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2011 BILL

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1 AN ACT *to amend* 601.41 (1), 601.43 (1) (a), 601.64 (1), 601.64 (3) (a), 601.64 (3)
2 (c) and 601.64 (4); and *to create* 100.70, 600.01 (1) (b) 12. and 601.31 (1) (kr)
3 of the statutes; **relating to:** regulating certain service contracts, granting
4 rule-making authority, and providing penalties.

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

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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. → insert 2-A

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; or 2) the service contract is offered by a public utility on its devices for transmitting service to customers. However, the second 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 is acting on the effective date of the bill as a warranty plan or warranty plan administrator under rules promulgated by OCI to elect to either: 1) comply with the bill; or 2) exempt itself from the bill's requirements and continue to comply with OCI's rules regarding warranty plans and warranty plan administrators. If such a person elects to comply with the bill, the person must apply for a license as a provider, which is described below, before the bill goes into effect, which is approximately one year after the bill is enacted.

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:

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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) condition arbitration clauses in service contracts on mutual agreement to arbitration; 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 liable for violations of the bill that are committed by an administrator appointed by the provider, 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)

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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. → insert 4-A

6. Allows OCI to enforce the bill's requirements in the same manner that OCI enforces 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 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.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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:

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

2 **100.70 Service contracts. (1) DEFINITIONS.** In this section:

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

5 1. Approving or disapproving claims, paying claims, or controlling the claims
6 adjustment process.

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1 2. Arranging for or controlling the purchase of insurance associated with the
2 offering of service contracts.

3 3. Maintaining records or submitting filings required under this section on
4 behalf of a provider.

5 4. Collecting provider fees from service contract sellers and remitting the
6 provider fees to the provider.

7 (b) "Administrator" means a person appointed by a provider under sub. (3) (a)
8 to be responsible for any or all of the administration of service contracts and
9 compliance with the section.

10 (c) "Commissioner" means the commissioner of insurance.

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

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

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

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

21 2. Is a subsidiary of the person that manufactures or produces motor vehicles.

22 3. Is a corporation that owns 100 percent of the person that manufactures or
23 produces motor vehicles.

24 4. Manufactures or produces motor vehicles and sells motor vehicles under the
25 trade name or label of another person that manufactures or produces motor vehicles.

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1 5. Does not manufacture or produce motor vehicles but, pursuant to a written
2 contract, licenses the use of its trade name or label to another person that
3 manufactures or produces motor vehicles and that sells motor vehicles under the
4 licensor's trade name or label.

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

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

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

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

11 1. A policy of insurance issued to a provider under the terms of the insured
12 service contracts issued or sold by the provider that, in the event of the provider's or
13 administrator's nonperformance, will pay or perform on behalf of the provider or
14 administrator all covered contractual obligations or services under the terms of the
15 insured service contracts issued or sold by the provider.

16 2. A policy of insurance issued to a provider that provides the coverage specified
17 in subd. 1. and additional coverage that does not conflict with subd. 1.

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

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1 road service and road hazard protection. "Service contract" includes a contract or
2 agreement that provides for any of the following:

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

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

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

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

17 5. The repair of motor vehicle windshield chips or cracks, but does not include
18 the replacement of the entire windshield.

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

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

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

4 (n) "Warranty" means a warranty made solely by the manufacturer, importer,
5 or seller of property or services without consideration, that is not negotiated or
6 separated from the sale of the product or services, that is incidental to the sale of the
7 product or services, and that guarantees indemnity for defective parts, mechanical
8 or electrical breakdown, labor, or other remedial measures, such as repair or
9 replacement of the property or repetition of services.

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

- 11 1. Warranties as defined in sub. (1) (n) or s. 100.203 (1) (g) or 100.205 (1) (g).
- 12 2. Maintenance agreements.
- 13 3. Service contracts offered by public utilities on their devices for the
14 transmission of public utility service to customers to the extent such service
15 contracts are regulated by the public service commission.
- 16 4. Service contracts sold or offered for sale to persons other than consumers.

17 (b) Motor vehicle manufacturer's service contracts on the motor vehicle
18 manufacturer's products are exempt from this section, except for subs. (4) (a) to (c)
19 and (f) to (p), (5), and ~~(7)~~⁸, and motor vehicle manufacturers offering service contracts
20 on the motor vehicle manufacturer's products are exempt from licensure under sub.
21 (3) (d).

22 (c) A person acting on the effective date of this paragraph [LRB inserts date],
23 as a warranty plan or warranty plan administrator under s. INS 15.01, Wis. Adm.
24 Code may elect to do one of the following:

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1 1. Continue to operate in this state as such a warranty plan or warranty plan
2 administrator. If the person makes such an election, s. INS 15.01, Wis. Adm. Code
3 shall continue to apply to the person and this section shall not apply to the person.

4 2. Apply for a license as a provider pursuant to sub. (3) (d) 2. If the person
5 applies for a license, this section shall apply to the person and s. INS 15.01, Wis. Adm.
6 Code shall not apply to the person.

7 **(3) REQUIREMENTS FOR DOING BUSINESS.** (a) *Appointment of administrator.* A
8 provider may, but is not required to, appoint an administrator to be responsible for
9 any or all of the administration of service contracts and compliance with this section.
10 Except as provided in sub. (5) (b) 2., a provider is liable for any violations of this
11 section committed by an administrator appointed by the provider. No person may
12 act as an administrator of service contracts sold in this state unless the person
13 registers with the commissioner by providing the following information:

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

18 2. The location of the administrator's home office.

19 3. The names of the service contract providers for whom the administrator
20 performs administration.

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

24 1. Provided a receipt for, or other written evidence of, the purchase of the
25 service contract to the service contract holder.

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1 2. Provided a copy of the service contract to the service contract holder within
2 a reasonable period of time from the date of purchase.

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

9 (d) *Licensure.* 1. Except as provided in subd. 2., no person may act as a provider
10 in this state unless the commissioner issues a license to the person under subd. 4.

11 2. A person acting on the effective date of this subdivision [LRB inserts date],
12 as a warranty plan or warranty plan administrator under s. INS 15.01, Wis. Adm.
13 Code, and that, no later than the first day of the 13th month beginning after the
14 effective date of this subdivision [LRB inserts date], submits an application for
15 licensure under subd. 3. may continue to act as such a warranty plan or warranty
16 plan administrator until the commissioner takes final action on the application. For
17 purposes of this subdivision, an action is final if the action has been finally
18 determined on appeal, if all time for filing an appeal or petition for review with
19 respect to the action has expired, or if the action is not subject to judicial review.

20 3. A person seeking to act as a provider in this state shall submit an application
21 for licensure with the commissioner consisting of all of the following:

- 22 a. The applicant's name.
- 23 b. The applicant's full business address.
- 24 c. The applicant's telephone number.

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

3 e. A copy of the service contracts proposed to be sold in this state that comply
4 with sub. (4).

5 f. Documentation of compliance with par. (e).

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

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

9 4. Upon receipt of an application that complies with subd. 3. as determined by
10 the commissioner, the commissioner shall issue a license to the applicant.

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

14 6. Each year after issuance of a license under subd. 4., a provider shall pay the
15 commissioner an annual fee in the amount specified in s. 601.31 (1) (kr).

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

19 (f) *Assurance of performance; insurance.* 1. A provider may satisfy par. (e) by
20 insuring all service contracts under a reimbursement insurance policy that has been
21 filed with and approved by the commissioner under s. 631.20, that is issued by an
22 insurer authorized to do business in this state, and that satisfies, at a minimum, all
23 of the following:

24 a. The policy states that, if the provider covered under the policy does not
25 provide, or reimburse or pay for, a service that is covered under a service contract

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1 insured under the policy within 60 days after a service contract holder provides proof
2 of loss, or in the event of the provider's insolvency or other financial impairment, the
3 service contract holder may file a claim with the insurer issuing the reimbursement
4 insurance policy for reimbursement, payment, or provision of the service.

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

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

13 2. If a reimbursement insurance policy by which a provider is satisfying this
14 paragraph is terminated, cancelled, or not renewed for any reason, or if the insurer
15 issuing the policy is not in compliance with applicable financial standards, all of the
16 following apply:

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

19 b. The provider shall cease selling service contracts in this state until the
20 provider either files with the commissioner a new reimbursement insurance policy
21 that covers its obligations under service contracts sold in the state and that satisfies
22 the requirements under subd. 1. or provides a deposit or irrevocable letter of credit
23 in accordance with par. (g).

24 c. If the commissioner so requests, the provider shall file with the commissioner
25 copies of its audited financial statements or financial statements that are certified

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1 as accurate by a corporate officer of the provider if the provider does not have audited
2 financial statements.

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

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

10 5. Nothing in this paragraph prevents, or limits the right of, an insurer that
11 issued a reimbursement insurance policy to seek indemnification from or
12 subrogation against a provider if the insurer pays or is obligated to pay the service
13 contract holder any amount that the provider was obligated to pay under the service
14 contract.

15 (g) *Assurance of performance; deposit or irrevocable letter of credit.* 1. A
16 provider may satisfy par. (e) by providing security to compensate any service contract
17 holder who sustains a loss due to the failure of the provider to perform its obligations
18 under a service contract as a result of insolvency or other financial impairment. The
19 commissioner shall approve the amount and form of the security.

20 2. The security under this paragraph shall be in one or a combination of the
21 following forms:

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

23 b. An irrevocable letter of credit that is from a bank properly chartered by the
24 federal government or any state, that is acceptable to the commissioner, and that is
25 issued for a term of at least 5 years with provision for renewal 2 years before

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1 termination. The letter of credit shall be payable to the commissioner or the
2 commissioner's designee for the benefit of Wisconsin consumers upon a finding by
3 the commissioner that a provider is insolvent or financially impaired and unable to
4 meet its obligations under service contracts issued in Wisconsin. The provider shall
5 notify the commissioner in writing of the nonrenewal of a letter of credit within 30
6 days after receiving a notice of nonrenewal. No provider whose letter of credit has
7 been nonrenewed may offer or sell or renew any service contract on or after the date
8 of nonrenewal until the provider obtains security satisfying the requirements of this
9 paragraph or satisfies the requirements of par. (f).

10 3. The security under this paragraph shall be not less than \$50,000 plus 22.5
11 percent of the provider fees collected from service contract holders for all unexpired
12 service contracts in force in Wisconsin on January 1 of each year.

13 4. The security under this paragraph shall continue until released by the
14 commissioner pursuant to a finding that it is not necessary for the reasonable
15 protection of Wisconsin consumers.

16 (h) *Financial statements.* A provider using a deposit or irrevocable letter of
17 credit as specified in par. (g) to satisfy par. (e) shall, by the end of the 5th month
18 following the end of each fiscal year of the provider, submit financial statements for
19 the fiscal year to the commissioner that are prepared on an accrual basis in
20 accordance with generally accepted accounting principles and that are audited by an
21 independent certified public accountant.

22 (i) *Commissioner limitation.* Except for the requirements specified in par. (e),
23 no other financial security requirements shall be required by the commissioner for
24 providers.

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1 (j) *Payment of claims.* A provider shall be subject to and shall pay claims under
2 a service contract in accordance with s. 628.46 (1) and (2).

3 (k) *Service contract sellers.* A service contract seller is not subject to licensure
4 or registration under this section.

5 **(4) FORM FILING AND REQUIRED DISCLOSURES.** (a) A service contract may not be
6 marketed, sold, offered for sale, issued, made, proposed to be made, or administered
7 in this state unless the service contract has been filed with and approved by the
8 commissioner in a manner and format prescribed by the commissioner. Service
9 contracts shall be filed in the final printed format or typed facsimile exactly as they
10 will be offered for issuance or delivery in this state.

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

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

20 (d) Service contracts insured under a reimbursement insurance policy
21 pursuant to sub. (3) (f) shall contain a statement in substantially the following form:
22 "Obligations of the provider under this service contract are insured under a service
23 contract reimbursement insurance policy." The service contract shall state the name
24 and address of the insurer; state that if a provider does not provide, or reimburse or
25 pay for, a service that is covered under a service contract within 60 days after a

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1 contract holder provides proof of loss, or if the provider becomes insolvent or
2 otherwise financially impaired, the contract holder may file a claim directly with the
3 service contract reimbursement insurer for reimbursement, payment, or provision
4 of the service; and state the instructions on how to file a claim.

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

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

15 (g) Service contracts shall state the total purchase price and the terms under
16 which the service contract is sold. The purchase price is not required to be preprinted
17 on the service contract and may be negotiated at the time of sale with the service
18 contract holder.

19 (h) Service contracts shall identify any applicable deductible amount.

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

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

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

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

8 1. The provider shall mail a written notice to the service contract holder at the
9 last-known address of the service contract holder contained in the records of the
10 provider at least 5 days prior to cancellation by the provider.

11 2. The notice under subd. 1. shall state the effective date of the cancellation and
12 the reason for the cancellation.

13 3. If a service contract is cancelled by the provider for a reason other than
14 nonpayment of the provider fee, the provider shall refund to the service contract
15 holder 100 percent of the unearned pro rata provider fee, less any claims paid.

16 4. A provider may charge a reasonable administrative fee for cancellation,
17 which may not exceed 10 percent of the provider fee.

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

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

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1 (o) Service contracts shall require the provider to permit the service contract
2 holder to return the service contract within 20 days of the date the service contract
3 was mailed to the service contract holder, or within 10 days of delivery if the service
4 contract is delivered to the service contract holder at the time of sale, or within a
5 longer period permitted under the service contract. Upon return of the service
6 contract to the provider within the applicable period, if no claim has been made under
7 the service contract prior to its return to the provider, the service contract is void and
8 the provider shall refund to the service contract holder, or credit the account of the
9 service contract holder, the full purchase price of the service contract. Unless
10 otherwise stated in a service contract, the right to void a service contract under this
11 paragraph is not transferable and shall apply only to the original service contract
12 purchaser. If a provider does not pay or credit a refund within 45 days after the
13 return of a service contract to the provider, the provider shall pay a 10 percent per
14 month penalty of the refund amount outstanding which the provider shall add to
15 amount of the refund.

16 (p) Service contracts shall provide that, subsequent to the period specified in
17 par. (o) for voiding a service contract or if a claim has been made under a service
18 contract within such period, a service contract holder may cancel the service contract
19 and the provider shall refund to the service contract holder 100 percent of the
20 unearned pro rata provider fee, less any claims paid. A provider may charge a
21 reasonable administrative fee for the cancellation, which may not exceed 10 percent
22 of the provider fee.

23 (q) Any arbitration clause contained in a service contract shall be conditioned
24 upon the mutual agreement of the provider and service contract holder to resolve any
25 dispute by arbitration.

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

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

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

16 (b) 1. No provider, administrator, service contract seller, or provider's
17 representative may make or cause to be made any communication relating to a
18 service contract, the service contract business, insurance business, any insurer, any
19 administrator, or any provider that contains false or misleading information,
20 including information that is misleading due to incompleteness. Filing a report and,
21 with intent to deceive a person examining it, making a false entry in a record or
22 intentionally refraining from making a proper entry, are "communications" within
23 the meaning of this subdivision. No provider or administrator may use any business
24 name, slogan, emblem, or related device that is misleading or likely to cause the

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1 provider or administrator to be mistaken for another provider or administrator
2 already in business.

3 2. If an administrator or representative of a provider distributes cards or
4 documents, exhibits a sign, or publishes an advertisement that violates subd. 1.,
5 having reference to a particular provider that the administrator or representative
6 represents, such violation creates a rebuttable presumption that the violation was
7 also committed by the provider.

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

Subsect 20-10

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

- 15 1. The provider's affiliation with a motor vehicle manufacturer.
- 16 2. The provider's possession of information regarding a motor vehicle owner's
- 17 current motor vehicle manufacturer's original equipment warranty.
- 18 3. The expiration of a motor vehicle owner's current motor vehicle
- 19 manufacturer's original equipment warranty.

20 4. A requirement that a motor vehicle owner purchase a new motor vehicle
21 service contract with the provider in order to maintain coverage under the motor
22 vehicle owner's current motor vehicle service contract or manufacturer's original
23 equipment warranty.

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

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

2 a. Copies of each type of service contract sold.

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

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

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

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

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

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

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

Insert 21-20

21

22 (7) ENFORCEMENT. (a) The commissioner may conduct examinations of
23 providers, administrators, service contract sellers, or other persons in accordance
24 with ss. 601.43 to 601.45 to enforce the provisions of this section and protect service
25 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

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1 behalf of the provider available to the commissioner which are necessary to enable
2 the commissioner to reasonably determine compliance with this section.

3 (b) The commissioner may take any action in accordance with ss. 601.41 and
4 601.61 to 601.73 that is necessary or appropriate to enforce the provisions of this
5 section and the commissioner's rules and orders and to protect service contract
6 holders in this state. The commissioner may subject a provider to any reporting and
7 replying requirement under s. 601.42.

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

9 600.01 (1) (b) 12. Providers, service contract sellers, or administrators of
10 service contracts under s. 100.70.

Service contracts, as defined in A. 100.70(1)(k), or

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

12 601.31 (1) (kr) For processing and maintaining license records under s. 100.70
13 (3) (d), \$400 upon initial licensure and \$100 annually thereafter, unless the
14 commission specifies a different amount by rule.

15 **SECTION 4.** 601.41 (1) of the statutes is amended to read:

16 601.41 (1) DUTIES. The commissioner shall administer and enforce chs. 600 to
17 655 and ss. 59.52 (11) (c), 66.0137 (4) and (4m), 100.203, 100.70, 120.13 (2) (b) to (g),
18 and 149.13 and shall act as promptly as possible under the circumstances on all
19 matters placed before the commissioner.

20 **SECTION 5.** 601.43 (1) (a) of the statutes is amended to read:

21 601.43 (1) (a) *Insurers, other licensees and other persons subject to regulation.*
22 Whenever the commissioner deems it necessary in order to inform himself or herself
23 about any matter related to the enforcement of s. 100.70 or chs. 600 to 647, the
24 commissioner may examine the affairs and condition of any person specified in s.
25 100.70 (a), of any licensee or permittee under chs. 600 to 647 or applicant for a

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1 license or permit, of any person or organization of persons doing or in process of
2 organizing to do an insurance business in this state, and of any advisory organization
3 serving any of the foregoing in this state.

4 **SECTION 6.** 601.64 (1) of the statutes is amended to read:

5 601.64 (1) INJUNCTIONS AND RESTRAINING ORDERS. The commissioner may
6 commence an action in circuit court in the name of the state to restrain by temporary
7 or permanent injunction or by temporary restraining order any violation of chs. 600
8 to 655 or s. 100.70 or 149.13, any rule promulgated under chs. 600 to 655, or any order
9 issued under s. 601.41 (4). The commissioner need not show irreparable harm or lack
10 of an adequate remedy at law in an action commenced under this subsection.

11 **SECTION 7.** 601.64 (3) (a) of the statutes is amended to read:

12 601.64 (3) (a) *Restitutionary forfeiture.* Whoever violates an effective order
13 issued under s. 601.41 (4), any insurance statute or rule, or s. 100.70 or 149.13 shall
14 forfeit to the state twice the amount of any profit gained from the violation, in
15 addition to any other forfeiture or penalty imposed.

16 **SECTION 8.** 601.64 (3) (c) of the statutes is amended to read:

17 601.64 (3) (c) *Forfeiture for violation of statute or rule.* Whoever violates an
18 insurance statute or rule or s. 100.70 or 149.13, intentionally aids a person in
19 violating an insurance statute or rule or s. 100.70 or 149.13, or knowingly permits
20 a person over whom he or she has authority to violate an insurance statute or rule
21 or s. 100.70 or 149.13 shall forfeit to the state not more than \$1,000 for each violation.
22 If the statute or rule imposes a duty to make a report to the commissioner, each week
23 of delay in complying with the duty is a new violation.

24 **SECTION 9.** 601.64 (4) of the statutes is amended to read:

Insert 2-A

no. 41 The bill specifies that a ~~policy~~
service contract is not to be
considered an insurance ^{contract} contract
for any purpose under the statutes.
(end of ins 2-A)

Insert 4-A

no. 41 , except for a person ~~who~~ buying or selling
a home, who may condition the purchase or
sale on the procurement of a service
contract covering the home
(end of ins 4-A)

Insert 20-10

with , except that a person buying or
selling a home may condition the
purchase or sale of the ^{home} home on
the seller's or buyer's procurement
of a service contract ~~that~~ that
covers
covers the home

(end of ins 20-10)

**** note version*

SECTION 3

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

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

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

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

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

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

Subsect 21-20

17 (7) EXEMPTION FROM INSURANCE REGULATION. A person who markets, sells, offers
18 for sale, issues, makes, proposes to make, or administers a warranty, maintenance
19 agreement, or service contract shall not be considered an insurer, and a warranty,
20 maintenance agreement, or service contract shall not be considered an insurance
21 contract, for any purpose under the statutes.

22 (8) ENFORCEMENT PROVISIONS. (a) The commissioner may conduct examinations
23 of providers, administrators, insurers, or other persons to enforce the provisions of
24 this section and protect service contract holders in this state. Upon request of the
25 commissioner, a provider shall make all accounts, books, and records concerning

Basford, Sarah

From: Kovach, Robert

Sent: Friday, February 03, 2012 2:28 PM

To: LRB.Legal

Subject: Draft Review: LRB 11-3969/2 Topic: Service contracts

Please Jacket LRB 11-3969/2 for the SENATE.

This memo is a review of the LRB draft dated 2/03/12 which was based on the SCIC draft version 4 dated 1/26/12. When suggested language is listed, it is intended as conveying the idea and not perhaps the final language.

Attached is the 2/3/12 LRB draft bill with #'s corresponding to the comments below

- 1. P. 4 It was agreed that these provisions would be put in subchapter III of 616. It's unclear why it continued to be in s. 100.70.
- 2. P. 8 - (2)(c) This language appears to limit new applicants for a license to the Service Contract process, excluding getting newly licensed as a warranty plan under Ins 15. The language is ok for warranty plans currently licensed. The intent was that an entity could in the future decide to seek licensure under either the service plan process or the Ins 15 warranty plan process. See p. 27 - (8) of the 1/26/12 revision. *616.52(3)(intro.) limited set of authority*
- 3. P. 9 - 2. The language appears to allow the service contract provisions to apply when an existing warranty plan "applies" to be a service contract provider. The service contract provisions should not apply until the entity is issued a provider license by OCI. Perhaps, change the language to: "If the person ~~applies for a license~~ is licensed ..." Until that time, Ins 15 would continue to control. *616.52(3)(b)*
- 4. P. 9 - (3) The previous language read "The acts of the administrator appointed by a provider under this paragraph shall be imputed to the provider." The proposed language limits the liability to only violations of this section. Broader language such as the previous language is needed to cover problems in the solicitation process that may impact the provider but are not specifically listed in the service contract statute. The intent is that consumers could rely on the administrator's actions as actions of the provider. *616.54(1)(intro.)*
- 5. P. 11 - 6. This is a new item. The annual renewal date should be specified so that all providers renew the same day. Ins 15 sets it as March 31 and this section should also set it on that date by adding "by March 31 of each year." or something similar. *616.54(4)(f)*
- 6. P. 14 - 3. This section has been modified to the following provision: *616.54(7)(c)*

"(3) The security prescribed in this subsection shall be not less than \$50,000 plus 15% of the provider fees collected from service contract holders for all unexpired service contracts in force in Wisconsin on January 1 of the current year if the Provider has not appointed an Administrator. If the Provider has appointed an Administrator to be responsible for any or all of the administration of service contracts and compliance with sub. (3), the security prescribed in this subsection shall be not less than \$50,000 plus 22.5% of the provider fees collected from service contract holders for all unexpired service contracts in force in Wisconsin on January 1 of the current year."
- 7. P. 18 - (q) This section has been modified to the following:

"A service contract shall be subject to s. 631.85."

616.56
→ (17)

New item

8. P. 22 – (7) This section should be deleted. The agreement was that the bill would not have a specific section stating that service contracts were not insurance and would not have a section saying that they were insurance. *big issue ↑*
9. P. 24 – Section 11 (1) This is somewhat confusing. The exemption seems to say that a provider can get licensed but that the provisions that regulate their conduct would not start until a year after the publishing date. It would seem that if a provider got licensed, then the provisions would commence on that date. We agree that providers could commence the licensing process anytime after publication. *effective date (1)*
10. P. 2 Remove the “not insurance” language consistent with item 8 above. *analysis*
11. P. 2 Indicate that an entity could also seek licensure under Ins 15 after the effective date consistent with item 2 above. *analysis*
12. P. 3 Make the arbitration description consistent with item 7 above. *analysis*

and