

HOUSE BILL REPORT

HB 1036

As Passed Legislature

Title: An act relating to service contracts.

Brief Description: Regulating service contracts.

Sponsors: Representatives Kirby, Ryu and Schmick.

Brief History:

Committee Activity:

Business & Financial Services: 1/16/13 [DP].

Floor Activity:

Passed House: 2/18/13, 96-0.

Passed Senate: 4/16/13, 47-0.

Passed Legislature.

Brief Summary of Bill

- Modifies the definition of "service contract."
- Clarifies that certain service contract products and certain contractual arrangements are not prohibited by law.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 15 members: Representatives Kirby, Chair; Ryu, Vice Chair; Parker, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Blake, Chandler, Habib, Hawkins, Hudgins, Hurst, Kochmar, MacEwen, O'Ban, Santos and Stanford.

Staff: Jon Hedegard (786-7127).

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.

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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. Persons regulated under these chapters may not have to be licensed or have the same degree of training. Service contracts are one of the types of products that are regulated less stringently than insurance products under the Code.

A "service contract" is a contract for separate consideration for a specific duration to:

- repair, replace, or maintain property; or
- indemnify for the repair, replacement, or maintenance of property.

Registration. A service contract provider must register with the Insurance Commissioner (Commissioner). Application procedures, requirements, and fees are set forth. The Commissioner may suspend or revoke the registration of a service contract provider for failure to comply with the specific requirements.

Persons selling and marketing service contracts are not required to register with or be licensed by the Commissioner unless they are service contract providers.

Financial Responsibility for Service Contract Providers. A service contract provider may choose one of the following options to ensure that all obligations and liabilities are paid:

- insure its service contracts with a reimbursement insurance policy;
- maintain a reserve account that includes a portion of the gross consideration received for all service contracts and give the Commissioner a financial security deposit;
- use a risk retention group to insure the contracts of a service contract with a reimbursement insurer policy; or
- maintain or have the parent company maintain a net worth or stockholder's equity of \$100 million.

Recordkeeping. A service contract provider must keep accurate accounts and records including:

- the name and address of the person who purchased a protection product;
- a list of locations where the service contract is sold or marketed; and
- written claims files with the dates, amounts, and descriptions of claims related to service contracts.

Investigations and Enforcement. The Commissioner may investigate a service contract provider. Upon the Commissioner's request, a service contract provider must make the books, accounts, and records available to the Commissioner. The Commissioner may take actions to enforce the chapter and the Commissioner's rules and orders. A violation of the service contract laws is a violation of the Consumer Protection Act. A purchaser of a service contract may bring suit for a violation.

Summary of Bill:

The definition of "service contract" is modified to include a contract of any duration entered into at or after the sale or lease of the subject property.

A service contract provider is not prohibited from covering residential water, sewer, utilities, or similar systems or from sharing contract revenue with local governments or other third parties for endorsements and marketing services.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Some years ago, the Legislature passed an omnibus bill to address service contract issues. The purpose of that bill was to avoid having to revisit and amend the service contract laws every time someone tried to sell a new service contract product in the state. The Commissioner believes that some of these products are insurance, not service contracts. One company sells the product as a service contract in over 40 other states. In this state, they cannot get a license as a service contractor. They must be regulated as an insurer.

Last year, a bill exactly like this passed this committee and the House unanimously. It died on the Senate floor. There are companies offering a service contract regarding utility lines. That product may be offered in combination with a local government with that government getting a royalty for assisting in marketing. The Office of the Insurance Commissioner (OIC) believes that the company offering the product must be regulated as an insurer instead of a service contractor. The OIC also believes that working with the local government may violate insurance laws. The OIC indicated that the law prevents the OIC from licensing the company as a service contractor. This bill addresses each of the problems that the OIC stated would prevent this company and others from selling these types of service contract products. These products are being sold as service contracts in 47 states. This bill gives the OIC the ability to license companies selling these products as service contracts. The original language on the bill last year caused some concerns for people who do service work. The substitute bill resolved those concerns and was supported by all of the stakeholders. Those stakeholders support the bill this year.

(Opposed) None

Persons Testifying: Representative Kirby, Prime sponsor; John Conniff, Utility Service Partners; and Jim King, Washington State Heating, Ventilation, Air-Conditioning and Refrigeration Association.

Persons Signed In To Testify But Not Testifying: None