of financial responsibility, the letter must be irrevocable.

Language is added to clarify that a motor vehicle service contract includes a contract sold for separately stated consideration for a specific duration to perform any of the services set out in the definition of a service contract that relate to a motor vehicle.

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: The current insurance code differs from most other states with regard to service contract providers. No other state requires a two year seasoning in order to operate in the state; the statute provides no guidance as to how a service provider should prove its solvency; and the requirement to provide financial

statements for both the service provider and parent company is duplicative. These requirements make Washington an outlier from other states when it comes to the regulation of these contracts. The purpose of this bill is to bring Washington law and OIC implementation of that law into greater conformity with the way the service contract industry is regulated in other states. Most states base their law on a model act. These amendments bring Washington law more into line with model act.

OTHER: Advocates have tried to write amendments to the model act and have used Florida as a model. The formula for looking at financial viability still needs some work. The definition of what constitutes a motor vehicle services contract is a good update. OIC will continue working with advocates to see if there is agreement on clear amendments.

Persons Testifying: PRO: Mel Sorensen, Property Casualty Insurers Assoc. of America and Allstate; Stephen McDaniel, Service Contract Industry Council; Motor Vehicle Ancillary Products Assoc.; Cliff Webster, American Insurance Association; Steve Gano, CNA Insurance.

OTHER: Lonnie Johns-Brown, Office of the Insurance Commissioner, Legislative Director.

Persons Signed In To Testify But Not Testifying: No one.