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**ENGROSSED HOUSE BILL 2309**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Kirby and Vick

AN ACT Relating to service contract providers; amending RCW 48.110.017, 48.110.030, 48.110.055, 48.110.130, and 48.110.902; and adding a new section to chapter 48.110 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 48.110.017 and 2013 c 117 s 2 are each amended to read as follows:

This chapter does not prohibit a service contract provider from covering, in whole or in part, residential water, sewer, plumbing, electrical, heating and cooling systems, utilities, or similar systems, including items intended to be attached to or installed in any real property, with or without coverage of appliances, or from sharing contract revenue with local governments or other third parties for endorsements and marketing services.

**Sec.**  RCW 48.110.030 and 2016 c 224 s 1 are each amended to read as follows:

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

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

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

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

(c)(i) For service contract providers relying on RCW 48.110.050(2) (a) or (b) or 48.110.075(2)(a) to assure the faithful performance of its obligations to service contract holders, the most recent audited annual financial statements, if available, or the most recent audited financial statements which prove that the applicant ((~~is solvent~~)) has and maintains a minimum net worth or stockholder's equity of two hundred thousand dollars or more calculated in accordance with section 6 of this act and the ability to pay its debts when debts become due. In lieu of submitting audited financial statements, a service contract provider relying on RCW 48.110.050(2)(a) or 48.110.075(2)(a) to assure the faithful performance of its obligations to service contract holders may comply with the requirements of this subsection (2)(c)(i) by submitting the most recent annual financial statements, if available, or the most recent financial statements of the applicant that are certified as accurate by two or more officers of the applicant; or

(ii) For service contract providers relying on RCW 48.110.050(2)(c) to assure the faithful performance of its obligations to service contract holders, the most recent audited annual financial statements, if available, or the most recent audited financial statements or form 10-K or form 20-F filed with the securities and exchange commission which prove that the applicant has and maintains a net worth or stockholder's equity of one hundred million dollars or more. However, if the service contract provider is relying on its parent company's net worth or stockholder's equity to meet the requirements of RCW 48.110.050(2)(c) and the service contract provider has provided the commissioner with a written guarantee by the parent company in accordance with RCW 48.110.050(2)(c), then the most recent audited annual financial statements, if available, or the most recent audited financial statements or form 10-K or form 20-F filed with the securities and exchange commission of the service contract provider's parent company must be filed and the applicant need not submit its own financial statements or demonstrate a minimum net worth or stockholder's equity; and

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

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

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

(b) The appointment is irrevocable, binds any successor in interest or to the assets or liabilities of the service contract provider, and remains in effect for as long as there could be any cause of action against the service contract provider arising out of any of the service contract provider's contracts or obligations in this state.

(c) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(4) The commissioner may refuse to issue a registration if the commissioner determines that the service contract provider, or any individual responsible for the conduct of the affairs of the service contract provider under subsection (2)(b) of this section, is not competent, trustworthy, ((~~financially responsible~~)) cannot demonstrate a minimum net worth or stockholder's equity and the ability to pay its debts when debts become due in accordance with the applicable requirements of subsection (2)(c) of this section, or has had a license as a service contract provider or similar license denied or revoked for cause by any state.

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

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

**Sec.**  RCW 48.110.055 and 2016 c 224 s 4 are each amended to read as follows:

(1) This section applies to protection product guarantee providers.

(2) A person must not act as, or offer to act as, or hold himself or herself out to be a protection product guarantee provider in this state, nor may a protection product be sold to a consumer in this state, unless the protection product guarantee provider has:

(a) A valid registration as a protection product guarantee provider issued by the commissioner; and

(b) Either demonstrated its financial responsibility or assured the faithful performance of the protection product guarantee provider's obligations to its protection product guarantee holders by insuring all protection product guarantees under a reimbursement insurance policy issued by an insurer holding a certificate of authority from the commissioner or a risk retention group, as defined in 15 U.S.C. Sec. 3901(a)(4), as long as that risk retention group is in full compliance with the federal liability risk retention act of 1986 (15 U.S.C. Sec. 3901 et seq.), is in good standing in its domiciliary jurisdiction, and properly registered with the commissioner under chapter 48.92 RCW. The insurance required by this subsection must meet the following requirements:

(i) The insurer or risk retention group must, at the time the policy is filed with the commissioner, and continuously thereafter, maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file audited financial statements with the commissioner; and

(ii) The commissioner may authorize an insurer or risk retention group that has surplus as to policyholders and paid-in capital of less than fifteen million dollars, but at least equal to ten million dollars, to issue the insurance required by this subsection if the insurer or risk retention group demonstrates to the satisfaction of the commissioner that the company maintains a ratio of direct written premiums, wherever written, to surplus as to policyholders and paid-in capital of not more than three to one.

(3) Applicants to be a protection product guarantee provider must make an application to the commissioner upon a form to be furnished by the commissioner. The application must include or be accompanied by the following information and documents:

(a) The names of the protection product guarantee provider's executive officer or officers directly responsible for the protection product guarantee provider's protection product guarantee business and their biographical affidavits on a form prescribed by the commissioner;

(b) The name, address, and telephone number of any administrators designated by the protection product guarantee provider to be responsible for the administration of protection product guarantees in this state;

(c) A copy of the protection product guarantee reimbursement insurance policy or policies;

(d) A copy of each protection product guarantee the protection product guarantee provider proposes to use in this state;

(e) The most recent annual financial statements, if available, or the most recent financial statements certified as accurate by two or more officers of the applicant which prove that the applicant ((~~is solvent~~)) has and maintains a minimum net worth or stockholder's equity of two hundred thousand dollars or more calculated in accordance with section 6 of this act and the ability to pay its debts when debts become due; and

(f) A nonrefundable application fee of two hundred fifty dollars.

(4) Each registered protection product guarantee provider must appoint the commissioner as the protection product guarantee provider's attorney to receive service of legal process issued against the protection product guarantee provider in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the protection product guarantee provider.

(a) With the appointment the protection product guarantee provider must designate the person to whom the commissioner must forward legal process so served upon him or her.

(b) The appointment is irrevocable, binds any successor in interest or to the assets or liabilities of the protection product guarantee provider, and remains in effect for as long as there could be any cause of action against the protection product guarantee provider arising out of any of the protection product guarantee provider's contracts or obligations in this state.

(c) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(5) The commissioner may refuse to issue a registration if the commissioner determines that the protection product guarantee provider, or any individual responsible for the conduct of the affairs of the protection product guarantee provider under subsection (3)(a) of this section, is not competent, trustworthy, ((~~financially responsible~~)) cannot demonstrate a minimum net worth or stockholder's equity in accordance with the applicable requirements of subsection (3)(e) of this section and the ability to pay its debts when debts become due, or has had a license as a protection product guarantee provider or similar license denied or revoked for cause by any state.

(6) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the protection product guarantee provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on the first day of July upon application of the protection product guarantee provider and payment of a fee of two hundred fifty dollars. If not so renewed, the registration expires on the June 30th next preceding.

(7) A protection product guarantee provider must keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs.

**Sec.**  RCW 48.110.130 and 2006 c 274 s 14 are each amended to read as follows:

(1) The commissioner may, subject to chapter 48.04 RCW, deny, suspend, or revoke the registration of a service contract provider or protection product guarantee provider if the commissioner finds that the service contract provider or protection product guarantee provider:

(a) Has violated this chapter or the commissioner's rules and orders;

(b) Has refused to be investigated or to produce its accounts, records, and files for investigation, or if any of its officers have refused to give information with respect to its affairs or refused to perform any other legal obligation as to an investigation, when required by the commissioner;

(c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused service contract holders or protection product guarantee holders to accept less than the amount due them or caused service contract holders or protection product guarantee holders to employ attorneys or bring suit against the service contract provider or protection product guarantee provider to secure full payment or settlement of claims;

(d) Is affiliated with or under the same general management or interlocking directorate or ownership as another service contract provider or protection product guarantee provider which unlawfully transacts business in this state without having a registration;

(e) At any time fails to meet any qualification for which issuance of the registration could have been refused had such failure then existed and been known to the commissioner;

(f) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony;

(g) Is under suspension or revocation in another state with respect to its service contract business or protection product business;

(h) Has made a material misstatement in its application for registration;

(i) Has obtained or attempted to obtain a registration through misrepresentation or fraud;

(j) Has, in the transaction of business under its registration, used fraudulent, coercive, or dishonest practices;

(k) Has failed to pay any judgment rendered against it in this state regarding a service contract or protection product guarantee within sixty days after the judgment has become final; or

(l) Has failed to respond promptly to any inquiry from the insurance commissioner relative to service contract or protection product business. A lack of response within fifteen business days from receipt of an inquiry is untimely. A response must be in writing, unless otherwise indicated in the inquiry.

(2)(a) The commissioner may, without advance notice or hearing thereon, immediately suspend the registration of a service contract provider or protection product guarantee provider if the commissioner finds that any of the following circumstances exist:

((~~(a)~~)) (i) The provider ((~~is insolvent~~)) either does not maintain the minimum net worth required by this chapter or cannot pay its debts when debts become due, or both;

((~~(b)~~)) (ii) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the service contract provider or protection product guarantee provider has been commenced in any state; or

((~~(c)~~)) (iii) The ((~~financial condition or~~)) business practices of the service contract provider or protection product guarantee provider otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(b) However, nothing in this subsection shall in any way be construed to limit the authority of the commissioner to take action against a service contract provider or a protection product guarantee provider granted by this chapter.

(3) If the commissioner finds that grounds exist for the suspension or revocation of a registration issued under this chapter, the commissioner may, in lieu of suspension or revocation, impose a fine upon the service contract provider or protection product guarantee provider in an amount not more than two thousand dollars per violation.

**Sec.**  RCW 48.110.902 and 2016 c 224 s 5 are each amended to read as follows:

(1) RCW 48.110.030 (2)(a) and (b), (3), and (4), 48.110.040, 48.110.060, 48.110.100, 48.110.110, 48.110.075 (2)(a) and (b) and (4)(e), and 48.110.073 (1) and (2) do not apply to motor vehicle service contracts issued by a motor vehicle manufacturer or import distributor covering vehicles manufactured or imported by the motor vehicle manufacturer or import distributor. ((~~For purposes of this section, "motor vehicle service contract" includes a contract or agreement sold for separately stated consideration for a specific duration to perform any of the services set forth in RCW 48.110.020(18)(b).~~))

(2) RCW 48.110.030(2)(c) does not apply to a publicly traded motor vehicle manufacturer or import distributor.

(3) RCW 48.110.030 (2)(a) through (c), (3), and (4), 48.110.040, and 48.110.073(2) do not apply to wholly owned subsidiaries of motor vehicle manufacturers or import distributors. For purposes of this subsection, a company is considered a wholly owned subsidiary as long as it is ultimately owned, directly or indirectly, one hundred percent by single or multiple motor vehicle manufacturers or import distributors.

(4) The adoption of chapter 274, Laws of 2006 does not imply that a vehicle protection product warranty was insurance prior to October 1, 2006.

(5) For purposes of this section, "motor vehicle service contract" includes a contract or agreement sold for separately stated consideration for a specific duration to perform any of the services set forth in RCW 48.110.020(18)(b).

NEW SECTION. **Sec.**  A new section is added to chapter 48.110 RCW to read as follows:

(1) A service contract provider relying on RCW 48.110.050(2)(a) or 48.110.075(2)(a) to assure the faithful performance of its obligations to service contract holders shall calculate the minimum net worth or stockholder's equity required by this chapter in accordance with generally accepted accounting principles as set forth by the financial accounting standards board. A service contract provider must follow generally accepted accounting principles, as set forth by the financial accounting standards board, in regard to either unearned service contract fees or expected service contract claims, or both, when determining its net worth. A service contract provider relying on RCW 48.110.050(2)(a) or 48.110.075(2)(a) may elect to use statutory accounting principles in lieu of generally accepted accounting principles if it so chooses.

(2) A service contract provider relying on RCW 48.110.050(2) (b) or (c) to assure the faithful performance of its obligations to service contract holders shall calculate the minimum net worth or stockholder's equity required by this chapter in accordance with generally accepted accounting principles as set forth by the financial accounting standards board but must exclude from its assets all intangible assets including, but not limited to, goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies when calculating net worth or stockholder's equity. However, a service contract provider relying on RCW 48.110.050(2) (b) or (c) may include receivables from affiliated companies if the affiliated company provides a written irrevocable guarantee to assure repayment of all receivables to the service contract provider and the guaranteeing organization has a net worth or stockholder's equity in excess of one hundred million dollars and submits a statement from a certified public accountant attesting that the net worth or stockholder's equity of the guaranteeing organization meets or exceeds the requirements of this subsection.

(3) A protection product guarantee provider that has elected to assure the faithful performance of its obligations to its protection product guarantee holders by insuring all protection product guarantees under a reimbursement insurance policy in accordance with RCW 48.110.055(2)(b) shall calculate the minimum net worth or stockholder's equity required by this chapter in accordance with generally accepted accounting principles as set forth by the financial accounting standards board. A protection product guarantee provider will follow generally accepted accounting principles, as set forth by the financial accounting standards board, in regard to either unearned protection product guarantee contract fees or expected protection product guarantee contract claims, or both, when determining net worth. A protection product guarantee provider may elect to use statutory accounting principles in lieu of generally accepted accounting principles.

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