

Assembly Bill No. 673—Committee on Commerce and Labor

CHAPTER.....

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:

Section 1. Title 57 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 25, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Administrator” means a person who is responsible for administering a service contract that is issued, sold or offered for sale by a provider.*

Sec. 4. *“Consumer” means a person who purchases, other than for resale, goods used primarily for personal, family or household purposes and not for business or research purposes.*

Sec. 5. *“Contractual liability insurance policy” means a policy of insurance that is issued to a provider to either:*

1. Reimburse the provider under the terms of a service contract issued or sold by the provider; or

2. If the provider does not satisfy his obligation under a service contract, pay on behalf of the provider any money the provider has an obligation to pay under the service contract.

Sec. 6. *“Goods” means all tangible personal property, whether movable at the time of purchase or a fixture, that is used primarily for personal, family or household purposes.*

Sec. 7. *“Holder” means a resident of this state who:*

1. Purchases a service contract; or

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

Sec. 8. *“Provider” means a person who is obligated to a holder pursuant to the terms of a service contract to repair, replace or perform maintenance on, or to indemnify the holder for the costs of repairing, replacing or performing maintenance on, goods.*

Sec. 9. *“Service contract” means a contract pursuant to which a provider, in exchange for separately stated consideration, is obligated for a specified period to a holder to repair, replace or perform maintenance on, or indemnify or reimburse the holder for the costs of repairing,*

replacing or performing maintenance on, goods that are described in the service contract and which have an operational or structural failure as a result of a defect in materials, workmanship or normal wear and tear, including, without limitation:

1. A contract that includes a provision for incidental payment of indemnity under limited circumstances, including, without limitation, towing, rental and emergency road service; and

2. A contract that provides for the repair, replacement or maintenance of goods for damages that result from power surges or accidental damage from handling.

Sec. 10. 1. The provisions of this Title do not apply to:

(a) A warranty;

(b) A maintenance agreement;

(c) A service contract provided by a public utility on its transmission device if the service contract is regulated by the public utilities commission of Nevada;

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

(e) A service contract for goods if the purchase price of the goods is less than \$250; or

(f) A service contract issued, sold or offered for sale by a vehicle dealer on vehicles sold by the dealer, if the dealer is licensed pursuant to NRS 482.325 and the service contract obligates either the dealer or the manufacturer of the vehicle, or an affiliate of the dealer or manufacturer, to provide all services under the service contract.

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

3. As used in this section:

(a) "Maintenance agreement" means a contract for a limited period that provides only for scheduled maintenance.

(b) "Warranty" means a warranty provided solely by a manufacturer, importer or seller of goods for which the manufacturer, importer or seller did not receive separate consideration and that:

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

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

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

Sec. 11. A provider shall not issue, sell or offer for sale service contracts in this state unless he has been issued a certificate of registration pursuant to the provisions of this chapter.

Sec. 12. 1. A provider who wishes to issue, sell or offer for sale service contracts in this state must submit to the commissioner:

(a) A registration application on a form prescribed by the commissioner;

- (b) Proof that he has complied with the requirements for security set forth in section 13 of this act;
- (c) A copy of each type of service contract he proposes to issue, sell or offer for sale;
- (d) The name, address and telephone number of each administrator with whom the provider intends to contract; and
- (e) A fee of \$1,000.

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

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

Sec. 13. To be issued a certificate of registration, a provider must comply with one of the following:

1. Purchase a contractual liability insurance policy which insures the obligations of each service contract the provider issues, sells or offers for sale. The contractual liability insurance policy must be issued by an insurer authorized to transact insurance in this state or pursuant to the provisions of chapter 685A of NRS.

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

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

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

(c) Cash;

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

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

3. Maintain, or be a subsidiary of a parent company that maintains, a net worth or stockholders' equity of at least \$100,000,000. Upon request, a provider shall provide to the commissioner a copy of the most recent Form 10-K report or Form 20-F report filed by the provider or parent company of the provider with the Securities and Exchange

Commission within the previous year. If the provider or parent company is not required to file those reports with the Securities and Exchange Commission, the provider shall provide to the commissioner a copy of the most recently audited financial statements of the provider or parent company. If the net worth or stockholders' equity of the parent company of the provider is used to comply with the requirements of this subsection, the parent company must guarantee to carry out the duties of the provider under any service contract issued or sold by the provider.

Sec. 14. The tax imposed pursuant to NRS 680B.027 does not apply to any business transacted pursuant to the provisions of this chapter.

Sec. 15. 1. Except as otherwise provided in this chapter, the marketing, issuance, sale, offering for sale, making, proposing to make and administration of service contracts are not subject to the provisions of Title 57 of NRS, except, when applicable, the provisions of:

- (a) NRS 679B.020 to 679B.157, inclusive;
- (b) NRS 679B.159 to 679B.300, inclusive;
- (c) NRS 679B.310 to 679B.370, inclusive;
- (d) NRS 685B.090 to 685B.190, inclusive;
- (e) NRS 686A.010 to 686A.095, inclusive;
- (f) NRS 686A.160 to 686A.187, inclusive; and
- (g) NRS 686A.260, 686A.270, 686A.280, 686A.300 and 686A.310.

2. A provider, person who sells service contracts, administrator or any other person is not required to obtain a certificate of authority from the commissioner pursuant to chapter 680A of NRS to issue, sell, offer for sale or administer service contracts.

Sec. 16. 1. A service contract is void and a provider shall refund to the holder the purchase price of the service contract if the holder has not made a claim under the service contract and the holder returns the service contract to the provider:

- (a) Within 20 days after the date the provider mails a copy of the service contract to the holder;
- (b) Within 10 days after the purchaser receives a copy of the service contract if the provider furnishes the holder with the copy at the time the contract is purchased; or
- (c) Within a longer period specified in the service contract.

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

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

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

Sec. 17. 1. *A contractual liability insurance policy issued in this state must provide that the issuer of the policy shall:*

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

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

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

Sec. 18. 1. *A service contract must:*

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

(b) Indicate that it is insured by a contractual liability insurance policy if it is so insured, and include the name and address of the issuer of the policy or that it is backed by the full faith and credit of the provider if the service contract is not insured by a contractual liability insurance policy.

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

(d) Include the name and address of the provider and, if applicable:

(1) The name and address of the administrator; and

(2) The name of the holder, if provided by the holder.

The names and addresses of such persons are not required to be preprinted on the service contract and may be added to the service contract at the time of the sale.

(e) Include the purchase price of the service contract. The purchase price must be determined pursuant to a schedule of fees established by the provider. The purchase price is not required to be preprinted on the service contract and may be negotiated with the holder and added to the service contract at the time of sale.

(f) Include a description of the goods covered by the service contract.

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

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

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

(j) Include the terms, restrictions or conditions for canceling the service contract before it expires and the procedure for canceling the service contract. The conditions for canceling the service contract must include, without limitation, the provisions of section 19.5 of this act.

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

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

(m) Indicate whether any defect in the goods covered by the service contract existing on the date the contract is purchased is not covered under the service contract.

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

Sec. 19. 1. A provider shall provide a receipt for, or other written evidence of, the purchase of a service contract.

2. The provider shall furnish a copy of the service contract to the holder within a reasonable time after the contract is purchased.

Sec. 19.5. 1. No service contract that has been in effect for at least 70 days may be canceled by the provider before the expiration of the agreed term or 1 year after the effective date of the service contract, whichever occurs first, except on any of the following grounds:

(a) Failure by the holder to pay an amount when due;

(b) Conviction of the holder of a crime which results in an increase in the service required under the service contract;

(c) Discovery of fraud or material misrepresentation by the holder in obtaining the service contract, or in presenting a claim for service thereunder;

(d) Discovery of:

(1) An act or omission by the holder; or

(2) A violation by the holder of any condition of the service contract,

which occurred after the effective date of the service contract and which substantially and materially increases the service required under the service contract; or

(e) A material change in the nature or extent of the required service or repair which occurs after the effective date of the service contract and which causes the required service or repair to be substantially and materially increased beyond that contemplated at the time that the service contract was issued or sold.

2. No cancellation of a service contract may become effective until at least 15 days after the notice of cancellation is mailed to the holder.

Sec. 20. 1. Except as otherwise provided in this section, a provider shall not include in the name of his business:

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

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

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

3. This section does not apply to a provider who, before January 1, 2000, includes in the name of his business a name that does not comply with the provisions of subsection 1. Such a provider shall include in each service contract he issues, sells or offers for sale a statement that the service contract is not a contract of insurance.

Sec. 21. No person may require the purchase of a service contract as a condition for the approval of a loan or the purchasing of goods.

Sec. 22. 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, sells or offers for sale;

(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, sells or offers for sale 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. 23. 1. Except as otherwise provided in this subsection, the commissioner may 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. The commissioner is not required to comply with the requirement in NRS 679B.230 that insurers be examined not less frequently than every 5 years in the enforcement of this chapter.

2. A provider shall, upon the request of the commissioner, make available to the commissioner for inspection any accounts, books and

records concerning any service contract issued, sold or offered for sale by the provider which are reasonably necessary to enable the commissioner to determine whether the provider is in compliance with the provisions of this chapter.

Sec. 24. *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. 25. *The commissioner may adopt such regulations as are necessary to carry out the provisions of this chapter.*

Sec. 26. 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 14 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 percent.

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

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

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

Sec. 27. 1. The provisions of this act do not apply to service contracts issued or renewed before January 1, 2000.

2. The failure of a provider or other person to comply with the provisions of this act or to administer a service contract in the manner set forth in this act before January 1, 2000, is not admissible in any court, arbitration or alternative dispute resolution proceeding, and may not otherwise be used to prove that the action of any person or any provision of the service contract was unlawful or otherwise improper.

Sec. 28. This act becomes effective upon passage and approval for the purpose of adopting regulations and on January 1, 2000, for all other purposes.