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SENATE BILL 6309

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State of Washington

64th Legislature

2016 Regular Session

By Senators Angel and Hobbs

Read first time 01/14/16. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to registered service contract and protection  
2 product guarantee providers; and amending RCW 48.110.030, 48.110.050,  
3 48.110.055, 48.110.073, 48.110.130, and 48.110.902.

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

5 **Sec. 1.** RCW 48.110.030 and 2014 c 82 s 2 are each amended to  
6 read as follows:

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

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

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

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

8 (c)(i) For service contract providers relying on RCW  
9 48.110.050(2) (a) or (b) or 48.110.075(2)(a) to assure the faithful  
10 performance of its obligations to service contract holders, the most  
11 recent audited annual financial statements or other financial reports  
12 acceptable to the commissioner for the ((two)) most recent ((years))  
13 year which prove that the applicant ((is solvent and any information  
14 the commissioner may require in order to review the current financial  
15 condition of the applicant. If the service contract provider is  
16 relying on RCW 48.110.050(2)(c) to assure the faithful performance of  
17 its obligations to service contract holders, then the audited  
18 financial statements of the service contract provider's parent  
19 company must also be filed. In lieu of submitting audited financial  
20 statements, a service contract provider relying on RCW  
21 48.110.050(2)(a) or 48.110.075(2)(a) to assure the faithful  
22 performance of its obligations to service contract holders may comply  
23 with the requirements of this subsection (2)(c) by submitting annual  
24 financial statements of the applicant that are certified as accurate  
25 by two or more officers of the applicant;)) has and maintains a net  
26 worth or stockholder's equity of two hundred thousand dollars or  
27 more. In lieu of submitting audited financial statements, a service  
28 contract provider relying on RCW 48.110.050(2)(a) or 48.110.075(2)(a)  
29 to assure the faithful performance of its obligations to service  
30 contract holders may comply with the requirements of this subsection  
31 (2)(c)(i) by submitting annual financial statements of the applicant  
32 that are certified as accurate by two or more officers of the  
33 applicant; or

34 (ii) For service contract providers relying on RCW  
35 48.110.050(2)(c) to assure the faithful performance of its  
36 obligations to service contract holders, the most recent audited  
37 annual financial statements or form 10-K or form 20-F filed with the  
38 securities and exchange commission which prove that the applicant has  
39 and maintains a net worth or stockholder's equity of one hundred  
40 million dollars or more. However, if the service contract provider is

1 relying on its parent company's net worth or stockholder's equity to  
2 meet the requirements of RCW 48.110.050(2)(c) and the service  
3 contract provider has provided the commissioner with a written  
4 guarantee by the parent company in accordance with RCW  
5 48.110.050(2)(c), then the most recent audited financial statements  
6 or form 10-K or form 20-F filed with the securities and exchange  
7 commission of the service contract provider's parent company must be  
8 filed and the applicant need not submit its own financial statements  
9 or demonstrate a minimum net worth or stockholder's equity; and

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

12 ~~(e) Any other pertinent information required by the~~  
13 ~~commissioner)).~~

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

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

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

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

31 (4) The commissioner may refuse to issue a registration if the  
32 commissioner determines that the service contract provider, or any  
33 individual responsible for the conduct of the affairs of the service  
34 contract provider under subsection (2)(b) of this section, is not  
35 competent(~~(; not~~ trustworthy(~~(; financially responsible, or~~)); has  
36 had a license as a service contract provider or similar license  
37 denied or revoked for cause by any state; or cannot demonstrate a net  
38 worth or stockholder's equity in accordance with the applicable  
39 requirements of subsection (2)(c) of this section.

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

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

14 **Sec. 2.** RCW 48.110.050 and 2006 c 274 s 6 are each amended to  
15 read as follows:

16 (1) Service contracts shall not be issued, sold, or offered for  
17 sale in this state or sold to consumers in this state unless the  
18 service contract provider has:

19 (a) Provided a receipt for, or other written evidence of, the  
20 purchase of the service contract to the contract holder; and

21 (b) Provided a copy of the service contract to the service  
22 contract holder within a reasonable period of time from the date of  
23 purchase.

24 (2) In order to either demonstrate its financial responsibility  
25 or assure the faithful performance of the service contract provider's  
26 obligations to its service contract holders, every service contract  
27 provider shall comply with the requirements of one of the following:

28 (a) Insure all service contracts under a reimbursement insurance  
29 policy issued by an insurer holding a certificate of authority from  
30 the commissioner or a risk retention group, as defined in 15 U.S.C.  
31 Sec. 3901(a)(4), as long as that risk retention group is in full  
32 compliance with the federal liability risk retention act of 1986 (15  
33 U.S.C. Sec. 3901 et seq.), is in good standing in its domiciliary  
34 jurisdiction, and is properly registered with the commissioner under  
35 chapter 48.92 RCW. The insurance required by this subsection must  
36 meet the following requirements:

37 (i) The insurer or risk retention group must, at the time the  
38 policy is filed with the commissioner, and continuously thereafter,  
39 maintain surplus as to policyholders and paid-in capital of at least

1 fifteen million dollars and annually file audited financial  
2 statements with the commissioner; and

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

11 (b)(i) Maintain a funded reserve account for its obligations  
12 under its service contracts issued and outstanding in this state. The  
13 reserves shall not be less than forty percent of the gross  
14 consideration received, less claims paid, on the sale of the service  
15 contract for all in-force contracts. The reserve account shall be  
16 subject to examination and review by the commissioner; and

17 (ii) Place in trust with the commissioner a financial security  
18 deposit, having a value of not less than five percent of the gross  
19 consideration received, less claims paid, on the sale of the service  
20 contract for all service contracts issued and in force, but not less  
21 than twenty-five thousand dollars, consisting of one of the  
22 following:

23 (A) A surety bond issued by an insurer holding a certificate of  
24 authority from the commissioner;

25 (B) Securities of the type eligible for deposit by authorized  
26 insurers in this state;

27 (C) Cash;

28 (D) An evergreen letter of credit issued by a qualified financial  
29 institution; or

30 (E) Another form of security prescribed by rule by the  
31 commissioner; or

32 (c)(i) Maintain, or its parent company maintain, a net worth or  
33 stockholder's equity of at least one hundred million dollars; and

34 (ii) Upon request, provide the commissioner with a copy of the  
35 service contract provider's or, if using the net worth or  
36 stockholder's equity of its parent company to satisfy the one hundred  
37 million dollar requirement, the service contract provider's parent  
38 company's most recent form 10-K or form 20-F filed with the  
39 securities and exchange commission within the last calendar year, or  
40 if the company does not file with the securities and exchange

1 commission, a copy of the service contract provider's or, if using  
2 the net worth or stockholder's equity of its parent company to  
3 satisfy the one hundred million dollar requirement, the service  
4 contract provider's parent company's most recent audited financial  
5 statements, which shows a net worth of the service contract provider  
6 or its parent company of at least one hundred million dollars. If the  
7 service contract provider's parent company's form 10-K, form 20-F, or  
8 audited financial statements are filed with the commissioner to meet  
9 the service contract provider's financial stability requirement, then  
10 the parent company shall agree to guarantee the obligations of the  
11 service contract provider relating to service contracts sold by the  
12 service contract provider in this state. A copy of the guarantee  
13 shall be filed with the commissioner. The guarantee shall be  
14 irrevocable as long as there is in force in this state any contract  
15 or any obligation arising from service contracts guaranteed, unless  
16 the parent company has made arrangements approved by the commissioner  
17 to satisfy its obligations under the guarantee.

18 (3) Service contracts shall require the service contract provider  
19 to permit the service contract holder to return the service contract  
20 within twenty days of the date the service contract was mailed to the  
21 service contract holder or within ten days of delivery if the service  
22 contract is delivered to the service contract holder at the time of  
23 sale, or within a longer time period permitted under the service  
24 contract. Upon return of the service contract to the service contract  
25 provider within the applicable period, if no claim has been made  
26 under the service contract prior to the return to the service  
27 contract provider, the service contract is void and the service  
28 contract provider shall refund to the service contract holder, or  
29 credit the account of the service contract holder with the full  
30 purchase price of the service contract. The right to void the service  
31 contract provided in this subsection is not transferable and shall  
32 apply only to the original service contract purchaser. A ten percent  
33 penalty per month shall be added to a refund of the purchase price  
34 that is not paid or credited within thirty days after return of the  
35 service contract to the service contract provider.

36 (4) This section does not apply to service contracts on motor  
37 vehicles or to protection product guarantees.

38 **Sec. 3.** RCW 48.110.055 and 2011 c 47 s 17 are each amended to  
39 read as follows:

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

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

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

9 (b) Either demonstrated its financial responsibility or assured  
10 the faithful performance of the protection product guarantee  
11 provider's obligations to its protection product guarantee holders by  
12 insuring all protection product guarantees under a reimbursement  
13 insurance policy issued by an insurer holding a certificate of  
14 authority from the commissioner or a risk retention group, as defined  
15 in 15 U.S.C. Sec. 3901(a)(4), as long as that risk retention group is  
16 in full compliance with the federal liability risk retention act of  
17 1986 (15 U.S.C. Sec. 3901 et seq.), is in good standing in its  
18 domiciliary jurisdiction, and properly registered with the  
19 commissioner under chapter 48.92 RCW. The insurance required by this  
20 subsection must meet the following requirements:

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

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

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

38 (a) The names of the protection product guarantee provider's  
39 executive officer or officers directly responsible for the protection  
40 product guarantee provider's protection product guarantee business

1 and their biographical affidavits on a form prescribed by the  
2 commissioner;

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

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

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

11 (e) ~~((Any other pertinent information required by the  
12 commissioner))~~ Financial statements certified as accurate by two or  
13 more officers of the applicant which prove that the applicant has and  
14 maintains a net worth or stockholder's equity of two hundred thousand  
15 dollars or more; and

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

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

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

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

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

35 (5) The commissioner may refuse to issue a registration if the  
36 commissioner determines that the protection product guarantee  
37 provider, or any individual responsible for the conduct of the  
38 affairs of the protection product guarantee provider under subsection  
39 (3)(a) of this section, is not competent(~~(τ)~~); not trustworthy(~~(τ)~~  
40 ~~financially responsible, or~~); has had a license as a protection



1 product guarantee provider or similar license denied or revoked for  
2 cause by any state; or cannot demonstrate a net worth or  
3 stockholder's equity in accordance with the applicable requirements  
4 of subsection (3)(e) of this section.

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

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

19 **Sec. 4.** RCW 48.110.073 and 2006 c 274 s 20 are each amended to  
20 read as follows:

21 (1) If the service contract provider or protection product  
22 guarantee provider is using (~~the~~) the reimbursement insurance  
23 policy to satisfy the requirements of RCW 48.110.050(2)(a),  
24 48.110.055(2)(b), or 48.110.075(2)(a), then the reimbursement  
25 insurance policy shall be filed with and approved by the commissioner  
26 in accordance with and pursuant to the requirements of chapter 48.18  
27 RCW. Reimbursement insurance policy rates shall be filed with and  
28 approved by the commissioner in accordance with and pursuant to the  
29 requirements of chapter 48.19 RCW only if the insured service  
30 contract provider is domiciled in this state.

31 (2) All service contracts forms covering motor vehicles must be  
32 filed with and approved by the commissioner prior to the service  
33 contract forms being used, issued, delivered, sold, or marketed in  
34 this state or to residents of this state.

35 (3) All service contracts forms covering motor vehicles being  
36 used, issued, delivered, sold, or marketed in this state or to  
37 residents of this state by motor vehicle manufacturers or import  
38 distributors or wholly owned subsidiaries thereof must be filed with  
39 the commissioner for approval within sixty days after the motor

1 vehicle manufacturer or import distributor or wholly owned subsidiary  
2 thereof begins using the service contracts forms.

3 (4) The commissioner shall disapprove any motor vehicle service  
4 contract form if:

5 (a) The form is in any respect in violation of, or does not  
6 comply with, this chapter or any applicable order or regulation of  
7 the commissioner issued under this chapter;

8 (b) The form contains or incorporates by reference any  
9 inconsistent, ambiguous, or misleading clauses, or exceptions and  
10 conditions;

11 (c) The form has any title, heading, or other indication of its  
12 provisions that is misleading; or

13 (d) The purchase of the contract is being solicited by deceptive  
14 advertising.

15 **Sec. 5.** RCW 48.110.130 and 2006 c 274 s 14 are each amended to  
16 read as follows:

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

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

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

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

37 (d) Is affiliated with or under the same general management or  
38 interlocking directorate or ownership as another service contract

1 provider or protection product guarantee provider which unlawfully  
2 transacts business in this state without having a registration;

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

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

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

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

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

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

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

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

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

29 (a) The provider (~~is insolvent~~) does not maintain the minimum  
30 net worth required by this chapter;

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

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

39 (3) If the commissioner finds that grounds exist for the  
40 suspension or revocation of a registration issued under this chapter,

1 the commissioner may, in lieu of suspension or revocation, impose a  
2 fine upon the service contract provider or protection product  
3 guarantee provider in an amount not more than two thousand dollars  
4 per violation.

5 **Sec. 6.** RCW 48.110.902 and 2006 c 274 s 21 are each amended to  
6 read as follows:

7 (1) RCW 48.110.030 (2)(a) and (b), (3), and (4), 48.110.040,  
8 48.110.060, 48.110.100, 48.110.110, 48.110.075 (2)(a) and (b) and  
9 (4)(e), and 48.110.073 (1) and (2) do not apply to motor vehicle  
10 service contracts issued by a motor vehicle manufacturer or import  
11 distributor covering vehicles manufactured or imported by the motor  
12 vehicle manufacturer or import distributor. For purposes of this  
13 section, "motor vehicle service contract" includes a contract or  
14 agreement sold for separately stated consideration for a specific  
15 duration to perform any of the services set forth in RCW  
16 48.110.020(18)(b).

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

19 (3) RCW 48.110.030 (2)(a) through (c), (3), and (4), 48.110.040,  
20 and 48.110.073(2) do not apply to wholly owned subsidiaries of motor  
21 vehicle manufacturers or import distributors.

22 (4) The adoption of chapter 274, Laws of 2006 does not imply that  
23 a vehicle protection product warranty was insurance prior to October  
24 1, 2006.

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