
ASSEMBLY BILL NO. 673—COMMITTEE ON COMMERCE AND LABOR

MARCH 22, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Provides for regulation of service contracts. (BDR 57-1673)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to service contracts; requiring a person who issues service contracts to obtain a certificate of registration from the commissioner of insurance; establishing the requirements for the contents of such contracts; prohibiting a person from requiring the purchase of a service contract as a condition for the approval of a loan or the purchasing of goods; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Title 57 of NRS is hereby amended by adding thereto a
2 new chapter to consist of the provisions set forth as sections 2 to 26,
3 inclusive, of this act.
- 4 **Sec. 2.** *As used in this chapter, unless the context otherwise requires,*
5 *the words and terms defined in sections 3 to 10, inclusive, of this act have*
6 *the meanings ascribed to them in those sections.*
- 7 **Sec. 3.** *“Administrator” means a person with whom a provider*
8 *contracts to carry out the terms of service contracts issued by the*
9 *provider, including, without limitation, issuing service contracts,*
10 *collecting premiums, adjusting claims and performing the duties of the*
11 *provider under the service contract.*
- 12 **Sec. 4.** *“Consumer” means a person who purchases, other than for*
13 *resale, goods used primarily for personal, family or household purposes*
14 *and not for business or research purposes.*
- 15 **Sec. 5.** *“Goods” means all tangible personal property, whether*
16 *movable at the time of purchase or a fixture, that is used primarily for*
17 *personal, family or household purposes.*

1 **Sec. 6. “Holder” means a resident of this state who:**

2 **1. Purchases a service contract; or**

3 **2. Is legally in possession of a service contract and is entitled to**
4 **enforce the rights of the original purchaser of the service contract.**

5 **Sec. 7. “Issue” means to transfer, sell or offer to sell a service**
6 **contract.**

7 **Sec. 8. “Liability insurance policy” means a policy of insurance that**
8 **is issued to reimburse a provider or to pay on behalf of a provider any**
9 **money the provider has an obligation to pay under a service contract.**

10 **Sec. 9. “Provider” means a person who is obligated to a holder**
11 **pursuant to the terms of a service contract to repair, replace or perform**
12 **maintenance on, or to indemnify the holder for the costs of repairing,**
13 **replacing or performing maintenance on, goods owned by the holder.**

14 **Sec. 10. “Service contract” means a contract pursuant to which a**
15 **provider, in exchange for consideration, is obligated for a specified**
16 **period to a holder to repair, replace or perform maintenance on, or**
17 **indemnify or reimburse the holder for the costs of repairing, replacing or**
18 **performing maintenance on, goods that are described in the service**
19 **contract.**

20 **Sec. 11. 1. The provisions of this chapter do not apply to:**

21 **(a) A warranty;**

22 **(b) A maintenance agreement;**

23 **(c) A service contract provided by a public utility if the service**
24 **contract is regulated by the public utilities commission of Nevada;**

25 **(d) A service contract sold or offered for sale to a person who is not a**
26 **consumer; or**

27 **(e) A service contract for goods if the purchase price of the goods is**
28 **less than \$350.**

29 **2. The sale of a service contract pursuant to this chapter does not**
30 **constitute the business of insurance for the purposes of 18 U.S.C. §§**
31 **1033 and 1034.**

32 **3. As used in this section:**

33 **(a) “Maintenance agreement” means a contract for a limited period**
34 **that provides only for scheduled maintenance.**

35 **(b) “Warranty” means a warranty provided by a manufacturer,**
36 **importer or seller of goods for which the manufacturer, importer or seller**
37 **did not receive separate consideration and that:**

38 **(1) Is not negotiated or separated from the sale of the goods;**

39 **(2) Is incidental to the sale of the goods; and**

40 **(3) Guarantees to indemnify the consumer for defective parts,**
41 **mechanical or electrical failure, labor or other remedial measures**
42 **required to repair or replace the goods.**

1 **Sec. 12.** *A provider shall not issue service contracts in this state*
2 *unless he has been issued a certificate of registration pursuant to the*
3 *provisions of this chapter.*

4 **Sec. 13. 1.** *A provider who wishes to issue service contracts in this*
5 *state must submit to the commissioner:*

6 *(a) An application on a form prescribed by the commissioner;*

7 *(b) Proof that he has complied with the requirements for security set*
8 *forth in section 14 of this act;*

9 *(c) A copy of each type of service contract he proposes to issue;*

10 *(d) The name, address and telephone number of each administrator*
11 *with whom the provider intends to contract; and*

12 *(e) A fee of \$500.*

13 **2.** *In addition to the fee required by subsection 1, a provider must*
14 *pay a fee of \$25 for each type of service contract he files with the*
15 *commissioner for review.*

16 **3.** *A certificate of registration is valid for 1 year after the date the*
17 *commissioner issues the certificate to the provider. A provider may renew*
18 *his certificate of registration if, before the certificate expires, he submits*
19 *to the commissioner an application on a form prescribed by the*
20 *commissioner and a fee of \$500.*

21 **Sec. 14.** *To be issued a certificate of registration, a provider must*
22 *comply with one of the following:*

23 **1.** *Purchase a liability insurance policy for each service contract the*
24 *provider issues. The liability insurance policy must be issued by an*
25 *insurer authorized to transact insurance in this state or pursuant to the*
26 *provisions of chapter 685A of NRS.*

27 **2.** *Maintain a reserve account and deposit with the commissioner*
28 *security as provided in this subsection. The reserve account must contain*
29 *at all times an amount of money equal to at least 40 percent of the gross*
30 *consideration received by the provider for any unexpired service*
31 *contracts, less any claims paid on those unexpired service contracts. The*
32 *commissioner may examine the reserve account at any time. The*
33 *provider shall also deposit with the commissioner security in an amount*
34 *that is equal to \$25,000 or 5 percent of the gross consideration received*
35 *by the provider for any unexpired service contracts, less any claims paid*
36 *on the unexpired service contracts, whichever is greater. The security*
37 *must be:*

38 *(a) A surety bond issued by a surety company authorized to do*
39 *business in this state;*

40 *(b) Securities of the type eligible for deposit pursuant to NRS*
41 *682B.030;*

42 *(c) Cash;*

1 (d) An irrevocable letter of credit issued by a financial institution
2 approved by the commissioner; or

3 (e) In any other form prescribed by the commissioner.

4 3. Maintain, or be a subsidiary of a parent company that maintains,
5 a net worth or stockholders' equity of at least \$100,000,000. Upon
6 request, a provider shall provide to the commissioner a copy of the most
7 recent Form 10-K report or Form 20-F report filed by the provider or
8 parent company of the provider with the Securities and Exchange
9 Commission within the previous year. If the provider or parent company
10 is not required to file those reports with the Securities and Exchange
11 Commission, the provider shall provide to the commissioner a copy of the
12 most recently audited financial statements of the provider or parent
13 company. If the net worth or stockholders' equity of the parent company
14 of the provider is used to comply with the requirements of this subsection,
15 the parent company must guarantee to carry out the duties of the
16 provider under any service contract issued by the provider.

17 Sec. 15. The tax imposed pursuant to NRS 680B.027 does not apply
18 to any business transacted pursuant to the provisions of this chapter.

19 Sec. 16. 1. Except as otherwise provided in this chapter, a provider
20 or an administrator is not required to comply with the provisions of Title
21 57 of NRS, except for the provisions of:

22 (a) NRS 679B.020 to 679B.157, inclusive;

23 (b) NRS 679B.159 to 679B.300, inclusive,

24 (c) NRS 679B.310 to 679B.370, inclusive;

25 (d) NRS 685B.090 to 685B.190, inclusive;

26 (e) NRS 686A.010 to 686A.095, inclusive;

27 (f) NRS 686A.160 to 686A.187, inclusive; and

28 (g) NRS 686A.260, 686A.270, 686A.280, 686A.300 and 686A.310.

29 2. A provider or administrator is not required to obtain a certificate
30 of authority from the commissioner pursuant to chapter 680A of NRS to
31 issue or administer service contracts.

32 Sec. 17. 1. A service contract is void and a provider shall refund to
33 the holder the purchase price of the service contract if the holder has not
34 made a claim under the service contract and the holder returns the
35 service contract to the provider:

36 (a) Within 20 days after the date the provider mails a copy of the
37 service contract to the holder;

38 (b) Within 10 days after the purchaser receives a copy of the service
39 contract if the provider furnishes the holder with the copy at the time the
40 contract is purchased; or

41 (c) Within a longer period specified in the service contract.

42 2. The right of a holder to return a service contract pursuant to this
43 section applies only to the original purchaser of the service contract.

1 3. A service contract must include a provision that clearly states the
2 right of a holder to return a service contract pursuant to this section.

3 4. The provider shall refund to the holder the purchase price of the
4 service contract within 45 days after a service contract is returned
5 pursuant to subsection 1. If the provider fails to refund the purchase
6 price within that time, the provider shall pay the holder a penalty of 10
7 percent of the purchase price for each 30-day period or portion thereof
8 that the refund and any accrued penalties remain unpaid.

9 **Sec. 18. 1.** A liability insurance policy issued in this state must
10 provide that the issuer of the policy shall:

11 (a) Reimburse or pay on behalf of the provider any money the
12 provider has a duty to pay under a service contract; or

13 (b) Otherwise provide for the performance of the duties of the
14 provider under a service contract.

15 2. If a provider fails to perform his duties under a service contract
16 within 60 days after receiving notice from the holder that the goods
17 described in the contract are defective, the holder may apply to the issuer
18 of the liability insurance policy for performance of the duties of the
19 provider under the service contract.

20 **Sec. 19. 1.** A service contract must:

21 (a) Be written in language that is understandable and printed in a
22 typeface that is easy to read.

23 (b) Indicate that it is insured by a liability insurance policy if it is so
24 insured, and include the name and address of the issuer of the policy.

25 (c) Include the amount of any deductible that the holder is required to
26 pay.

27 (d) Include the name and address of the provider, the holder, and, if
28 applicable, the administrator.

29 (e) Include the purchase price of the service contract.

30 (f) Include a description of the goods for which the service contract is
31 issued.

32 (g) Specify the duties of the provider and any limitations, exceptions
33 or exclusions.

34 (h) If the service contract is issued for a motor vehicle, indicate
35 whether replacement parts that are not made for or by the original
36 manufacturer of the motor vehicle may be used to comply with the terms
37 of the service contract.

38 (i) Include any restrictions on transferring or renewing the service
39 contract.

40 (j) Include the terms, restrictions or conditions for canceling the
41 service contract before it expires and the procedure for canceling the
42 service contract. Except as otherwise provided in this paragraph, a
43 provider shall mail a written notice to the holder at his last known

1 address as indicated in the records of the provider at least 5 days before
2 canceling a service contract. The notice must state the date of and reason
3 for the cancellation. A provider is not required to provide such notice if
4 he is canceling the service contract because of the nonpayment of the
5 purchase price of the service contract, a material misrepresentation
6 related to the service contract made by the holder or any other act by the
7 holder constituting a breach of a duty under the service contract.

8 (k) Include the duties of the holder under the contract, including,
9 without limitation, the duty to protect against damage to the goods
10 covered by the service contract or to comply with any instructions
11 included in the owner's manual for the goods.

12 (l) Indicate whether the service contract authorizes the holder to
13 recover consequential damages.

14 (m) Indicate whether any defect in the goods for which the service
15 contract is issued existing on the date the contract is purchased is not
16 covered under the service contract.

17 2. A provider shall not allow, make or cause to be made a false or
18 misleading statement in any of his service contracts or intentionally omit
19 a material statement that causes a service contract to be misleading. The
20 commissioner may require the provider to amend any service contract
21 that the commissioner determines is false or misleading.

22 **Sec. 20. 1.** A provider shall provide to a holder at the time he
23 purchases a service contract, a receipt for, or other written evidence of,
24 the purchase of the service contract.

25 2. The provider shall furnish a copy of the service contract to the
26 holder within 15 days after the contract is purchased.

27 **Sec. 21. 1.** Except as otherwise provided in this section, a provider
28 shall not include in the name of his business:

29 (a) The words "insurance," "casualty," "surety," "mutual" or any
30 other word or term that implies that he is engaged in the business of
31 transacting insurance or is a surety company; or

32 (b) A name that is deceptively similar to the name or description of an
33 insurer or surety company or the name of another provider.

34 2. A provider may include the word "guaranty" or a similar word in
35 the name of his business.

36 3. This section does not apply to a provider who, before January 1,
37 2000, includes in the name of his business a name that does not comply
38 with the provisions of subsection 1. Such a provider shall include in each
39 service contract he issues a statement that the service contract is not a
40 contract of insurance.

41 **Sec. 22.** No person may require the purchase of a service contract as
42 a condition for the approval of a loan or the purchasing of goods.

Sec. 23. 1. A provider shall maintain records of the transactions governed by this chapter. The records of a provider must include:

(a) A copy of each type of service contract that the provider issues;

(b) The name and address of each holder who possesses a service contract under which the provider has a duty to perform, to the extent that the provider knows the name and address of each holder;

(c) A list that includes each location where the provider issues service contracts; and

(d) The date and a description of each claim made by a holder under a service contract.

2. Except as otherwise provided in this subsection, a provider shall retain all records relating to a service contract for at least 1 year after the contract has expired. A provider who intends to discontinue doing business in this state shall provide the commissioner with satisfactory proof that he has discharged his duties to the holders in this state and shall not destroy his records without the prior approval of the commissioner.

3. The records required to be maintained pursuant to this section may be stored on a computer disk or other storage device for a computer from which the records can be readily printed.

Sec. 24. 1. The commissioner shall conduct examinations to enforce the provisions of this chapter pursuant to the provisions of NRS 679B.230 to 679B.300, inclusive, at such times as he deems necessary.

2. A provider shall, upon the request of the commissioner, make any accounts, books and records concerning any service contract issued by the provider available to the commissioner for inspection.

Sec. 25. *A person who violates any provision of this chapter or an order or regulation of the commissioner issued or adopted pursuant thereto may be assessed a civil penalty by the commissioner of not more than \$500 for each act or violation, not to exceed an aggregate amount of \$10,000 for violations of a similar nature. For the purposes of this section, violations shall be deemed to be of a similar nature if the violations consist of the same or similar conduct, regardless of the number of times the conduct occurred.*

Sec. 26. *The commissioner may adopt such regulations as are necessary to carry out the provisions of this chapter.*

Sec. 27. NRS 680B.027 is hereby amended to read as follows:

680B.027 1. Except as otherwise provided in NRS 680B.033 and 680B.050, **and section 15 of this act**, for the privilege of transacting business in this state, each insurer shall pay to the department of taxation a tax upon his net direct premiums and net direct considerations written at the rate of 3.5

1 2. The tax must be paid in the manner required by NRS 680B.030 and
2 680B.032.

3 3. The commissioner or the executive director of the department of
4 taxation may require at any time verified supplemental statements with
5 reference to any matter pertinent to the proper assessment of the tax.

6 4. For the purposes of this section, "insurer" includes the state
7 industrial insurance system.

8 **Sec. 28.** The provisions of this act do not apply to service contracts
9 issued or renewed before January 1, 2000.

10 **Sec. 29.** This act becomes effective on January 1, 2000.

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