State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-2677/8
MDK&PJK:kjf&wlj:jm

2011 BILL

AN ACT ***to renumber*** subchapter II (title) of chapter 616 [precedes 616.71]; and ***to create*** 600.01 (1) (b) 12., 601.31 (1) (kr) and subchapter III of chapter 616 [precedes 616.50] of the statutes; **relating to:** regulating certain service contracts and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill imposes requirements on service contracts that are enforced by the Office of the Commissioner of Insurance (OCI). As discussed below, the bill defines the service contracts that are subject to the bill, creates exemptions from the bill's requirements, imposes requirements on providers of service contracts that are not exempt from the bill, and imposes other requirements.

Service contracts. The bill defines "service contract" as a contract or agreement for a separately stated consideration to perform, or provide indemnification for, the repair, replacement, or maintenance of property for the operational or structural failure of property that is due to a defect in materials or workmanship, accidental damage from handling, or normal wear and tear. The definition includes contracts or agreements with or without additional provisions for incidental payment of indemnity under limited circumstances, including towing, rental, and emergency road service and road hazard protection.

The bill specifies that a contract or agreement for the following is a service contract: 1) repair, replacement, maintenance, or indemnification for damage resulting from a power surge or interruption; 2) repair, replacement, or indemnification for the operational or structural failure of motor vehicle parts or

systems that is brought about by the failure of an additive product to perform as represented; 3) repair or replacement of motor vehicle tires or wheels that are damaged by road hazards; and 4) removal of motor vehicle dents, dings, or creases that can be repaired by specified processes. In addition, the bill specifies that a contract or agreement for repairing motor vehicle windshield chips or cracks is a service contract, but a contract or agreement for replacing an entire windshield is not a service contract. Also, the bill specifies that a contract or agreement for repairing damage to the interior components of a motor vehicle caused by wear and tear is a service contract, but a contract or agreement for replacing any part or component of a motor vehicle's interior is not a service contract.

Exemptions. The bill exempts certain service contracts from the bill's requirements. A service contract is exempt if any of the following are satisfied: 1) the service contract is sold or offered for sale to a person who is not a consumer; 2) the service contract is for an inside wire protection plan associated with the offering of telecommunications, video, cable programming, or Internet access service; or 3) the service contract is offered by a public utility on its devices for transmitting service to customers. However, the third exemption applies only to the extent that the service contract is regulated by the Public Service Commission.

The bill also exempts maintenance agreements and certain warranties from the bill's requirements. The bill defines "maintenance agreement" as a contract for a specified duration that provides for scheduled maintenance without including repair or replacement. The exemption for warranties covers warranties for certain products for preventing loss or damage to motor vehicles, as well as warranties for motor vehicle rustproofing, both of which are subject to regulation by OCI under current law. In addition, any other type of warranty is exempt if it satisfies all of the following: 1) the warranty is made solely by the manufacturer, importer, or seller of property or services without consideration; 2) the warranty is not negotiated or separated from the sale of the product or services; 3) the warranty is incidental to the sale of the product or services; and 4) the warranty guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures.

The bill also allows a person who holds a valid certificate of authority under OCI's rules regarding warranty plans to elect to either: 1) comply with the bill; or 2) exempt itself from the bill's requirements and continue to comply with those rules.

Regulation of providers. The bill regulates a "provider," which the bill defines as a person who is contractually obligated to the holder or purchaser of a service contract under the terms of the contract. Unless an exemption applies, the bill prohibits a person from acting as a provider without a license issued by OCI. An applicant for a license must pay an initial license fee of $400 and an annual $100 fee, unless OCI specifies different amounts by rule. An applicant must also submit copies of service contracts that it proposes to sell in the state. In addition, an applicant must provide documentation that the applicant does one of the following in order to assure performance of its obligations under the service contracts that it sells in the state: 1) obtains a reimbursement insurance policy that satisfies certain specified requirements; or 2) provides OCI with a deposit of securities, an irrevocable letter

of credit, or a combination of the foregoing, in specified amounts. The bill generally defines "reimbursement insurance policy" as an insurance policy issued to a provider that, in the event of the provider's nonperformance under its service contracts, will pay or perform on behalf of the provider all covered contractual obligations or services. To satisfy the requirements necessary to assure performance of the provider's obligations under its service contracts a reimbursement insurance policy must state that a service contract holder may file a claim with the insurer if the provider does not perform its obligations within 60 days after the service contract holder provides proof of loss; that the insurer will administer and pay claims if the provider or the provider's designated administrator fails to do so; and that the insurer may not terminate or refuse to renew the policy unless the insurer has provided at least 60 days' written notice to OCI before terminating or not renewing the policy.

The bill requires providers to do the following: 1) obtain OCI approval of service contracts and comply with requirements regarding contract language; 2) make specified disclosures in service contracts; 3) comply with requirements regarding cancellation of service contracts and refunds; 4) provide sample service contracts prior to purchase upon request; 5) provide receipts and copies of service contracts to purchasers; 6) subject to OCI's approval, include independent appraisal and compulsory arbitration provisions in service contracts; 7) comply with payment of claims requirements that apply to insurers under current law; and 8) comply with record-keeping requirements. The bill prohibits providers from using certain terms regarding insurance in the provider's name, unless the provider used an otherwise prohibited term in its name prior to the bill's effective date, in which case the bill requires the provider to disclose that its service contracts are not insurance contracts. In addition, the bill prohibits a provider from making communications about service contracts that are false or misleading. For motor vehicle service contracts, the bill prohibits false or misleading statements regarding original equipment warranties or affiliation with motor vehicle manufacturers.

Other requirements. The bill also does the following:

1. Allows, but does not require, a provider to appoint a person, whom the bill refers to as an "administrator," to be responsible for administering service contracts and complying with the bill's requirements. A provider is generally liable for acts of an administrator regarding administration of the provider's service contracts, except that the bill allows a provider to avoid liability for certain false or misleading communications made by an administrator in cards, documents, or advertisements. The bill also requires an applicant for licensure as a provider to identify any administrators that the applicant has appointed, and requires administrators to register with OCI.

2. Exempts motor vehicle manufacturers, as defined in the bill, who offer service contracts from the following: 1) licensing by OCI: 2) registering administrators; 3) providing sample service contracts prior to purchase upon request; 4) providing receipts and copies of service contracts to purchasers; 5) assuring performance of obligations by obtaining a reimbursement insurance policy

or providing OCI with a deposit of securities or an irrevocable letter of credit; and 6) complying with record-keeping requirements.

3. Exempts service contract sellers from licensure or registration. The bill generally defines a "service contract seller" as a person, including a real estate agent, who is engaged only in the selling or soliciting of a service contract.

4. Subjects administrators, service contract sellers, and representatives of providers to the prohibition on false or misleading communications that applies to providers.

5. Prohibits any person from requiring the purchase of a service contract as a condition of a loan or sale of property, except for a person buying or selling a home, who may condition the purchase or sale on the procurement of a service contract covering the home.

6. Allows OCI to enforce the bill's requirements in the same manner that OCI enforces other insurance requirements under current law, including allowing OCI to conduct examinations of providers, administrators, service contract sellers, and other persons, and allowing OCI to commence actions for injunctions and temporary restraining orders.

7. Subjects persons who violate the bill to the same penalties that apply under current law to other violations of insurance requirements. The penalties include forfeitures of not more than $1,000 and restitutionary forfeitures, as well as fines of not more than $10,000, imprisonment for not more than three years and six months, or both.

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

600.01 **(1)** (b) 12. Service contracts, as defined in s. 616.50 (11), or providers, service contract sellers, or administrators of service contracts under subch. III of ch. 616.

SECTION 2. 601.31 (1) (kr) of the statutes is created to read:

601.31 **(1)** (kr) For processing and maintaining license records under s. 616.54 (4), $400 upon initial licensure and $100 annually thereafter, unless the commission specifies a different amount by rule.

SECTION 3. Subchapter II (title) of chapter 616 [precedes 616.71] of the statutes is renumbered subchapter IV (title) of chapter 616 [precedes 616.71] of the statutes.

SECTION 4. Subchapter III of chapter 616 [precedes 616.50] of the statutes is created to read:

SUBCHAPTER III

PROPERTY SERVICE CONTRACTS

616.50 Definitions. In this subchapter:

(1) "Administration" includes any of the following activities performed on behalf of a provider:

(a) Approving or disapproving claims, paying claims, or controlling the claims adjustment process.

(b) Arranging for or controlling the purchase of insurance associated with the offering of service contracts.

(c) Maintaining records or submitting filings required under this subchapter on behalf of a provider.

(d) Collecting provider fees from service contract sellers and remitting the provider fees to the provider.

(2) "Administrator" means a person appointed by a provider under s. 616.54 (1) to be responsible for any or all of the administration of service contracts and compliance with this subchapter.

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

(4) "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.

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

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

(a) Manufactures or produces motor vehicles and sells motor vehicles under its own name or label.

(b) Is a subsidiary of the person that manufactures or produces motor vehicles.

(c) Is a corporation that owns 100 percent of the person that manufactures or produces motor vehicles.

(d) Manufactures or produces motor vehicles and sells motor vehicles under the trade name or label of another person that manufactures or produces motor vehicles.

(e) 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 that manufactures or produces motor vehicles and that sells motor vehicles under the licensor's trade name or label.

(7) "Nonoriginal manufacturer's parts" means replacement parts for property that are not made for or by the original manufacturer of the property.

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

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

(10) "Reimbursement insurance policy" means any of the following:

(a) A policy of insurance issued to a provider under the terms of the insured service contracts issued or sold by the provider that, in the event of the provider's or administrator's nonperformance, will pay or perform on behalf of the provider or

administrator all covered contractual obligations or services under the terms of the insured service contracts issued or sold by the provider.

(b) A policy of insurance issued to a provider that provides the coverage specified in par. (a) and additional coverage that does not conflict with par. (a).

(11) "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 of 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" includes a contract or agreement that provides for any of the following:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) The repair of motor vehicle windshield chips or cracks, but does not include the replacement of the entire windshield.

(f) The repair of damage to the interior components of a motor vehicle caused by wear and tear, but does not include the replacement of any part or component of a motor vehicle's interior.

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

(13) "Service contract seller" means a person, including a real estate agent, who is engaged only in the selling or soliciting of a service contract, but who is not acting as a provider or involved in the administration of service contracts.

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

616.52 Applicability. (1) This subchapter does not apply to any of the following:

(a) Warranties as defined in s. 616.50 (14) or s. 100.203 (1) (g) or 100.205 (1) (g).

(b) Maintenance agreements.

(c) Service contracts offered by public utilities on their devices for the transmission of public utility service to customers to the extent such service contracts are regulated by the public service commission.

(d) Service contracts sold or offered for sale to persons other than consumers.

(e) Service contracts for inside wire protection plans associated with the offering of telecommunications service, as defined in 196.01 (9m), video service, as defined in 66.0420 (2) (y), or Internet access service.

(2) Motor vehicle manufacturer's service contracts on the motor vehicle manufacturer's products are exempt from this subchapter, except for ss. 616.56 (1) to (3) and (6) to (16), 616.58, and 616.62, and motor vehicle manufacturers offering service contracts on the motor vehicle manufacturer's products are exempt from licensure under s. 616.54 (4).

(3) A person who holds a valid certificate of authority under s. Ins 15.01, Wis. Adm. Code may elect to do one of the following:

(a) Continue to operate in this state under the certificate of authority. If the person makes such an election, s. Ins 15.01, Wis. Adm. Code shall continue to apply to the person and this section shall not apply to the person.

(b) Apply for a license as a provider pursuant to s. 616.54 (4). If the person is licensed, this subchapter shall apply to the person and s. Ins 15.01, Wis. Adm. Code shall not apply to the person.

616.54 Requirements for doing business. **(1)** 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 subchapter. Except as provided in s. 616.58 (2) (b), a provider shall be liable for the acts of an administrator appointed by the provider to assist with the administration of the provider's service contracts to the extent such acts relate to the provider's service contracts offered in or from this state. No person may act as an

for any service contracts issued subsequent to licensure

administrator of service contracts sold in this state unless the person registers with the commissioner by providing the following information:

(a) The name, business address, and other information required by the commissioner for an employee or officer of the administrator that is designated by the applicant as the person responsible for the administration of service contracts in this state.

(b) The location of the administrator's home office.

(c) The names of the service contract providers for whom the administrator performs administration.

(2) 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:

(a) Provided a receipt for, or other written evidence of, the purchase of the service contract to the service contract holder.

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

(3) 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 subsection 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.

(4) LICENSURE. (a) No person may act as a provider in this state unless the commissioner issues a license to the person under par. (c).

(b) A person seeking to act as a provider in this state shall submit an application for licensure with the commissioner consisting of all of the following:

1. The applicant's name.

2. The applicant's full business address.

3. The applicant's telephone number.

4. The name and full business address of a person in this state designated for service of process.

5. A copy of the service contracts proposed to be sold in this state that comply with s. 616.56.

6. Documentation of compliance with sub. (5).

7. The names of any administrator appointed by the applicant to assist with the administration of the provider's service contract business in this state.

8. An initial licensure fee in the amount specified in s. 601.31 (1) (kr).

(c) Upon receipt of an application that complies with par. (b) as determined by the commissioner, the commissioner shall issue a license to the applicant.

(d) The information submitted with an applicant's application for licensure need only be updated by written notification to the commissioner if material changes occur in the license application on file with the commissioner.

(e) By March 31 of each year after issuance of a license under par. (c), a provider shall pay the commissioner an annual fee in the amount specified in s. 601.31 (1) (kr).

(5) ASSURANCE OF PERFORMANCE; IN GENERAL. In order to assure the faithful performance of a provider's obligations to its service contract holders, each provider shall be responsible for complying with the requirements specified in sub. (6) or (7).

(6) ASSURANCE OF PERFORMANCE; INSURANCE. (a) A provider may satisfy sub. (5) by insuring all service contracts under a reimbursement insurance policy that has

been filed with and approved by the commissioner under s. 631.20, that is issued by an insurer authorized to do business in this state, and that satisfies, at a minimum, all of the following:

1. The policy states that, if the provider covered under the policy does not provide, or reimburse or pay for, a service that is covered under a service contract insured under the policy within 60 days after a service contract holder provides proof of loss, or in the event of the provider's insolvency or other financial impairment, the service contract holder may file a claim with the insurer issuing the reimbursement insurance policy for reimbursement, payment, or provision of the service.

2. The policy states that the insurer issuing the policy shall assume full responsibility for administering and paying claims and other obligations under service contracts insured under the policy if the provider or designated administrator fails to do so.

3. The policy states that the insurer issuing the policy may not terminate or refuse to renew the policy unless the insurer has provided a written notice of termination or nonrenewal to the commissioner at least 60 days before the date of the termination or, in the case of nonrenewal, the expiration of the policy.

(b) If a reimbursement insurance policy by which a provider is satisfying this subsection is terminated, cancelled, or not renewed for any reason, or if the insurer issuing the policy is not in compliance with applicable financial standards, all of the following apply:

1. The provider shall immediately notify the commissioner of the termination, cancellation, or nonrenewal of the policy, if applicable.

2. The provider shall cease selling service contracts in this state until the provider either files with the commissioner a new reimbursement insurance policy

that covers its obligations under service contracts sold in the state and that satisfies the requirements under par. (a) or provides a deposit or irrevocable letter of credit in accordance with sub. (7).

3. If the commissioner so requests, the provider shall file with the commissioner copies of its audited financial statements or financial statements that are certified as accurate by a corporate officer of the provider if the provider does not have audited financial statements.

(c) An insurer issuing a reimbursement insurance policy to a provider is considered to have received the premium for that insurance policy upon payment by a consumer of the fee for a service contract issued by the insured provider.

(d) The termination or nonrenewal of a provider's reimbursement insurance policy does not reduce the insurer's responsibility with respect to service contracts issued by the provider before the date of the termination or, in the case of nonrenewal, the expiration of the policy.

(e) Nothing in this subsection prevents, or limits the right of, an insurer that issued a 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.

(7) ASSURANCE OF PERFORMANCE; DEPOSIT OR IRREVOCABLE LETTER OF CREDIT. (a) A provider may satisfy sub. (5) by providing security to compensate any service contract holder who sustains a loss due to the failure of the provider to perform its obligations under a service contract as a result of insolvency or other financial impairment. The commissioner shall approve the amount and form of the security.

(b) The security under this subsection shall be in one or a combination of the following forms:

1. A deposit of securities under s. 601.13 for the benefit of Wisconsin consumers.

2. An irrevocable letter of credit that is from a bank properly chartered by the federal government or any state, that is acceptable to the commissioner, and that is issued for a term of at least 5 years with provision for renewal 2 years before termination. The letter of credit shall be payable to the commissioner or the commissioner's designee for the benefit of Wisconsin consumers upon a finding by the commissioner that a provider is insolvent or financially impaired and unable to meet its obligations under service contracts issued in Wisconsin. The provider shall notify the commissioner in writing of the nonrenewal of a letter of credit within 30 days after receiving a notice of nonrenewal. No provider whose letter of credit has been nonrenewed may offer or sell or renew any service contract on or after the date of nonrenewal until the provider obtains security satisfying the requirements of this subsection or satisfies the requirements of sub. (6).

one of the following (i)

(c) The security under this subsection shall be not less than $50,000 plus ~~22.5~~ 1 percent of the provider fees collected from service contract holders for all unexpired service contracts in force in Wisconsin on January 1 of each year:

1. If the provider has not appointed an administrator under s. 616.54 (1), 15 percent.

2. If the provider has appointed an administrator under s. 616.54 (1), 22.5 percent.

(d) The security under this subsection shall continue until released by the commissioner pursuant to a finding that it is not necessary for the reasonable protection of Wisconsin consumers.

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(8) FINANCIAL STATEMENTS. A provider using a deposit or irrevocable letter of credit as specified in sub. (7) to satisfy sub. (5) shall, by the end of the 5th month following the end of each fiscal year of the provider, submit financial statements for the fiscal year to the commissioner that are prepared on an accrual basis in accordance with generally accepted accounting principles and that are audited by an independent certified public accountant.

(9) COMMISSIONER LIMITATION. Except for the requirements specified in sub. (5), no other financial security requirements shall be required by the commissioner for providers.

(10) PAYMENT OF CLAIMS. A provider shall be subject to and shall pay claims under a service contract in accordance with s. 628.46 (1) and (2).

(11) SERVICE CONTRACT SELLERS. A service contract seller is not subject to licensure or registration under this subchapter.

616.56 Form filing and required disclosures. (1) A service contract may not be marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state unless the service contract has been filed with and approved by the commissioner in a manner and format prescribed by the commissioner. Service contracts shall be filed in the final printed format or typed facsimile exactly as they will be offered for issuance or delivery in this state.

(2) Service contracts shall be written, printed, or typed in commonly understood language, shall be legible, appropriately divided, and captioned by their various sections, and their various sections shall be presented in a meaningful sequence. Contract filings shall be accompanied by a certificate of compliance and readability signed by an officer of the provider or administrator submitting the contract for review and approval.

(3) Service contracts shall contain the following statement printed in bold and capitalized type: "THIS CONTRACT IS SUBJECT TO LIMITED REGULATION BY THE OFFICE OF THE COMMISSIONER OF INSURANCE."

(4) Service contracts insured under a reimbursement insurance policy pursuant to s. 616.54 (6) shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy." The service contract shall state the name and address of the insurer; state that 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, or if the provider becomes insolvent or otherwise financially impaired, the contract holder may file a claim directly with the service contract reimbursement insurer for reimbursement, payment, or provision of the service; and state the instructions on how to file a claim.

(5) Service contracts not insured under a reimbursement insurance policy pursuant to s. 616.54 (6) 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."

(6) 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.

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

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

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

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

(10) Service contracts covering motor vehicles shall state whether the use of nonoriginal manufacturers' parts is allowed.

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

(12) Service contracts shall state the terms, restrictions, or conditions governing cancellation of the service contract by the provider prior to the termination or expiration date of the service contract. A service contract may be cancelled by a provider only for nonpayment of the provider fee, material misrepresentation by the contract holder to the provider or administrator, or substantial breach of duties by the service contract holder relating to the covered product or its use. A provider shall comply with all of following when cancelling a service contract:

(a) The provider 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.

(b) The notice under par. (a) shall state the effective date of the cancellation and the reason for the cancellation.

(c) 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.

(d) A provider may charge a reasonable administrative fee for cancellation, which may not exceed 10 percent of the provider fee.

(13) 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.

(14) 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.

(15) 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 period permitted under the service contract. Upon return of the service contract to the provider within the applicable 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, the full purchase price of the service contract. Unless otherwise stated in a service contract, the right to void a service contract under this paragraph is not transferable and shall apply only to the original service contract purchaser. 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 of the refund amount outstanding which the provider shall add to amount of the refund.

(16) Service contracts shall provide that, subsequent to the period specified in sub. (15) for voiding a service contract or if a claim has been made under a service contract within such 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 administrative fee for the cancellation, which may not exceed 10 percent of the provider fee.

shall be subject to s. 631.85

(17) A service contract ~~may contain provision for independent appraisal and compulsory arbitration, subject to sub. (1). If an approved service contract provides for application to a court of record for the appointment of a disinterested appraiser, arbitrator, or umpire, any court of record of this state except the court of appeals or the supreme court may be requested to make an appointment. Upon appropriate request, the court shall make the appointment promptly.~~

(18) In the event of a total loss of property covered by a service contract that is not covered by a replacement of the property pursuant to the terms of the contract, a service contract holder shall be entitled to cancel the service contract and receive a pro rata refund of any unearned provider fee, less any claims paid.

616.58 Prohibited acts. (1) (a) A provider shall not use in its name used in this state 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.

(b) Paragraph (a) does not apply to a provider that was using any language prohibited under par. (a) in its name used in this state prior to the effective date of

this paragraph .... [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."

(2) (a) No provider, administrator, service contract seller, or provider's representative may make or cause to be made any communication relating to a service contract, the service contract business, insurance business, any insurer, any administrator, or any provider that contains false or misleading information, including information that is misleading due to incompleteness. Filing a report and, with intent to deceive a person examining it, making a false entry in a record or intentionally refraining from making a proper entry, are "communications" within the meaning of this paragraph. No provider or administrator may use any business name, slogan, emblem, or related device that is misleading or likely to cause the provider or administrator to be mistaken for another provider or administrator already in business.

(b) If an administrator or representative of a provider distributes cards or documents, exhibits a sign, or publishes an advertisement that violates par. (a), having reference to a particular provider that the administrator or representative represents, such violation creates a rebuttable presumption that the violation was also committed by the provider.

(3) 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, except that a person buying or selling a home may condition the purchase or sale of the home on the seller's or buyer's procurement of a service contract that covers the home.

(4) 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:

(a) The provider's affiliation with a motor vehicle manufacturer.

(b) The provider's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty.

(c) The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty.

(d) A requirement that a motor vehicle owner purchase 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.

616.60 Record-keeping requirements. (1) (a) A provider shall keep accurate accounts, books, and records concerning transactions regulated under this subchapter.

(b) A provider's accounts, books, and records shall include all of the following:

1. Copies of each type of service contract sold.

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

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

4. Written claims files that shall contain at least the dates, descriptions, and amounts paid or denied for claims related to the service contracts.

5. The effective date, expiration date, name of the seller, and provider fee paid for each service contract sold in this state.

(c) Except as provided in sub. (2), a provider shall retain all records required to be maintained under this subsection for a service contract for at least one year after the period of coverage specified in the contract has expired.

(d) The records required under this subsection 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 electronic copy or legible hard copy at the request of the commissioner.

(2) 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.

616.62 Enforcement. (1) The commissioner may conduct examinations of providers, administrators, servicer contract sellers, or other persons under ss. 601.43 to 601.45 to enforce the provisions of this subchapter 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 or on behalf of the provider available to the commissioner which are necessary to enable the commissioner to reasonably determine compliance with this subchapter.

(2) The commissioner may take any action under ss. 601.41 and 601.61 to 601.73 that is necessary or appropriate to enforce the provisions of this subchapter and the commissioner's rules and orders and to protect service contract holders in this state. The commissioner may subject a provider to any reporting and replying requirement under s. 601.42.

SECTION 5. Initial applicability.

INSERT 22-24

(1) SERVICE CONTRACTS. The treatment of subchapter III of chapter 616 of the statutes first applies to service contracts that are issued, sold, or offered for sale, on the effective date of this subsection.

(END)

INSERT 23-3

INSERT 14-16:

1. If the provider has not appointed an administrator under s. 616.54(1), 15 percent of the provider fees collected from service contract holders for all unexpired service contracts in force in Wisconsin on January 1 of each year.

2. If the provider has appointed an administrator under s. 616.54(1), 22.5 percent of the provider fees collected from service contract holders for all unexpired service contracts in Wisconsin on January 1 of each year.

INSERT 22-24:

SECTION #. 628.02 (1) (b) 9. of the statutes is created to read:

628.02 **(1)** (b) 9. A person whose activities are limited to the marketing, selling, or offering for sale a warranty contract, as defined in s. Ins 15.01 (4) (d), Wis. Adm. Code, maintenance agreement, as defined in s. 616.50 (5), or service contract, as defined in s. 616.50 (11).

INSERT 23-3:

(CS) → MARKETING

(#) INSURANCE ~~MARKETING~~ INTERMEDIARIES. The treatment of section 628.02 (1) (b) 9. of the statutes first applies to activities that take place on the effective date of this subsection.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2844/4dn
MDK:...
WY
2677

Date

Rep. Nygren:

This version is identical to the previous version, except that it makes the changes requested in Brooke Froelich's email to me dated February 13, 2012. In addition to those changes, I created an initial applicability provision for the treatment of s. 628.02 (1) (b) 9.

proposed

Note that one of the changes is proposed s. 616.56 (17), which is revised to say: "A service contract shall be subject to s. 631.85." I understand that the intent of this language is to require OCI to approve independent appraisal or compulsory arbitration provisions in service contracts based on the criteria set forth in s. 631.20 (2). This results because s. 631.85 has a cross-reference to s. 631.20.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2677/4dn
MDK:wlj:jf

February 15, 2012

Rep. Nygren:

This version is identical to the previous version, except that it makes the changes requested in Brooke Froelich's e-mail to me dated February 13, 2012. In addition to those changes, I created an initial applicability provision for the treatment of proposed s. 628.02 (1) (b) 9.

Note that one of the changes is proposed s. 616.56 (17), which is revised to say: "A service contract shall be subject to s. 631.85." I understand that the intent of this language is to require OCI to approve independent appraisal or compulsory arbitration provisions in service contracts based on the criteria set forth in s. 631.20 (2). This results because s. 631.85 has a cross-reference to s. 631.20.

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State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-2677/4
MDK&PJK:kjf&wlj:jf

2011 ASSEMBLY BILL 571

Before changes

February 16, 2012 - Introduced by Representatives NYGREN, LEMAHIEU, BIES and A. OTT, cosponsored by Senator OLSEN. Referred to Committee on Insurance.

AN ACT ***to renumber*** subchapter II (title) of chapter 616 [precedes 616.71]; and ***to create*** 600.01 (1) (b) 12., 601.31 (1) (kr), subchapter III of chapter 616 [precedes 616.50] and 628.02 (1) (b) 9. of the statutes; **relating to:** regulating certain service contracts and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill imposes requirements on service contracts that are enforced by the Office of the Commissioner of Insurance (OCI). As discussed below, the bill defines the service contracts that are subject to the bill, creates exemptions from the bill's requirements, imposes requirements on providers of service contracts that are not exempt from the bill, and imposes other requirements.

Service contracts. The bill defines "service contract" as a contract or agreement for a separately stated consideration to perform, or provide indemnification for, the repair, replacement, or maintenance of property for the operational or structural failure of property that is due to a defect in materials or workmanship, accidental damage from handling, or normal wear and tear. The definition includes contracts or agreements with or without additional provisions for incidental payment of indemnity under limited circumstances, including towing, rental, and emergency road service and road hazard protection.

The bill specifies that a contract or agreement for the following is a service contract: 1) repair, replacement, maintenance, or indemnification for damage resulting from a power surge or interruption; 2) repair, replacement, or indemnification for the operational or structural failure of motor vehicle parts or

SECTION 3. Subchapter II (title) of chapter 616 [precedes 616.71] of the statutes is renumbered subchapter IV (title) of chapter 616 [precedes 616.71] of the statutes.

SECTION 4. Subchapter III of chapter 616 [precedes 616.50] of the statutes is created to read:

SUBCHAPTER III

PROPERTY SERVICE CONTRACTS

616.50 Definitions. In this subchapter:

(1) "Administration" includes any of the following activities performed on behalf of a provider:

(a) Approving or disapproving claims, paying claims, or controlling the claims adjustment process.

(b) Arranging for or controlling the purchase of insurance associated with the offering of service contracts.

(c) Maintaining records or submitting filings required under this subchapter on behalf of a provider.

(d) Collecting provider fees from service contract sellers and remitting the provider fees to the provider.

(2) "Administrator" means a person appointed by a provider under s. 616.54 (1) to be responsible for any or all of the administration of service contracts and compliance with this subchapter.

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

(4) "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.

(d) The records required under this subsection 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 electronic copy or legible hard copy at the request of the commissioner.

(2) 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.

616.62 Enforcement. (1) The commissioner may conduct examinations of providers, administrators, servicer contract sellers, or other persons under ss. 601.43 to 601.45 to enforce the provisions of this subchapter 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 or on behalf of the provider available to the commissioner which are necessary to enable the commissioner to reasonably determine compliance with this subchapter.

(2) The commissioner may take any action under ss. 601.41 and 601.61 to 601.73 that is necessary or appropriate to enforce the provisions of this subchapter and the commissioner's rules and orders and to protect service contract holders in this state. The commissioner may subject a provider to any reporting and replying requirement under s. 601.42.

SECTION 5. 628.02 (1) (b) 9. of the statutes is created to read:

628.02 **(1)** (b) 9. A person whose activities are limited to marketing, selling, or offering for sale a warranty contract, as defined in s. Ins 15.01 (4) (d), Wis. Adm. Code, maintenance agreement, as defined in s. 616.50 (5), or service contract, as defined in s. 616.50 (11).

SECTION 6. Initial applicability.

(1) SERVICE CONTRACTS. The treatment of subchapter III of chapter 616 of the statutes first applies to service contracts that are issued, sold, or offered for sale, on the effective date of this subsection.

(2) INSURANCE MARKETING INTERMEDIARIES. The treatment of section 628.02 (1) (b) 9. of the statutes first applies to activities that take place on the effective date of this subsection.

(END)

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-2677/4
MDK&PJK:kjf&wlj:jf

2011 ASSEMBLY BILL 571

CORRECTED COPY

February 16, 2012 - Introduced by Representatives NYGREN, LEMAHIEU, BIES and A. OTT, cosponsored by Senator OLSEN. Referred to Committee on Insurance.

AN ACT ***to renumber*** subchapter II (title) of chapter 616 [precedes 616.71]; and ***to create*** 600.01 (1) (b) 12., 601.31 (1) (kr), subchapter III of chapter 616 [precedes 616.50] and 628.02 (1) (b) 9. of the statutes; **relating to:** regulating certain service contracts and granting rule-making authority.

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Service contracts. The bill defines "service contract" as a contract or agreement for a separately stated consideration to perform, or provide indemnification for, the repair, replacement, or maintenance of property for the operational or structural failure of property that is due to a defect in materials or workmanship, accidental damage from handling, or normal wear and tear. The definition includes contracts or agreements with or without additional provisions for incidental payment of indemnity under limited circumstances, including towing, rental, and emergency road service and road hazard protection.

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move to p 22

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(2) "Administrator" means a person appointed by a provider under s. 616.54 (1) to be responsible for any or all of the administration of service contracts and compliance with this subchapter.

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

(4) "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.

(d) The records required under this subsection 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 electronic copy or legible hard copy at the request of the commissioner.

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SECTION 6. Initial applicability.

State of Wisconsin
2011 - 2012 LEGISLATURE

CORRECTED COPY

LRB-2677/4
MDK&PJK:kjf&wlj:jf

02-28-2012 After Changes

Corrections made by KJK

2011 ASSEMBLY BILL 571

February 16, 2012 - Introduced by Representatives NYGREN, LEMAHIEU, BIES and A. OTT, cosponsored by Senator OLSEN. Referred to Committee on Insurance.

AN ACT ***to renumber*** subchapter II (title) of chapter 616 [precedes 616.71]; and ***to create*** 600.01 (1) (b) 12., 601.31 (1) (kr), subchapter III of chapter 616 [precedes 616.50] and 628.02 (1) (b) 9. of the statutes; **relating to:** regulating certain service contracts and granting rule-making authority.

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

(4) "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.

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

are maintained in other than hard copy, the records shall be capable of duplication to electronic copy or legible hard copy at the request of the commissioner.

(2) 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.

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(END)