

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2677/P1dn

MDK:...

*Date*

*EPJK*

Rep. Nygren:

This preliminary draft is based on the Service Contract Industry Council (SCIC) model service contracts act (model act) that you provided. We have included NOTES in the text of the preliminary draft that raise questions about the language of the model act and point out some of the changes that we made to that language. You may want to obtain the SCIC's input as you review the NOTES. After you respond to the NOTES, we will prepare a version of the draft that can be introduced.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.wisconsin.gov

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2677/P1dn  
MDK&PJK:kjf:rs

September 22, 2011

Rep. Nygren:

This preliminary draft is based on the Service Contract Industry Council (SCIC) model service contracts act (model act) that you provided. We have included NOTES in the text of the preliminary draft that raise questions about the language of the model act and point out some of the changes that we made to that language. You may want to obtain the SCIC's input as you review the NOTES. After you respond to the NOTES, we will prepare a version of the draft that can be introduced.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.wisconsin.gov](mailto:mark.kunkel@legis.wisconsin.gov)

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

## Kunkel, Mark

---

**From:** Froelich, Brooke  
**Sent:** Tuesday, October 18, 2011 2:29 PM  
**To:** Kunkel, Mark  
**Subject:** Changes to Service Contract legislation

**Attachments:** Leg Counsel Draft BM Revisions 10 10 11.rtf

Hi Mark,

Please find the attached PDF for the Service Contract Legislation. It has the answers and changes that need to be made. Thank you.



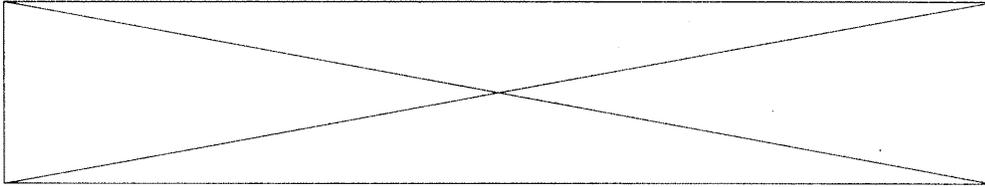
Leg Counsel Draft  
BM Revisions...

*Brooke Froelich*

Legislative Assistant  
Office of State Representative John Nygren  
89th Assembly District  
Phone: 608.266.2343  
Email: brooke.froelich@legis.wi.gov

*Note: Please remember that all communications conducted through state resources are subject to Wisconsin's Open Records Law established in Wisconsin State Statute 19.35(1)*

**2011 Special Session  
2011 - 2012 LEGISLATURE**



Service contracts

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ENGROSSED 2011 BILL**

**AN ACT** to amend 601.32 (1); and to create 100.70, 600.01 (1) (b) 12., 601.31 (1) (kr) and 632.19 of the statutes; **relating to:** regulating certain service contracts, granting rule-making authority, and providing a penalty.

---

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

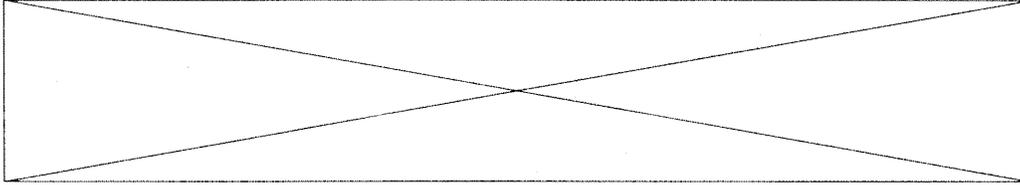
**SECTION 1.** 100.70 of the statutes is created to read:

\*\*\*\*NOTE: Section 1 (A) of the SCIC Industry Model Act (model act) provides: "The purposes of this Act is to create a legal framework within which service contracts are defined, may be sold and are regulated in this state. It declares that service contracts, as defined, are not insurance and not otherwise subject to the insurance code. It adds significant consumer protections and eliminates unnecessary administration." I did not include the foregoing statement of legislative intent because it is not necessary. In addition, under the LRB's drafting policies, the LRB generally includes statements of legislative intent only in recodification bills or when necessary to assist a court in upholding a bill against a constitutional challenge.

**100.70 Service contracts. (1) DEFINITIONS.** In this section:

(

ENGROSSED BILL



(a) "Administrator" means a person appointed by a provider under sub. (3)

~~(a) to be responsible for the administration of the service contracts or the service contracts plan or who is responsible for any submission required by this section.~~

\*\*\*\*NOTE: The model act's definition duplicates language set forth in sub. (3)

(a). Therefore, I simplified the model act's definition by making a cross-reference to sub. (3) (a). RESPONSE: I think we should define here as this is a critical definition for regulation of the industry.

(b) "Commissioner" means the commissioner of insurance.

\*\*\*\*NOTE: As under the model act, the commissioner of insurance is responsible for administering and enforcing this section. However, because service contracts are not insurance, you could have DATCP, rather than the Office of the Commissioner of Insurance (OCI), administer and enforce this section. On the other hand, there is precedent under current law for OCI to administer requirements that are not insurance products. See OCI's regulation of vehicle protection product warranties under s. 100.203. RESPONSE: Understood. We have been working with OCI and they seem to be interested in keeping the regulation of the industry within OCI which we are fine with.

(c) "Consumer" means an individual who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes.

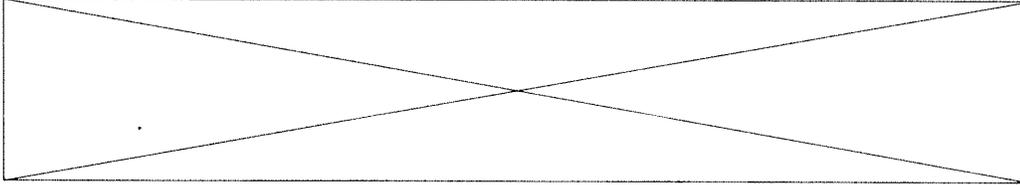
\*\*\*\*NOTE: The model act refers to a "natural person." Under the LRB's drafting policies, "individual" is the preferred term. RESPONSE: OK.

(d) "Maintenance agreement" means a contract for a specified duration that provides for scheduled maintenance only and does not include repair or replacement.

- what is the "service contracts plan" ?  
- what submissions are required ?

Deleted: of limited

ENGROSSED BILL



✓ \*\*\*\*NOTE: The above should be revised to clarify what constitutes a "limited duration." RESPONSE: Revised to make clear that whatever duration it is for must be specified in the maintenance agreement.

(e) "Motor vehicle manufacturer" means a person that does or satisfies any of the following:

1. Manufactures or produces motor vehicles and sells motor vehicles under its own name or label.

✓ 2. Is a subsidiary of the person who manufactures or produces motor vehicles.

Deleted: wholly owned

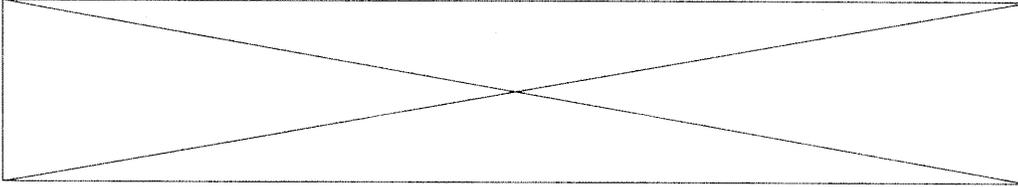
3. Is a corporation which owns 100 percent of the person who manufactures or produces motor vehicles.

4. Does not manufacture or produce motor vehicles, but sells motor vehicles under the trade name or label of another person who manufactures or produces motor vehicles.

5. Manufactures or produces motor vehicles and sells motor vehicles under the trade name or label of another person who manufactures or produces motor vehicles.

6. Does not manufacture or produce motor vehicles but, pursuant to a written contract, licenses the use of its trade name or label to another person who

ENGROSSED BILL



manufactures or produces motor vehicles and who sells motor vehicles under the licensor's trade name or label.

(f) "Nonoriginal manufacturer's parts" means replacement parts for property

that are not made for or by the original manufacturer of the property.

✓ \*\*\*\*NOTE: The model act also provides that such parts are commonly referred to as "after market parts." Because that term is not otherwise used in the act, is not defined, and does not add anything to the meaning of "nonoriginal manufacturer's parts, I did not include the term in the above. RESPONSE: OK.

✓ \*\*\*\*NOTE: I added "for property" after "replacement parts." RESPONSE: OK.

✓ \*\*\*\*NOTE: The model act defines "person" as "an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate or any similar entity or combination of entities acting in concert." However, I did not include the definition because it is not necessary. Current law defines "person" broadly to include "all partnerships, associations and bodies politic or corporate." See s. 990.01 (26). In addition, under the LRB's drafting policies, "person" is intended to refer to both human beings and nonhuman entities. RESPONSE: OK.

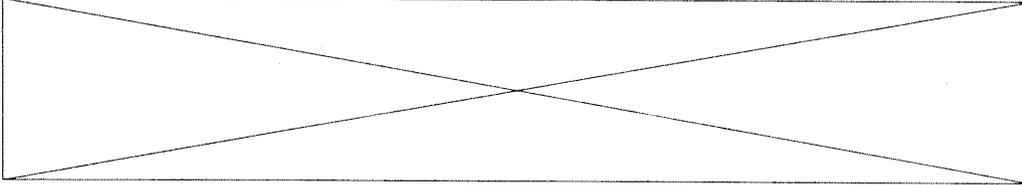
(g) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

(h) "Provider" means a person who is contractually obligated to a service contract holder under the terms of a service contract.

(i) "Provider fee" means the consideration paid for a service contract.

(j) "Reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the

ENGROSSED BILL



provider's nonperformance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider.

(k) "Service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property, or to provide indemnification for the repair, replacement, or maintenance of property, for the operational or structural failure the property, due to a defect in materials or workmanship, accidental damage from handling, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including towing, rental, and emergency road service and road hazard protection. "Service contract"

Deleted: of any motor vehicle, residential property, or other

includes a contract or agreement that provides for any of the following:

✓ \*\*\*\*NOTE: The reference to "other property" should be clarified. Should it be limited to personal property, or do you want to refer to other real property as well, in addition to "residential property" (which I assume is intended to refer to residential real property)? RESPONSE: See revision above.

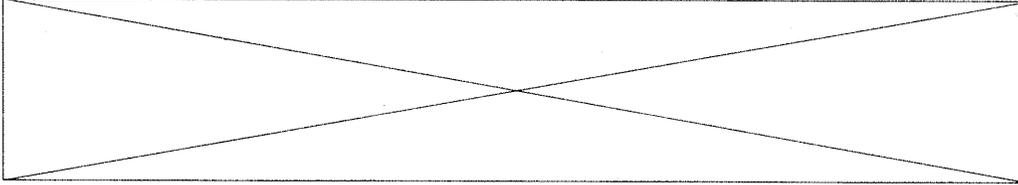
✓ \*\*\*\*NOTE: The above refers to "separately stated consideration." Separate from what? RESPONSE: Separate from any other consideration paid. This language comes from the NAIC Model Act and the Industry model act and is universally accepted. It is intended to clearly distinguish between something that is part of the "basis of the bargain" like a Mag-Moss warranty and a service contract which is sold for separately stated consideration.

✓ \*\*\*\*NOTE: Throughout this draft, I refer to "including," instead of "including but not limited to." Under the LRB's drafting policies, the phrase "but not limited to" is redundant and not necessary. RESPONSE: If "but not limited to" is assumed that

added  
NOTE

5

ENGROSSED BILL



is fine. However, assuming that language is different than calling it redundant and not necessary so I want to make sure I understand the note. Is "but not limited to" assumed under Wisconsin statutory construction rules?

1. The repair, replacement, or maintenance of property or indemnification for the repair, replacement, or maintenance of property for damage resulting from a power surge or interruption.

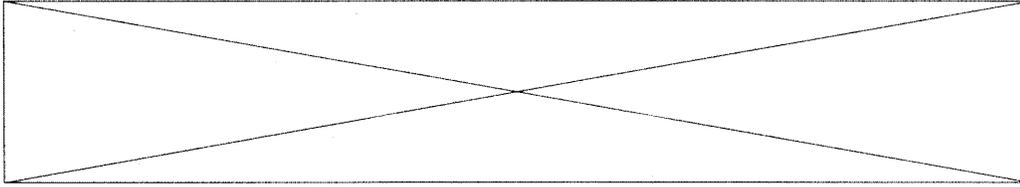
\*\*\*\*NOTE: Based on par. (k) (intro.), a contract or agreement is a service contract if it provides for repair, replacement, maintenance, or indemnification for operational or structural failure of specified property, but only if the failure is due to a defect in materials or workmanship, accidental damage from handling, or normal wear and tear. Am I reading the model act correctly on this point? If so, how does a power surge or interruption fit into this scheme? Is a power surge considered to be accidental damage from handling or normal wear and tear? Or is it something else? If it is something else, the above may have to be revised. RESPONSE: It is considered an incidental indemnity benefit in most cases so you could arguably include "power surge or interruption" in the portion of the intro. that references "incidental payment of indemnity under limited circumstances. However, some products are actually intended to protect against power surges so a repair caused by that would actually be a defect in materials and workmanship as opposed to incidental indemnity. This cross-over is why this benefit is treated separately in the definition.

2. The repair or replacement or indemnification for the repair or replacement of a motor vehicle for the operational or structural failure of one or more parts or systems of the motor vehicle brought about by the failure of an additive product to perform as represented.

\*\*\*\*NOTE: Why is it necessary to include subs. 2. to 6.? Don't the repairs and replacements described in subs. 2. to 6. fall under the definition of "service contract" in par. (k) (intro.)? RESPONSE: No. Too many times we have passed the Model Act in a state assuming exactly what bill drafting does in its note only to find out that these products are found to be impermissible under the general service contract definition. These products need to be specifically addressed.

6

ENGROSSED BILL



3. The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards including potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

4. The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting.

5. The repair of small motor vehicle windshield chips or cracks but which expressly excludes the replacement of the entire windshield.

✓ \*\*\*\*NOTE: What is intended by "but which expressly excludes..."? Does it mean that the agreement is allowed to expressly exclude such replacements? If so, why is it necessary to say that? RESPONSE: It must exclude an agreement which would replace an entire windshield. If not, we get too close to auto insurance coverage which results in problems with the passage of the legislation as well as the regulator viewing it unfavorably.

6. The repair of damage to the interior components of a motor vehicle caused by wear and tear but which expressly excludes the replacement of any part or component of a motor vehicle's interior.

Service contracts are not insurance in this state or otherwise regulated under the insurance code.

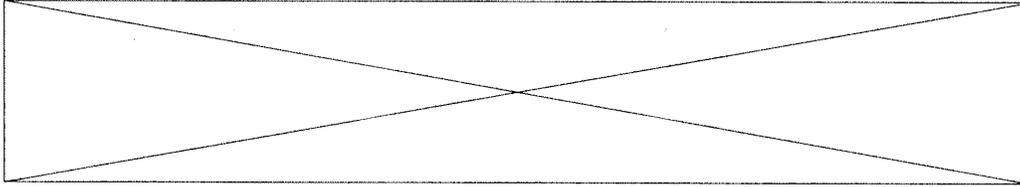
✓ \*\*\*\*NOTE: See the NOTE above regarding "but which expressly excludes..."  
RESPONSE: See response above. Replacement of interior components goes too far and typically evokes regulator concern in that it starts to move too close to the line of insurance.

See NOTE

Formatted: Indent: Left: 0.38",  
First line: 0"

7

ENGROSSED BILL



✓  
\*\*\*\*NOTE: The model act includes the following drafter's note: "The inclusion of tire and wheel, paintless dent removal, windshield repair, and appearance care products within the definition of "service contract" shall only apply in those states which currently do not have a regulatory framework applicable to motor vehicle service contracts and in which the SCIC has voted to enact the Model Act in. This language should be omitted from any proposed legislation in states where the regulator has opined that these products currently fall within the definition of a service contract or are otherwise unregulated. It shall not be a goal of the SCIC to revisit states with existing service contract laws to authorize these ancillary product offerings within existing laws unless and until directed otherwise by the Council membership." The current Wisconsin statutes do include requirements for the cancellation of future service contracts and motor club service contracts sold by creditors (see subch. IV of ch. 424), as well as the regulation of motor club service contracts (see subch. II of ch. 616), vehicle protection product warranties (see s. 100.203), and motor vehicle rustproofing warranties (see s. 100.205). However, I don't think the foregoing statutes apply to service contracts as defined in the model act. Does that mean that subs. 3. to 6. should be eliminated from the draft? I'm having trouble understanding the model act's drafter's note on this point. RESPONSE: All of these terms should have been included in the Wisconsin draft. The drafter's note should have been removed before sending to leg counsel.

✓  
\*\*\*\*NOTE: The model act also provides: "Service contracts are not insurance in this state or otherwise regulated under the insurance code." Such a result is accomplished in the creation of s. 600.01 (1) (b) 12. RESPONSE: We would like to keep this language for absolute clarity

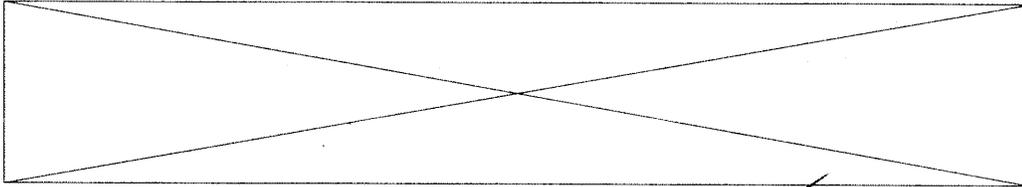
So note  
(L) "Service contract holder" means a person who is the purchaser or holder of a service contract.

✓  
\*\*\*\*NOTE: I deleted "or contract holder" and made sure the draft refers to "service contract holders" throughout the draft. Therefore, there is no need to refer to "or contract holder." RESPONSE: OK

✓  
\*\*\*\*NOTE: Other than a purchaser, who else could be the holder of a contract? RESPONSE: A person whom the contract is transferred to through the secondary sale of a vehicle with a service contract covering it.

(m) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration, that is not

ENGROSSED BILL



negotiated or separated from the sale of the product or services, that is incidental to the sale of the product or services, and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

\*\*\*\*NOTE: The above first refers to the sale of "property or services," and then refers to the sale of a "product." For the sake of clarity, the above should be revised to consistently refer to either "property or services" or to "products." Please let me know your preference. RESPONSE: See revisions above.

\*\*\*\*NOTE: Instead of saying that a warranty is made "without consideration," would it be more accurate to say that a warranty is made without consideration that is separate from the consideration given for the property, services, or product? RESPONSE: No. A warranty is made without consideration as it is part of the basis of the bargain. Federal law dictates this.

\*\*\*\*NOTE: What does it mean to say that a warranty is not "separated" from the sale of a product? RESPONSE: Federal law requires that a Mag-Moss warranty is a part of the basis

(2) APPLICABILITY. (a) This section does not apply to any of the following:

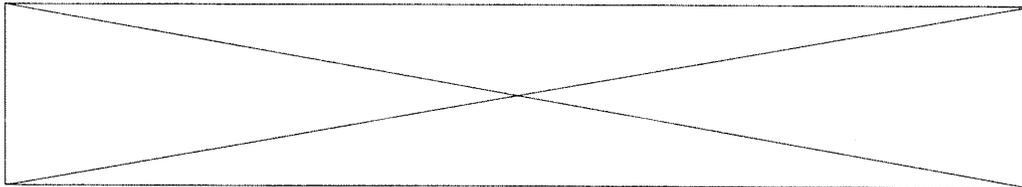
\*\*\*\*NOTE: This section is based on section 1 (B) and (C) of the model act.

\*\*\*\*NOTE: Section 1 (D) of the model act provides that agreements specified in pars. (a) 1. to 5 and (b) and service contracts are not insurance and are not subject to any provision of the insurance law of this state. With respect to service contracts, including those specified in par. (a) 3., 4., and 5. and par. (b), I accomplished your intent by creating s. 600.01 (1) (b) 12., which exempts all service contracts from the insurance law requirements set forth in chs. 600 to 646. Please confirm that you want to also exempt any warranty or maintenance agreement from those requirements. RESPONSE: That is correct. I have added that language back in below.

1. Warranties as defined in sub. (1) (m) or s. 100.203 (1) (g) or 100.205 (1)

(g).

ENGROSSED BILL



✓ \*\*\*\*NOTE: In addition to warranties as defined for purposes of this section, the above also exempts vehicle protection product warranties under s. 100.203 and motor vehicle rustproofing warranties under s. 100.205. RESPONSE: OK.

2. Maintenance agreements.

3. Warranties, service contracts, or maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated by the public service commission.

Deleted: , as defined in sub. (1) (m).

✓ \*\*\*\*NOTE: If all types of warranties and maintenance agreements are exempt under subds. 1. and 2., it is redundant to specify that the above specific types of warranties and maintenance agreements are exempt. Therefore, I would revise the above to delete the reference to warranties and maintenance agreements. Please let me know if you agree. RESPONSE: We just need to put this language in there. These groups come to the table and ask for it anyway if not included so we might as well include it up front. They are typically regulated by the PSC so this is to make absolutely clear that there is not duplication of regulatory efforts.

See NOTE  
✓ \*\*\*\*NOTE: What do you mean by "to the extent" regulated by the PSC? Does that mean that one has to consider not only whether there is PSC regulation, but also the extent of that regulation? And what follows if the PSC does not regulate to a sufficient extent, whatever that is? Is the exemption only partial? RESPONSE: The purpose of this language is to clearly exempt these types of products if regulated by someone but if not regulated by the PSC then a contract meeting the definition of a service contract would be subject to this regulatory framework as it should be.

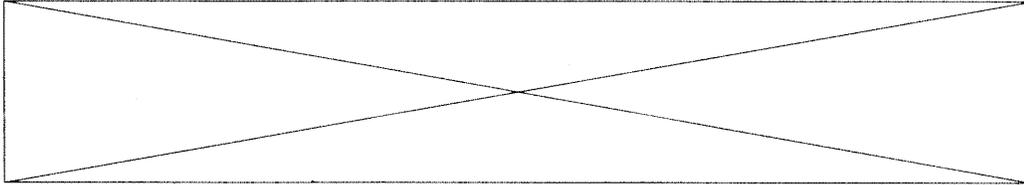
✓ \*\*\*\*NOTE: What is a "transmission device"? Can you give me some examples? I want to make sure that the term "transmission device" accomplishes your intent. RESPONSE: Phone lines, power lines, etc.

4. Service contracts sold or offered for sale to persons other than consumers.

5. Service contracts on tangible property where the tangible property for which the service contract is sold has a purchase price of \$100 or less, exclusive of sales tax.

10

ENGROSSED BILL



(b) Motor vehicle manufacturer's service contracts on the motor vehicle manufacturer's products are exempt from this section, except for subs. (3)(i), (4)

(a) and (d) to (L), (5), and (7).

\*\*\*\*NOTE: The model act provides that motor vehicle manufacturer's service contracts must comply with section 3F of the model act, which corresponds to sub. (3) (i) of this draft, which provides that, except for sub. (3) (c) (sample contract) and (d) (registration), no other financial security requirements may be imposed on service contract providers. A reference to sub. (3) (i) would be confusing, as sub. (3) (i) does not impose any requirements on motor vehicle manufacturer's service contracts. Therefore, I did not refer to sub. (3) (i). Is it your intent to apply sub. (3) (c) and (d) to manufacturer's service contracts? If so, the above should be revised to specify that sub. (3) (c) and (d) apply. RESPONSE: Error on our part. The revised language above is correct.

(c) The types of agreements referred to in sub-subsections (a) and (b) of this subsection are not insurance and do not have to comply with any provision of the insurance laws of this state.

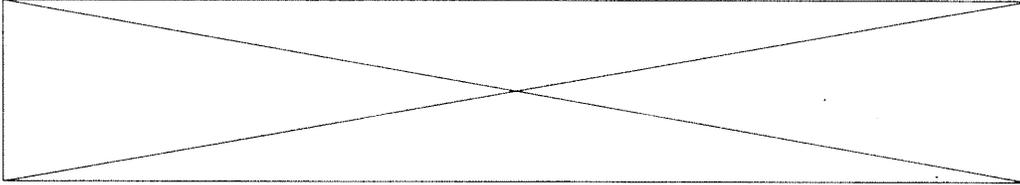
(3) REQUIREMENTS FOR DOING BUSINESS. (a) *Appointment of administrator.*

A provider may, but is not required to, appoint an administrator to be responsible for any or all of the administration of service contracts and compliance with this section.

\*\*\*\*NOTE: The model act refers to appointing an administrator "or other designee." I deleted the reference to "other designee" to ensure that any person appointed by a provider is an administrator for purposes of the draft. RESPONSE: OK.

||

ENGROSSED BILL



(b) *Receipt and copy of contract.* A service contract may not be issued, sold, or offered for sale in this state unless the provider of the service contract has done all of the following:

1. Provided a receipt for, or other written evidence of, the purchase of the service contract to the service contract holder.
2. Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase.

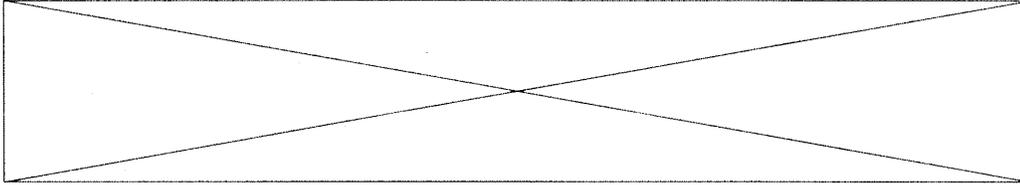
(c) *Sample contract.* A provider shall provide a consumer with a complete sample copy of the service contract terms and conditions prior to the time of sale upon a request for the same by the consumer. A provider may comply with this paragraph by providing the consumer with a complete sample copy of the terms and conditions or by directing the consumer to an Internet Web site containing a complete sample of the terms and conditions of the service contract.

✓ \*\*\*\*NOTE: Does the above apply only if the consumer requests a sample copy? What if a consumer doesn't know about option to request? RESPONSE: This applies if they request a copy only. Doesn't make sense to provide a copy if the consumer doesn't want it. If they want to read the terms and conditions they will ask.

(d) 1. Registration. Each provider of service contracts sold in this state shall file a registration with the commissioner consisting of their name, full business address, telephone number, and contact person and designate a person

12

ENGROSSED BILL



in this state for service of process. Each provider shall pay to the commissioner a fee in the amount specified in s. 601.31 (1) (kr) upon initial registration and every year thereafter. The registration need only be updated by written notification to the commissioner if material changes occur in the registration on file.

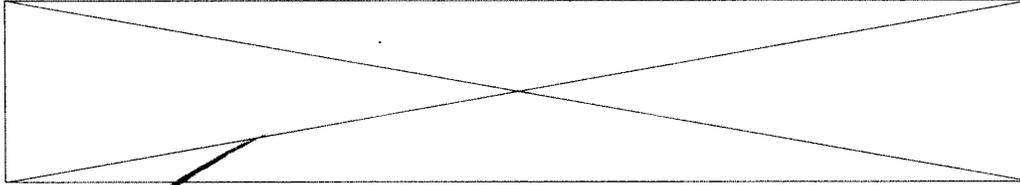
2. A person engaged in the service contract business, as a provider or otherwise, in this state on or before the effective date of this Act, which submits an application for registration as a provider pursuant to this section within 30 days after the Commissioner makes the application available, may continue to engage in business as a provider in this state until final agency action is taken by the Commissioner regarding the registration application and all rights to administrative judicial review have been exhausted or expired.

\*\*\*\*NOTE: Instead of referring to "full corporate address" as in the model act, the above refers to "full business address." Is that okay? RESPONSE: OK.

\*\*\*\*NOTE: Section 12 (A) of the model act states: "A person engaged in the service contract business, as a provider or otherwise, in this state on or before the effective date of this Act, which submits an application for registration as a provider pursuant to this Act within 30 days after the Commissioner makes the applications available, may continue to engage in business as a provider in this state until final agency action is taken by the commissioner regarding the registration application and all rights to administrative judicial review have been exhausted or expired." I didn't include comparable language in the draft because I don't think it is necessary. The model act requires providers to register, but does not prohibit unregistered providers from engaging in the service contract business. As a result, as long as a provider applies for registration and otherwise complies with the Act's requirements, the provider can engage in the service contract business, even before OCI registers the provider. Is that okay? RESPONSE: No. If you are acting as a service contract

See  
NOTE

ENGROSSED BILL



provider you must register. Generally that is how these laws work across the country. See proposed revision above.

✓ \*\*\*\*NOTE: The draft, as well as the model act, does not specify conditions under which OCI can deny a registration. As a result, registration appears to be a purely ministerial act. Is that okay? Also, note that there are no grounds for OCI to revoke a registration. However, from an enforcement standpoint, revocation of registration is not necessary, as OCI does have authority under sub. (7) (c) 1. to issue an order that prohibits a provider from selling service contracts in violation of s. 100.70. RESPONSE: Correct.

✓ \*\*\*\*NOTE: To be consistent with other fees imposed by OCI, I set forth the \$200 registration fee in s. 601.31 (1) (kr). Also note that s. 601.31 (1) (kr) allows OCI to set a lesser amount by rule. However, OCI may not increase the fee above \$200 without statutory authority. Is that okay? RESPONSE: OK.

(e) Assurance of performance; in general. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider shall be responsible for complying with the requirements of either par. (f) or (g).

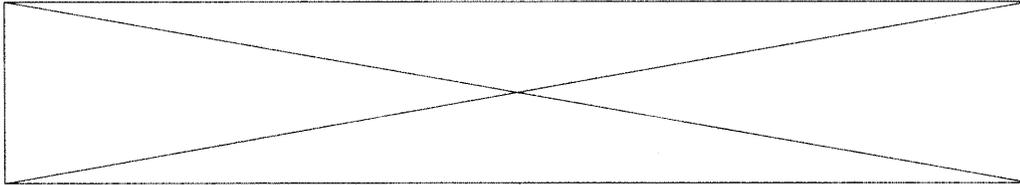
✓ \*\*\*\*NOTE: I restructured the model act to conform to the LRB's numbering conventions. Also note that I revised the model act's language for the above. RESPONSE: Need to be clear that only one of these requirements must be satisfied. As it was drafted it looked like a provider needed to comply with all three. Also, OCI wanted the reserve option removed and we are okay with that. See revision below.

**Deleted:** Each provider shall comply with the assurance of performance requirements specified in par. (f), (g), or (h)

(f) *Assurance of performance; insurance.* A provider may satisfy par. (e) by doing all of the following:

1. Insuring all service contracts under a reimbursement insurance policy issued by an insurer that is authorized to do business in this state and that, at the time the policy is filed with the commissioner and continuously thereafter, satisfies either of the following:

ENGROSSED BILL



\*\*\*\*NOTE: What does the reference to filing the policy with the commissioner refer to? Must the policy be filed with the commissioner under this section or does it refer to filing under a provision under current law, such as under ch. 625 for rate approval or ch. 631 for form approval? RESPONSE: It needs to be filed under 625 and 631 pursuant to current law.

a. Maintains surplus as to policyholders and paid-in capital of at least \$15,000,000, and annually files copies of the reimbursement insurer's audited financial statements, its National Association of Insurance Commissioner's annual statement, and any actuarial certification required by and filed in the insurer's domiciliary state, as defined in s. 600.03 (18).

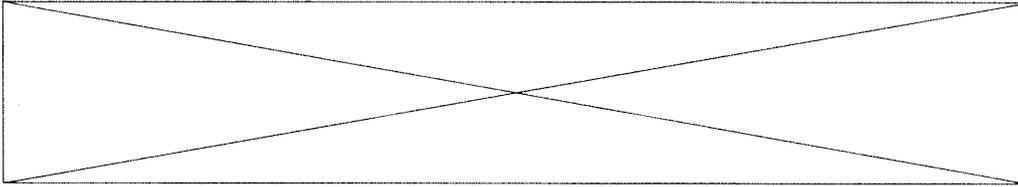
b. Maintains surplus as to policyholders and paid-in capital of less than \$15,000,000 but at least \$10,000,000 and demonstrates to the satisfaction of the commissioner that the insurer maintains a ratio of net premiums written, wherever written, to surplus as to policyholders and paid-in capital of not greater than 3 to one, and annually files copies of the reimbursement insurer's audited financial statements, its National Association of Insurance Commissioner's annual statement, and any actuarial certification required by and filed in the insurer's domiciliary state, as defined in s. 600.03 (18).

\*\*\*\*NOTE: Do you want the above surplus provisions to apply regardless of whether they comply with ch. 623? RESPONSE: Yes.

**Deleted:** 2. Annually filing copies of the reimbursement insurer's audited financial statements, its National Association of Insurance Commissioner's annual statement, and any actuarial certification required by and filed in the insurer's domiciliary state, as defined in s. 600.03 (18).

15

ENGROSSED BILL



✓ \*\*\*\*NOTE: Do these copies get filed with the commissioner? Should the provider or the insurer be responsible for filing them? RESPONSE: The insurer is responsible for filing with the Commissioner and does so today. See revisions above.

✓ \*\*\*\*NOTE: I have never heard of NAIC annual statements. Do all insurers have to file annual statements with the NAIC? RESPONSE: Yes.

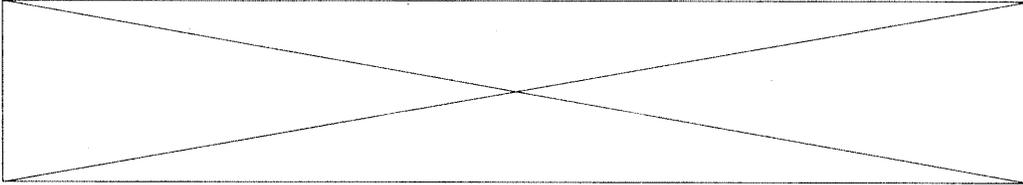
✓ \*\*\*\*NOTE: I modified the above requirements in a way that made sense to me. It was hard to tell from the structure of the proposed language whether the requirements above apply to the provider or the reimbursement insurer. As it is drafted, the provider may obtain insurance but the requirements under subd. 1. a. and b. apply to the insurer and the requirements under subd. 2. apply to the provider with respect to the insurer. Are any changes needed to the way in which I have drafted this? RESPONSE: Yes. See revisions. It is intended that the insurer must comply with all of the surplus and filing requirements. Insurers already comply with the filing requirements pursuant to current law and the surplus requirements are additional safeguards for consumers and are in place in the substantial majority of states that regulate service contracts.

✓ (g) Assurance of performance; net worth or financial forms. A provider may satisfy par. (e) by maintaining, or together with its parent company maintaining, a net worth or stockholders' equity of \$100,000,000. Upon the request of the commissioner, the provider shall provide the commissioner with a copy of the provider's or the provider's parent company's most recent U.S. Securities and Exchange Commission form 10-K or form 20-f that is filed pursuant to 15 USC 78L (b) or (g), 78m, or 78o (d), or, if the provider or parent company does not file with the U.S. Securities and Exchange Commission, a copy of the company's audited financial statements which shows a net worth of the provider or its parent

**Deleted:** Assurance of performance; funded reserve account or trust. A provider may satisfy par. (e) by doing any of the following:¶  
1. Maintaining a funded reserve account for its obligations under its service contracts issued and outstanding in this state. The reserves shall not be less than 40 percent of gross consideration received, less claims paid, on the sale of the service contract for all service contracts that are in force. The reserve account shall be subject to examination and review by the commissioner.¶  
2. Placing in trust with the commissioner a financial security deposit that is equal to \$25,000; or 5 percent of the gross consideration received, less claims paid, on the sale of service contracts issued and in force in this state; whichever is greater. The financial security deposit shall consist of one of the following:¶  
\*\*\*\*NOTE: Please review the changes I made in the above to the model act's language.¶  
a. A surety bond issued by an authorized surety.¶  
\*\*\*\*NOTE: Who is an "authorized" surety? Who does the authorizing?¶  
b. Securities of the type eligible for deposit by insurers authorized to do business in this state.¶  
c. Cash.¶  
d. A letter of credit issued by a qualified financial institution.¶  
\*\*\*\*NOTE: What is a "qualified" financial institution? Who does the qualifying?¶  
e. Another form of security prescribed in rules promulgated by the commissioner.¶  
(h)

16

ENGROSSED BILL



company of at least \$100,000,000. If the provider's parent company's form 10-K, form 20-f, or financial statements are used to meet the requirements of this paragraph, the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state.

Deleted: provided to the commission under

\*\*\*\*NOTE: Why is the requirement for the parent company to guarantee the obligations of a provider contingent upon OCI requesting, and the provider providing, copies of the specified forms or financial statements? Is there a better way to describe the circumstances under which a parent company must make the guarantee? RESPONSE: See revisions.

\*\*\*\*NOTE: The references to the SEC forms are based on the references in s. 100.203 (3) (b). RESPONSE: OK.

(h) Commissioner limitation. Except for the requirements specified in pars.

Deleted: i

(d) and (e), above, no other financial security requirements shall be required by

Deleted: c

Deleted: d

the commissioner for service contract providers.

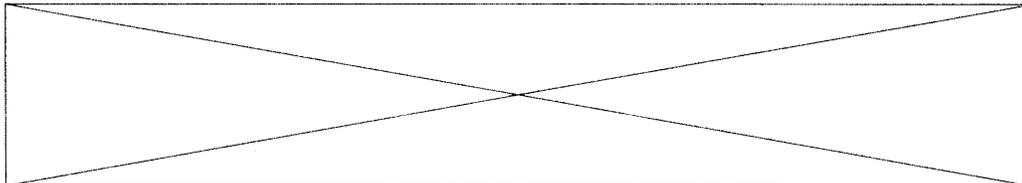
\*\*\*\*NOTE: The above is based on section 3 (F) of the model act, which refers to section 3 (C) and (D) of the model act, which correspond to pars. (c) and (d). However, the above is confusing, as pars. (c) (sample contract) and (d) (registration) are not financial security requirements. Even if pars. (c) and (d) were financial security requirements, what is the intent of the above? Please clarify your intent so that I can draft language that accomplishes your intent. RESPONSE: See revisions.

Deleted: j

(i) Contract return or cancellation. 1. Service contracts shall require the provider to permit the service contract holder to return the service contract within 20 days of the date the service contract was mailed to the service contract holder, or within 10 days of delivery if the service contract is delivered to the service contract holder at the time of sale, or within a longer time period permitted under

17

**ENGROSSED BILL**

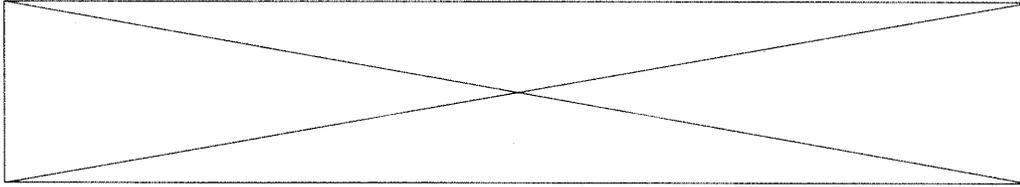


the service contract. Upon return of the service contract to the provider within the applicable time period, if no claim has been made under the service contract prior to its return to the provider, the service contract is void and the provider shall refund to the service contract holder, or credit the account of the service contract holder, with the full purchase price of the service contract. The right to void the service contract under this subdivision is not transferable and shall apply only to the original service contract purchaser, and only if no claim has been made prior to its return to the provider. If a provider does not pay or credit a refund within 45 days after the return of a service contract to the provider, the provider shall pay a 10 percent per month penalty which the provider shall add to amount of the refund.

✓ \*\*\*\*NOTE: I restructured the last sentence, so please make sure it achieves your intent. RESPONSE: OK.

2. Subsequent to the time period specified in subd. 1. for returning a service contract or, if a claim has been made under a service contract, within such time period, a service contract holder may cancel the service contract and the provider shall refund to the service contract holder 100 percent of the unearned pro rata provider fee, less any claims paid. A provider may charge a reasonable

ENGROSSED BILL



administrative fee for the cancellation, which may not exceed 10 percent of the gross provider fee paid by the service contract holder.

\*\*\*\*NOTE: I restructured the last sentence, so please make sure it achieves your intent. RESPONSE: OK.

✓  
\*\*\*\*NOTE: The model act also includes section 3 (H) (1), which states: "Provider fees collected on service contracts shall not be subject to premium taxes." Because a service contract is not subject to insurance law under chs. 600 to 646 (see s. 600.01 (1) (b) 12.), the Department of Revenue will not treat a service contract like an insurance policy that is subject to premium taxes. Therefore, the model act's language is not necessary. The model act also includes section 3 (H) (2), which states: "Premiums for reimbursement insurance policies shall be subject to applicable taxes." The foregoing is redundant and not necessary, as the state's tax law sets forth the requirements that will apply to the premiums. RESPONSE: We need this language in there for clarity. Too often Departments of Revenue will treat service contracts as insurance for tax purposes regardless of how they are treated for regulatory purposes. A prime example is that the IRS treats service contract provider fees as insurance premiums under the federal tax code. Accordingly, I have re-inserted this language.

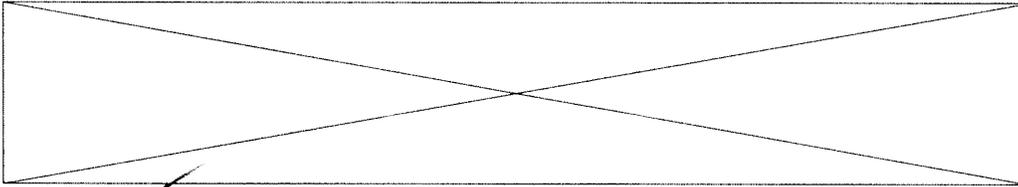
See  
JTK  
language

✓  
\*\*\*\*NOTE: The model act also includes section 3 (I), which exempts "providers and related service contract sellers, administrators, and other persons marketing, selling or offering to sell service contracts" from "any licensing requirements of this state," except for the registration requirements under par. (d). I did not include the foregoing because the reference to "any licensing requirements of this state" is overly broad. Note that s. 600.01 (1) (b) 12. exempts providers, sellers, and administrators of service contracts from insurance law requirements under chs. 600 to 646. Are there additional provisions of current law for which you want to create exemptions? RESPONSE: This is OK.

✓  
\*\*\*\*NOTE: As noted above, section 3 (I) of the model act exempts a "related" seller, administrator, or other person who markets, sells, or offers to sell a service contract. What do you mean by "related"? Must there be a specified relationship between the foregoing and provider for the foregoing to qualify for an exemption? Or does the language I created in s. 600.01 (1) (b) 12. satisfy your intent on this point? RESPONSE: This is fine.

⊗  
\*\*\*\*NOTE: The model act also includes section 3 (J), which states: "The marketing, sale, offering for sale, issuance, making, proposing to make and administration of service contracts by providers and related service contract sellers, administrators, and other persons shall be exempt from all other provisions of this

ENGROSSED BILL



~~state's insurance law." The foregoing is not necessary, as an exemption from insurance law requirements is created in s. 600.01 (1) (b) 2. RESPONSE: We need this in there to be absolutely clear that not only the people and entities involved exempt but also the activities associated with the industry.~~

~~(j) Premium Taxes. 1. Provider fees collected on service contracts shall not be subject to premium taxes.~~

~~2. Premiums for reimbursement insurance policies shall be subject to applicable taxes.~~

~~(k) The marketing, sale, offering for sale, issuance, making, proposing to make and administration of service contracts by providers and related service contract sellers, administrators, and other persons shall be exempt from all other provisions of this state's insurance law.~~

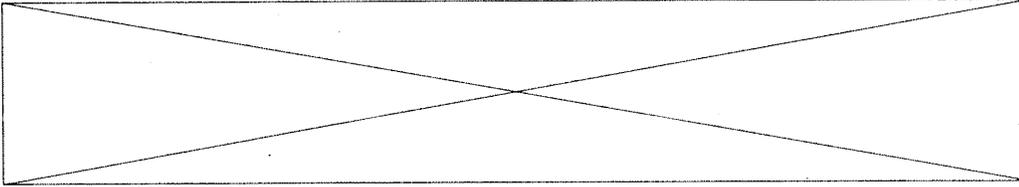
(4) REQUIRED DISCLOSURES. (a) Service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state shall be written, printed, or typed in clear, understandable language that is easy to read.

\*\*\*\*NOTE: The model act also says that service contracts "shall disclose the requirements set forth in this [subsection], as applicable." However, that language is not necessary and redundant. RESPONSE: OK.

(b) Service contracts insured under a reimbursement insurance policy pursuant to sub. (3) (f) shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are insured under a

→ JK language

ENGROSSED BILL



service contract reimbursement insurance policy.” The service contract shall also state the name and address of the insurer.

\*\*\*\*NOTE: You could eliminate arguments over whether a statement is in “substantially the following form” by specifying the exact language that must be used.  
RESPONSE: We are fine with the Model Act language.

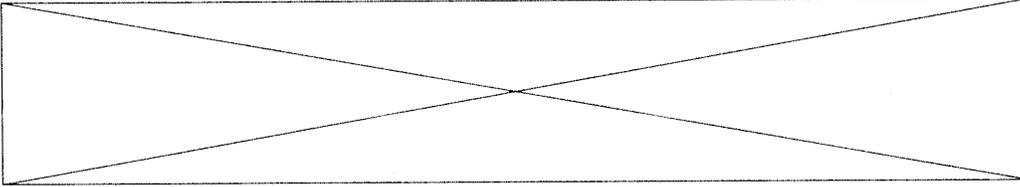
(c) Service contracts not insured under a reimbursement insurance policy pursuant to sub. (3) (f) shall contain a statement in substantially the following form: “Obligations of the provider under this service contract are backed by the full faith and credit of the provider.”

\*\*\*\*NOTE: What do you mean by “full faith and credit”? I think that concept is limited to governmental guarantees and is not appropriate for private contracts. Please elaborate on your intent so that I can revise the above language. RESPOND: This language is used in every other state regulating service contracts and it simply means that a provider's obligations which are not insured are backed by the full faith and credit of the provider itself.

(d) Service contracts shall state the name and address of the provider, and shall identify any administrator that is different from the provider, the service contract seller, and the service contract holder, if the name of the service contract holder has been furnished by the service contract holder. The identities of such parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale.

(e) Service contracts shall state the total purchase price and the terms under which service contract is sold. The purchase price is not required to be

**ENGROSSED BILL**



preprinted on the service contract and may be negotiated at the time of sale with the service contract holder.

(f) Service contracts shall identify any applicable deductible amount.

(g) Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

(h) Service contracts covering ~~motor vehicles~~ shall state whether the use of the ~~non~~original manufacturers' parts is allowed.

\*\*\*\*NOTE: Should the above refer to "motor vehicle" instead of "automobile"?

RESPONSE: Yes.

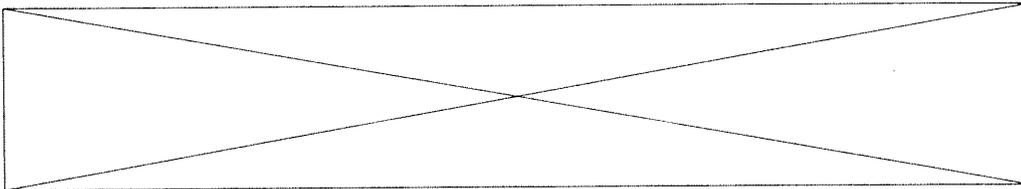
Deleted: automobiles

(i) Service contracts shall state any applicable restrictions governing the transferability of the service contract.

(j) Service contracts shall state the terms, restrictions, or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the provider or the service contract holder. The provider of the service contract shall mail a written notice to the service contract holder at the last known address of the service contract holder contained in the records of the provider at least 5 days prior to cancellation by the provider. Prior notice is not required if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation by the service

22

**ENGROSSED BILL**



contract holder to the provider, or a substantial breach of duties by the service contract holder relating to the covered product or its use. The notice shall state the effective date of the cancellation and the reason for the cancellation. If a service contract is cancelled by the provider for a reason other than nonpayment of the provider fee, the provider shall refund to the service contract holder 100 percent of the unearned pro rata provider fee, less any claims paid. A provider may charge a reasonable administrative fee for cancellation, which may not exceed 10 percent of the gross provider fee paid by the service contract holder.

✓ \*\*\*\*NOTE: I restructured the last sentence. Also, note that the last sentence allows a provider to charge an administrative fee if the provider cancels for any reason. Is that okay? RESPONSE: Yes.

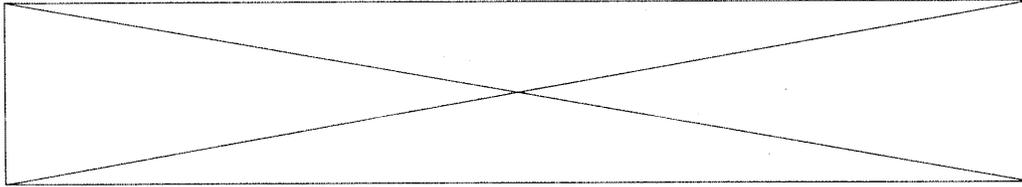
(k) Service contracts shall set forth all of the obligations and duties of the service contract holder, including the duty to protect against any further damage and any requirement to follow the owner's manual.

(L) Service contracts shall state whether or not the service contract provides for or excludes consequential damages or preexisting conditions. Service contracts may, but are not required to, cover damage resulting from rust, corrosion, or damage caused by a noncovered part or system.

✓ \*\*\*\*NOTE: Why is the 2nd sentence necessary? RESPONSE: To ensure that this type of coverage is permissible if disclosed in the contract.

23

**ENGROSSED BILL**



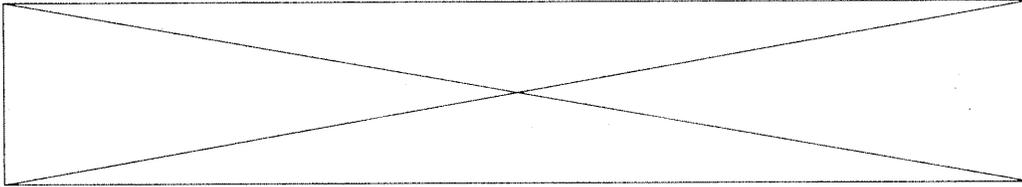
(5) PROHIBITED ACTS. (a) 1. A provider shall not use in its name the words "insurance," "casualty," "surety," or "mutual" or any other words descriptive of the insurance, casualty, or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other provider. The word "guaranty" or a similar word may be used by a provider.

2. Subdivision 1. does not apply to a provider that was using any language prohibited under subd. 1. in its name prior to the effective date of this subdivision .... [LRB inserts date]. Such a provider shall include in its service contracts a statement in substantially the following form: "This agreement is not an insurance contract."

(b) A provider or its representative shall not in its service contracts or literature make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted.

(c) A person, including a bank, savings and loan association, lending institution, manufacturer, or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.

ENGROSSED BILL



(d) A motor vehicle service contract provider or its representative shall not, directly or indirectly, represent in any manner, whether by written solicitation or telemarketing, a false, deceptive, or misleading statement with respect to any of the following:

✓ \*\*\*\*NOTE: Is it necessary to create a definition for "motor vehicle service contract," or, based on the definition of "service contract," will the meaning be clear? Note the term, "motor vehicle service contract," is also used in subd. 4. below.  
RESPONSE: Not necessary. The approach used in the draft has worked in all other states where this language has been enacted.

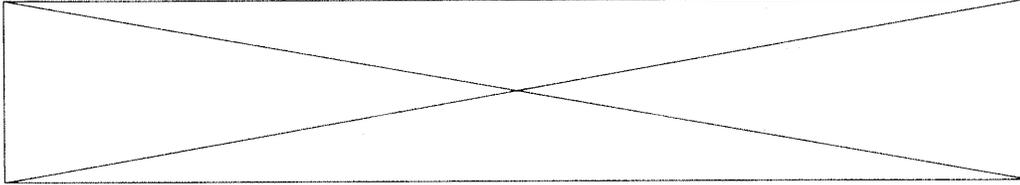
1. The provider's affiliation with a motor vehicle manufacturer.
2. The provider's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty.
3. The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty.
4. A requirement that a motor vehicle owner register for a new motor vehicle service contract with the provider in order to maintain coverage under the motor vehicle owner's current motor vehicle service contract or manufacturer's original equipment warranty.

(6) RECORD-KEEPING REQUIREMENTS. (a) 1. A provider shall keep accurate accounts, books, and records concerning transactions regulated under this section.

2. A provider's accounts, books, and records shall include all of the following:

25

**ENGROSSED BILL**



a. Copies of each type of service contract sold.

b. The name and address of each service contract holder that has furnished such information to the provider.

c. A list of the locations where service contracts are marketed, sold, or offered for sale in this state.

\*\*\*\*NOTE: Should the above be limited to locations in this state? RESPONSE:

Yes.

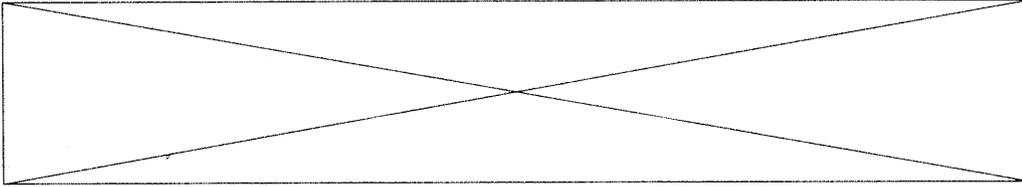
d. Written claims files which shall contain at least the dates and description of claims related to the service contracts.

3. Except as provided in par. (b), a provider shall retain all records required to be maintained under this paragraph for a service contract for at least one year after the period of coverage specified in the contract has expired.

\*\*\*\*NOTE: I revised the language in the model act to refer to the period of coverage specified in a service contract. RESPONSE: OK.

4. The records required under this paragraph may be, but are not required to be, maintained on a computer disk or other record-keeping technology. If the records are maintained in other than hard copy, the records shall be capable of duplication to legible hard copy at the request of the commissioner.

**ENGROSSED BILL**



(b) A provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to service contract holders in this state.

(7) ENFORCEMENT PROVISIONS. (a) The commissioner may conduct examinations of providers, administrators, insurers, or other persons to enforce the provisions of this section and protect service contract holders in this state. Upon request of the commissioner, a provider shall make all accounts, books, and records concerning service contracts sold by the provider available to the commissioner which are necessary to enable the commissioner to reasonably determine compliance with this section.

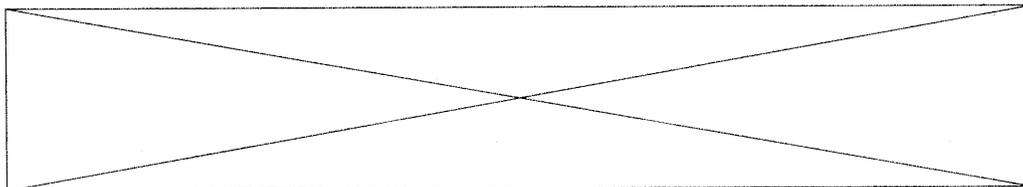
(b) The commissioner may take action which is necessary or appropriate to enforce the provisions of this section and the commissioner's rules and orders, and to protect service contract holders in this state.

✓ \*\*\*\*NOTE: In the model act, the language for pars. (c) to (e) below are included in the same paragraph as par. (b). RESPONSE: OK

(c) 1. If a provider has violated this section or the commissioner's rules or orders, the commissioner may issue an order directed to the provider to cease and desist from committing violations of this section or the commissioner's rules or orders; may issue an order prohibiting a service contract provider from selling or

27

ENGROSSED BILL



offering for sale service contracts in violation of this section; or may issue an order imposing a forfeiture that is subject to par. (e) on the provider, or any combination of the foregoing as the commission determines are applicable.

✓ \*\*\*\*NOTE: I changed the model act's "as applicable" to "as the commission determines are applicable." RESPONSE: OK.

✓ \*\*\*\*NOTE: The model act allows the commissioner to impose a "civil penalty," which is referred to as a "forfeiture" under current law. I added the reference to par. (e) to limit the amount that OCI may impose. Is that okay? Also note that any forfeitures that OCI collects will be deposited in the school fund, as required by article X, section 2, of the Wisconsin Constitution. RESPONSE: OK.

2. A person aggrieved by an order issued under subd. 1. may request a hearing before the commissioner. The hearing request shall be filed with the commissioner within 20 days of the date the commissioner's order is effective.

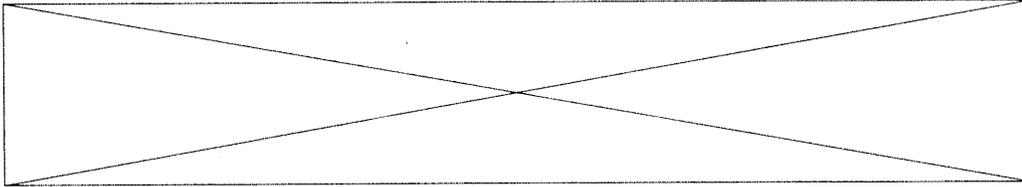
3. If a hearing is requested under subd. 2., an order issued by the commissioner under subd. 1. shall be suspended from the original effective date of the order until completion of the hearing and final decision of the commissioner.

4. At a hearing, the burden shall be on the commissioner to show why the order issued under subd. 1. is justified. Chapter 227 shall apply to a hearing requested under subd. 2.

(d) The commissioner may bring an action for an injunction or other appropriate relief to enjoin threatened or existing violations of this section or of

28

**ENGROSSED BILL**



the commissioner's orders or rules. An action filed under this paragraph may also seek restitution on behalf of persons aggrieved by a violation of this section or orders or rules of the commissioner.

(e) A person who violates this section or orders or rules of the commissioner is subject to a forfeiture of not more than \$500 per violation and not more than \$10,000 in the aggregate for all violations of a similar nature. For purposes of this paragraph, violations are of a similar nature if the violations consist of the same or similar course of conduct, action, or practice, irrespective of the number of times the act, conduct, or practice which is determined to violate this section occurred.

✓ \*\*\*\*NOTE: The model act refers to a "civil penalty," which is referred to as a "forfeiture" under Wisconsin law. The above limit on forfeitures applies to those imposed by OCI under par. (c) 1. or by a court. RESPONSE: OK.

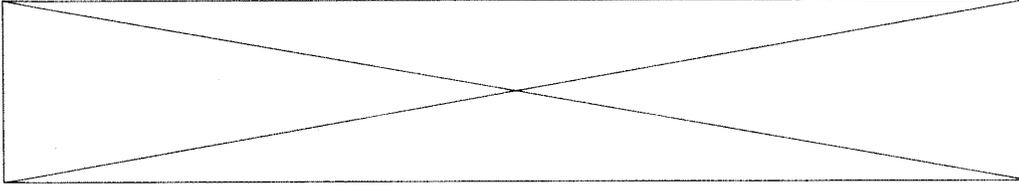
SECTION 2. 600.01 (1) (b) 12. of the statutes is created to read:

600.01 (1) (b) 12. Providers, sellers, or administrators of service contracts under s. 100.70.

✓ \*\*\*\*NOTE: The above is based on s. 600.01 (1) (b) 11., which exempts vehicle protection product warranties under s. 100.203 from insurance requirements. RESPONSE: OK. However, I have included additional language above to make sure we are not only exempting the players but also the product itself.

SECTION 3. 601.31 (1) (kr) of the statutes is created to read:

ENGROSSED BILL



601.31 (1) (kr) For processing and maintaining registration records under s. 100.70 (3) (d), a fee to be set by the commissioner by rule but not to exceed \$200 annually.

\*\*\*\*NOTE: The above is based on s. 600.31 (1) (km), which applies to registration fees that OCI collects for vehicle protection product warrantors. Note that the fees are credited to OCI's general program operations appropriation under s. 20.145 (1) (g) 1. RESPONSE: OK.

SECTION 4. 601.32 (1) of the statutes is amended to read:

601.32 (1) If the moneys credited to s. 20.145 (1) (g) 1. under other sections of the statutes prove inadequate for the office's supervision of insurance industry program, the commissioner may increase any or all of the fees imposed by s. 601.31, except s. 601.31 (1) (kr), or may in any year levy a special assessment on all domestic insurers, or both, for the general operation of that program.

\*\*\*\*NOTE: The above prohibits OCI from increasing service contract registration fees above \$200.

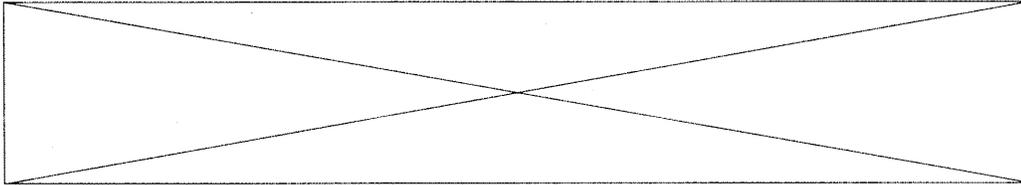
SECTION 5. 632.19 of the statutes is created to read:

**632.19 Service contract reimbursement insurance. (1)** In this section:

- (a) "Provider" has the meaning given in s. 100.70 (1) (h).
- (b) "Service contract" has the meaning given in s. 100.70 (1) (k)

(2) (a) A reimbursement insurance policy that insures service contracts and that is issued, sold, or offered for sale in this state shall state that the insurer

ENGROSSED BILL



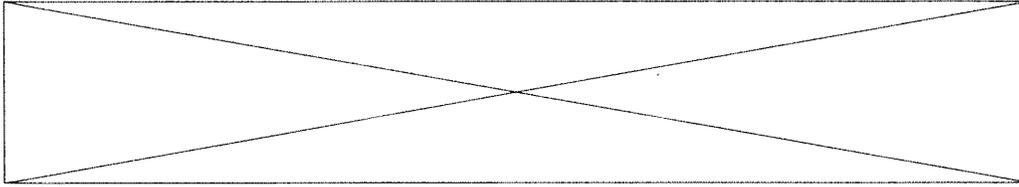
issuing the policy shall either reimburse or pay on behalf of the provider any covered sums that the provider is legally obligated to pay or shall, in the event of the provider's nonperformance, provide the service that the provider is legally obligated to perform in accordance with the provider's contractual obligations under service contracts issued or sold by the provider and covered by the reimbursement insurance policy.

\*\*\*\*NOTE: Does one reimbursement insurance policy cover all service contracts sold by the provider? RESPONSE: In some cases yes, in others there may be one provider with more than one policy covering different programs.

(b) Insurers issuing service contract reimbursement insurance to providers are considered to have received the premiums for that insurance upon payment by consumers of fees for service contracts issued by insured providers.

\*\*\*\*NOTE: This doesn't make any sense. The model language was written in the plural, making it even harder to understand what the meaning is. Does it mean that a service contract provider doesn't actually have to pay a premium for service contract reimbursement insurance, since the insurer is considered to have been paid for the insurance when consumers pay for service contracts? Or does it mean that a particular service contract is covered by the insurance when the consumer pays the contract fee? If the latter, it wouldn't seem necessary to have this language if a provider obtains one policy that covers all service contracts issued by the provider. That would be part of the insurance contract language, i.e., that the policy covers all contracts issued by the provider. Alternatively, you could say that a service contract is covered under the provider's reimbursement insurance policy when the consumer pays the fee for the service contract. That may be the more direct way of stating what the intention is. RESPONSE: This just means that the insurer is on the hook when the consumer pays the money for the service contract. It is an integral consumer protection measure and ensures that a service contract provider cannot abscond with the provider fees and leave the consumer holding the bag.

ENGROSSED BILL



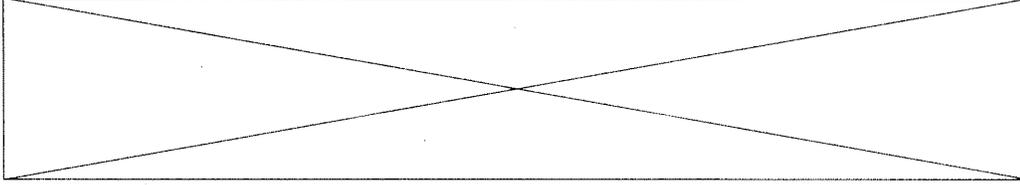
(c) If a provider does not provide, or reimburse or pay for, a service that is covered under a service contract within 60 days after a contract holder provides proof of loss, the contract holder may apply directly to the service contract reimbursement insurer for reimbursement, payment, or provision of the service.

(d) An insurer issuing a service contract reimbursement insurance policy may not terminate the policy in the manner provided in s. 631.36 until the insurer has provided a notice of termination to the commissioner. The termination of a reimbursement insurance policy shall not reduce the insurer's responsibility for service contracts issued by providers prior to the date of the termination.

\*\*\*\*NOTE: I'm not aware of any other type of insurance that requires termination notice to the commissioner before notice is sent to the policyholder. Generally, notice goes to the policyholder only. Section 655.24 (4) requires an insurer that terminates a health care liability insurance policy to notify the commissioner *after* termination of such a policy, but there may be a need to know since the fund under ch. 655 (Injured Patients and Families Compensation Fund) pays claims that exceed health care liability insurance limits of providers who carry insurance with at least the minimum required limits. Why would the commissioner need to know when a service contract reimbursement insurance policy is going to be terminated?  
RESPONSE: Because that provider's registration was contingent on the provider having insurance covering its obligations. If the insurance is terminated the registration should be pulled or the provider must demonstrate \$100 million net worth.

\*\*\*\*NOTE: I did not include the language about termination not reducing the reimbursement insurance insurer's responsibility for service contracts before termination of the insurance because that goes without saying and would be a provision of the insurance contract, i.e., whether the policy pays for claims that occur or that are made *while the policy is in effect*. RESPONSE: We want this in to ensure consumers are protected.

**ENGROSSED BILL**



(3) Nothing in this section or s. 100.70 prevents, or limits the right of, an insurer that issued a service contract reimbursement insurance policy to seek indemnification from or subrogation against a provider if the insurer pays or is obligated to pay the service contract holder any amount that the provider was obligated to pay under the service contract.

**SECTION 6. Initial applicability.**

(1) SERVICE CONTRACTS. The treatment of section 100.70 of the statutes first applies to service contracts that are issued, sold, or offered for sale, on the effective date of this subsection.

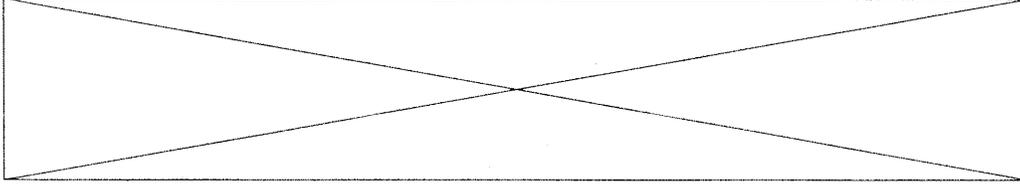
(2) REIMBURSEMENT INSURANCE.

(a) The treatment of section 632.19 (2) (a) of the statutes first applies to service contract reimbursement insurance policies that are issued or renewed on the effective date of this paragraph.

(b) If a service contract reimbursement insurance policy that is in effect on the effective date of this paragraph contains a provision that is inconsistent with section 632.19 (2) (b), (c), or (d) or (3) of the statutes, section 632.19 (2) (b), (c), or (d) or (3) of the statutes first applies to that insurance policy on the date on which it is renewed.

**SECTION 7. Effective date.**

ENGROSSED BILL



(1) This act takes effect on January 1, \_\_\_\_\_.

\*\*\*\*NOTE: The model act does not specify the year in which it takes effect. Do you want the bill to take effect on January 1, 2013? 2014? Or do you want to delay the bill by a period of time after its publication date, such as 3, 6, or 12 months after publication? RESPONSE: We would like to make the law effective as soon as possible after passage.

\*\*\*\*NOTE: Section 11 of the model act consists of the following: "If any provision at this Act, or the application of the provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to person or circumstances other than those as to which it is held invalid, shall not be affected." Such a severability provision is not necessary, as s. 990.001 (11), provides that the unconstitutionality of any provision of the statutes or of a session law does not affect other provisions that can be given effect independently of the unconstitutional provision if severing the unconstitutional portion does not foil the legislature's manifest intent. RESPONSE: OK

(END)

34

Superseded by  
LRB-2677/P2.1.3

**INSERT A-PJK-1**

One way for a provider to assure its performance under the service contracts that it issues is to insure all of its service contracts under a reimbursement insurance policy. The insurer issuing the policy must: 1) maintain surplus as to policyholders and paid-in capital of at least \$15,000,000, or 2) maintain surplus as to policyholders and paid-in capital of at least \$10,000,000 and demonstrate to the satisfaction of the commissioner that it maintains a ratio of net premiums written to surplus as to policyholders and paid-in capital of not greater than three to one. In addition, the insurer must annually file with the commissioner copies of its audited financial statements, its National Association of Insurance Commissioners annual statement, and any actuarial certification required by and filed in its domiciliary state.

(END OF INSERT A-PJK-1)

**INSERT A-PJK-2**

The bill provides that any service contract reimbursement insurance policy issued in this state must state that, with respect to service contracts covered under the policy, the insurer shall either reimburse or pay on behalf of the provider any covered sums that the provider is legally obligated to pay or shall provide the service that the provider is legally obligated to perform in accordance with the provider's contractual obligations. The bill provides that, if a provider does not reimburse for, or provide, a service that is covered under a service contract within 60 days after the holder of the service contract provides proof of loss to the provider, the holder may apply directly to the insurer issuing a reimbursement insurance policy that covers the service contract.

Under the bill, a reimbursement insurance policy may not be terminated until the insurer has provided notice of the termination to the commissioner. The bill provides that termination of a reimbursement insurance policy does not reduce the insurer's responsibility with respect to service contracts that were issued by a provider and covered under the policy before the policy was terminated.

(END OF INSERT A-PJK-2)

**INSERT 9-10**

1           (f) *Assurance of performance; insurance.* A provider may satisfy par. (e) by  
2           insuring all service contracts under a reimbursement insurance policy issued by an  
3           insurer that is authorized to do business in this state and that satisfies all of the  
4           following:

5           1. At the time the policy is filed with the commissioner under s. 631.20 and  
6           continuously thereafter, the insurer satisfies either of the following:

\*\*\*\*NOTE: I limited the filing to s. 631.20 because I'm not sure the policy is filed when rates are filed under s. 625.13. Additionally, rates must be filed within 30 days after use while forms must be filed before use, so the filings would not necessarily occur at the same time.

(END OF INSERT 9-10)

**INSERT 10-11**

- 1           2. The insurer annually files with the commissioner copies of all of the
- 2 following:
- 3           a. Its audited financial statements.
- 4           b. Its National Association of Insurance Commissioners annual statement.
- 5           c. Any actuarial certification required by and filed in the insurer's domiciliary
- 6 state, as defined in s. 600.03 (18).

(END OF INSERT 10-11)

**INSERT 21-19**

\*\*\*\*NOTE: I made this language singular, which I think makes it more understandable.

(END OF INSERT 21-19)

**INSERT 22-7**

- 7           2. The termination of a provider's service contract reimbursement insurance
- 8 policy does not reduce the insurer's responsibility with respect to service contracts
- 9 issued by the provider before the date of the termination.

\*\*\*\*NOTE: The implication from the above language is that all reimbursement insurance policies are written to cover any claim made under any service contract that is issued while the reimbursement insurance policy is in effect. Is this the actual case? Is it possible for a reimbursement insurance policy to be written to cover only claims made under a covered service contract while the policy is in effect? If so, subd. 2. above is incorrect. Also, should "and covered under the policy" be added after "issued by the provider"?

\*\*\*\*NOTE: I did not include any language about reimbursement insurers being subject to applicable taxes. They are, under subch. VII of ch. 71. It sets a bad precedent

to specify that a particular type of insurer is subject to applicable taxes. The implication is that subch. VII of ch. 71 does not apply to an insurer unless the statutes explicitly state somewhere in chs. 600 to 655 (the insurance chapters) that the insurer is subject to applicable taxes.

**(END OF INSERT 22-7)**