


**I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN**  
**2013 (FIRST) Regular Session**

Bill No. 176.32 (COR)

Introduced by:

V. C. Pangelinan 

**AN ACT TO ADD A NEW ARTICLE 2 TO CHAPTER 12,  
DIVISION 2, TITLE 22 OF THE GUAM CODE  
ANNOTATED, RELATIVE TO THE LICENSING OF  
SERVICE CONTRACTS SOLD ON GUAM.**

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1           **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2           **Section 1. Legislative Statement and Intent.** *I Liheslaturan Guåhan*  
3 finds that under current Guam law, the definition of insurance as interpreted by the  
4 Insurance Commissioner classifies service contracts, also known as extended  
5 warranties, as an insurance product. However, service contracts are being sold on  
6 Guam and are *not* being regulated by the Department of Revenue and Taxation  
7 (DRT) regardless of the fact that the DRT has opined that they are insurance  
8 products under Guam's definition of insurance.

9           Thirty-six (36) states have enacted legislation, which expressly provides that  
10 service contracts *do not* constitute insurance, or that they are *not* subject to the  
11 state's insurance laws. Three (3) state departments of insurance have informally  
12 opined that service contracts are *not* insurance contracts. Eleven (11) states have  
13 either enacted a framework making it clear that a service contract is *not* subject to  
14 regulation as an insurance product in that state, or have informally opined as such.

15           *I Liheslaturan Guåhan* finds that service contracts can be a beneficial  
16 consumer product and should be made readily available without undue and  
17 burdensome regulation.



1 (b) *Commissioner* means the Insurance and Banking  
2 Commissioner.

3 (c) *Consumer* means an individual who buys any tangible personal  
4 goods that is primarily for personal, family, or household use.

5 (d) *Non-original manufacturer's parts* means replacement parts not  
6 made for or by the original manufacturer of the goods, commonly referred to  
7 as "after-market parts."

8 (e) *Person* means an individual, limited liability partnership,  
9 partnership, limited liability company, corporation, incorporated or  
10 unincorporated association, joint stock company, reciprocal, syndicate, or  
11 any similar entity or combination of entities acting in concert.

12 (f) *Reimbursement insurance policy* means a policy of insurance  
13 issued to a service contract provider by an authorized insurer. Pursuant to  
14 this insurance policy, the insurer agrees, for the benefit of the service  
15 contract holders, to discharge all of the obligations and liabilities of the  
16 service contract provider under the terms of the issued service contracts or in  
17 the event of non-performance by the insured service contract provider. A  
18 reimbursement insurance policy insurer *shall not* terminate the policy until it  
19 has issued a notice of termination required by the Commissioner under the  
20 insurance laws, rules, or regulations of the government of Guam. The  
21 termination of a reimbursement insurance policy *shall not* reduce the  
22 insurer's responsibility for service contracts issued by service contract  
23 providers prior to the date of termination. A service contract provider *shall*  
24 be considered the agent of the reimbursement insurance policy insurer for  
25 purposes of determining duties owed by the insurer to service contract  
26 holders in accordance with the service contract, and this Article. Insurers are  
27 deemed to have received the premiums for the insurance upon the payment

1 of provider fees by consumers for service contracts issued by the insured  
2 service contract provider. “All obligations and liabilities” include:

3 (1) the failure or inability of the insured service contract  
4 provider to perform under the terms and conditions of the provider’s  
5 issued service contracts; and

6 (2) in the event of cancellation, the service contract  
7 provider’s failure or inability to return the unearned portion of the  
8 paid service contract fee to the service contract holder.

9 (g) *Service contract* for the purposes of this Article means a  
10 contract or agreement for a separately stated consideration for a specific  
11 duration to perform the repair, replacement or maintenance of goods or  
12 indemnification for repair, replacement or maintenance, for the operational  
13 or structural failure of any motor vehicle or other goods due to a defect in  
14 materials, workmanship, accidental damage from handling, or normal wear  
15 and tear, with or without additional provisions for incidental payment of  
16 indemnity under limited circumstances, including, but *not* limited to, towing,  
17 rental and emergency road service, and road hazard protection. Motor  
18 vehicle manufacturer and original equipment manufacturer (OEM)-backed  
19 contracts *shall* be exempt from the requirements in this Article. Service  
20 contracts may provide for repair, replacement, or maintenance of goods for  
21 damage resulting from power surges or interruption. Service contracts also  
22 include a contract or agreement sold for a separately stated consideration for  
23 a specific duration that provides for any of the following:

24 (1) the repair or replacement or indemnification for the  
25 repair or replacement of a motor vehicle for the operational or  
26 structural failure of one or more parts or systems of the motor vehicle

1 brought about by the failure of an additive product to perform as  
2 represented;

3 (2) the repair or replacement of tires and/or wheels on a  
4 motor vehicle damaged as a result of coming into contact with road  
5 hazards, including, but *not* limited to, potholes, rocks, wood debris,  
6 metal parts, glass, plastic, curbs, or composite scraps;

7 (3) the removal of dents, dings, or creases on a motor vehicle  
8 that can be repaired using the process of paint-less dent removal  
9 without affecting the existing paint finish and without replacing  
10 vehicle body panels, sanding, bonding or painting;

11 (4) the repair of small motor vehicle windshield chips or  
12 cracks, but which expressly excludes the replacement of the entire  
13 windshield; or

14 (5) the repair of damage to the interior components of a  
15 motor vehicle caused by wear and tear, but which expressly excludes  
16 the replacement of any part or component of a motor vehicle's  
17 interior.

18 (h) *Service Contract Provider* means a person who is contractually  
19 obligated to the service contract holder under the terms of the service  
20 contract.

21 (i) *Service Contract Holder* or *contract holder* means a person  
22 who is the purchaser or holder of a service contract.

23 (j) *Service Contract Seller* means the person who sells the service  
24 contract to the consumer.

25 (k) *Warranty* means a warranty made without consideration, solely  
26 by the manufacturer, importer, or seller of goods or services, that is *not*  
27 negotiated or separated from the sale of the product and is incidental to the

1 sale of the product, that provides repair or replacement for defective parts,  
2 mechanical or electrical breakdown, labor, or other remedial measures.

3 **§ 12203. License Required.**

4 It *shall* be unlawful for any person to act as, or offer to act as, or hold  
5 himself or herself out to be a service contract provider, nor may a service  
6 contract be sold to a consumer, *unless* the service contract provider has a  
7 valid license as a service contract provider issued by the Commissioner. A  
8 service contract provider *shall* make an application to the Commissioner  
9 upon a form prescribed by the Commissioner, and *shall* pay to the  
10 Commissioner a fee as provided under this Article. A service contract  
11 provider *shall* update the application information and documents annually  
12 and furnish such updates to the Commissioner. The application *shall* include  
13 or be accompanied by the following information and documents:

14 (a) all basic organizational documents of the service contract  
15 provider, including any articles of incorporation, articles of association,  
16 partnership agreement, trade name certificate, trust agreement, shareholder  
17 agreement, bylaws, and other applicable documents, and all amendments to  
18 those documents;

19 (b) the identities of the service contract provider's executive  
20 officers directly responsible for the service contract provider's service  
21 contract business, and, if more than fifty percent (50%) of the service  
22 contract provider's gross revenue is derived from the sale of service  
23 contracts, the identities of the service contract provider's directors and  
24 stockholders having beneficial ownership of ten percent (10%) or more of  
25 any class of securities;

26 (c) audited annual financial statements *or* other financial reports  
27 acceptable to the Commissioner for the two most recent years, which prove

1 that the applicant is solvent, and any information the Commissioner may  
2 require in order to review the current financial condition of the applicant;

3 (d) an application fee of Two Hundred Fifty Dollars (\$250.00),  
4 which *shall* be deposited in the Better Public Service Fund; and

5 (e) any other pertinent information required by the Commissioner.

6 **§ 12204. Financial Responsibility.**

7 (a) Any service contract provider applying for a license *shall* be  
8 solvent and *shall* meet the minimum requirements under this Section. *If* the  
9 financial responsibility requirement under this Section is to be maintained by  
10 the service contract provider's parent company, the parent company *shall*  
11 guarantee the service contract provider's obligations under service contracts  
12 sold by the service contract provider licensed under this Article.

13 (b) The service contract provider *shall* provide one of the  
14 following:

15 (1) provide both:

16 (A) maintain a funded reserve account for all  
17 obligations under service contracts issued and in force on  
18 Guam. The reserves *shall not* be less than forty percent (40%)  
19 of the gross consideration received from the sale of the service  
20 contract, less claims paid, for all in force contracts. The reserve  
21 account *shall* be subject to examination by the Commissioner;  
22 and

23 (B) place in trust with the Commissioner, for all  
24 service contracts issued and in force on Guam, a financial  
25 security deposit having a value that is the larger of Forty  
26 Thousand Dollars (\$40,000 or five percent (5%) of the gross  
27 consideration received, less claims paid for the sale of the

1 service contracts. The financial security deposit *shall* consist of  
2 one of the following:

3 (i) a surety bond issued by an authorized  
4 surety;

5 (ii) securities of the type eligible for deposit by  
6 authorized insurers on Guam;

7 (iii) cash or time certificate of deposit issued by  
8 a bank that is licensed in Guam and is insured by the  
9 Federal Deposit Insurance Corporation (FDIC) or by the  
10 National Credit Union Administration (NCUA);

11 (iv) a letter of credit issued by a qualified  
12 financial institution; or

13 (v) another form of security authorized by the  
14 Commissioner by rule, subject to the approval of *I*  
15 *Liheslaturan Guåhan*.

16 Service contracts for those service contract providers that  
17 provide the security in Subsections (A) and (B) of §  
18 12204(b)(1) *shall* contain a statement in substantially the same  
19 format:

20 *“The service contract provider’s obligations stated in*  
21 *this service contract are backed by the full faith and credit of*  
22 *the service contract provider.”*

23 (2) insure the performance for all service contracts issued by  
24 the service contract provider by a reimbursement insurance policy  
25 issued by an insurer holding a certificate of authority from the  
26 Commissioner, and who is in good standing with the Commissioner.  
27 Service contracts insured by a reimbursement insurance policy *shall*:



1 (A) conspicuously state the name and either the  
2 address or contact information for the insurance company; and

3 (B) contain a statement in substantially the following  
4 format:

5 *“The service contract provider’s obligations stated in*  
6 *this service contract are covered by a reimbursement insurance*  
7 *policy. If your service contract provider fails to pay or provide*  
8 *service on your claim, or a cancellation refund, or any other*  
9 *covered obligation under this service contract within sixty (60)*  
10 *days after that claim or request has been made by you to this*  
11 *service contract provider, you may then directly present your*  
12 *claim or request for service or payment to your service contract*  
13 *provider’s insurance company.”*

14 **§ 12205. Powers and Duties.** The Commissioner *shall*:

15 (a) receive applications for certification or license of service  
16 contract providers;

17 (b) establish the procedure for processing applications made under  
18 this Article;

19 (c) retain all applications and other records submitted to him or  
20 her;

21 (d) maintain a registry of the names and addresses of persons  
22 licensed under this Article;

23 (e) establish and collect fees as required by this Article;

24 (f) approve/disapprove applications for license;

25 (g) establish, suspend, revoke, or reprimand service contract  
26 licenses; and

27 (h) perform the other duties necessary to implement this Article.

1           **§ 12206. Recordkeeping.**

2           (a) The service contract provider or service contract provider's  
3 administrator *shall* keep accurate accounts, books, and records of all  
4 transactions regulated under this Article.

5           (b) Accounts, books, and records maintained as required by this  
6 Section *shall* include the following:

7                   (1) copies of each type of service contract sold;

8                   (2) the name and address of each service contract holder, to  
9 the extent that the name and address have been furnished by the  
10 service contract holder;

11                   (3) a list of the locations where the service contract  
12 provider's service contracts are marketed, sold, or offered for sale;  
13 and

14                   (4) recorded claims filed which, at a minimum, *shall* contain  
15 the date and description of each claim under the service contract  
16 provider's service contracts.

17           (c) The service contract provider for each service contract *shall*  
18 retain records required under this Section for *at least* one year after coverage  
19 under the contract has expired. A service contract provider discontinuing  
20 business on Guam *shall* maintain records required under this Section until it  
21 provides the Commissioner with satisfactory proof that the service contract  
22 provider has discharged all contractual obligations to contract holders on  
23 Guam.

24           (d) The records required under this Section may be, but are *not*  
25 required to be, maintained on a computer disk, computer drive or server or  
26 other electronic recordkeeping technology. *If* records are maintained in a

1 form other than hard copy, the records *shall* be in a form allowing  
2 duplication as a legible hard copy at the request of the Commissioner.

3 (e) Upon request of the Commissioner, the service contract  
4 provider *shall* make available to the Commissioner all accounts, books, and  
5 records concerning service contracts sold by the service contract provider  
6 reasonably necessary to enable the Commissioner to determine compliance  
7 or noncompliance with this Article.

8 **§ 12207. Filing of Annual Report.**

9 (a) Every registered service contract provider must file an annual  
10 report for the preceding calendar year with the Commissioner on or before  
11 July 1<sup>st</sup> of each year, or within any extension of the time the Commissioner  
12 for good cause may grant. The report must be in the form and contain those  
13 matters as the Commissioner prescribes, and *shall* be verified by at least two  
14 officers of the service contract provider, or for service contract providers  
15 with a single officer, the sole officer of service contract providers with a  
16 single officer.

17 (b) At the time of filing the report, the service contract provider  
18 must pay a filing fee of Twenty Five Dollars (\$25.00), which *shall* be  
19 deposited in the Better Public Service Fund.

20 (c) As part of any investigation by the Commissioner, the  
21 Commissioner may require a service contract provider to file monthly  
22 financial reports whenever, in the Commissioner's discretion, there is a need  
23 to more closely monitor the financial activities of the service contract  
24 provider. If the Commissioner requires monthly financial reports, the service  
25 contract provider *shall* file monthly financial statements, which *shall* be filed  
26 with the Commissioner *no later than* the twenty-fifth (25<sup>th</sup>) day of the month  
27 following the month for which the financial report is being filed. These

1 monthly financial reports are the internal financial statements of the service  
2 contract provider. The monthly financial reports that are filed with the  
3 Commissioner constitute information that might be damaging to the service  
4 contract provider if made available to its competitors, and therefore *shall* be  
5 kept confidential by the Commissioner. This information may not be made  
6 public or be subject to subpoena, other than by the Commissioner, and then  
7 *only* for the purpose of enforcement actions taken by the Commissioner.

8 **§ 12208. Receipt and Disclosures.**

9 (a) Service contract providers *shall* provide purchasers of a service  
10 contract with:

11 (1) a receipt or other written evidence of the purchase of the  
12 service contract that *shall* be provided to the service contract holder;

13 (2) a copy of the service contract that *shall* be provided  
14 within a reasonable period of time from the date of purchase; and

15 (3) *except* for offers or sales of service contracts by  
16 telephone, mail, or electronic means, a written copy of the basic terms  
17 and conditions of the service contract to be made available to the  
18 purchaser where the purchaser is physically present at the point of  
19 sale.

20 (b) Service contracts *shall* be written in clear, understandable  
21 language, and *shall* be printed or typed in a typeface and format that is easy  
22 to read.

23 (c) All service contracts *shall*:

24 (1) state the name and address of the service contract  
25 provider and the administrator of the service contract, if different from  
26 the service contract provider;

1           (2) identify the service contract seller and the service  
2 contract holder, to the extent that the service contract holder has  
3 furnished the service contract seller, administrator, or service contract  
4 provider with that information;

5           (3) the terms of the sale, including the purchase price;

6           (4) the procedure the service contract holder must follow to  
7 obtain service;

8           (5) any deductible amount that applies;

9           (6) the specific merchandise and services to be provided, and  
10 any limitations, exceptions, or exclusions;

11           (7) where the service contract covers a motor vehicle,  
12 whether the use of non-original manufacturer's parts is allowed;

13           (8) any restrictions governing the transferability of the  
14 service contract that apply;

15           (9) the terms, restrictions, or conditions governing the return  
16 or cancellation of the service contract by either the service contract  
17 provider or service contract holder prior to the service contract's  
18 termination or expiration date;

19           (10) the obligations and duties of the service contract holder,  
20 such as the duty to protect against any further damage, or to follow the  
21 owner's manual instructions; and

22           (11) a provision for, or exclusion of consequential damages or  
23 pre-existing conditions that applies.

24           The information under Subsections (1) and (2) *shall not* be required to  
25 be preprinted on the service contract and *may* be added to the service  
26 contract at the time of sale. The purchase price under Subsection (3) *shall*

1        *not* be required to be preprinted on the service contract and *may* be  
2        negotiated with the service contract holder at the time of sale.

3                **§ 12209.        Returns and Refunds.**

4                (a)    Service contracts *shall* state that the service contract holder may  
5        return the contract within:

6                        (1)    thirty (30) days of the date that the service contract was  
7        mailed to the service contract holder;

8                        (2)    twenty (20) days of the date the service contract was  
9        delivered to the service contract holder, if the service contract was  
10       delivered at the time of sale; or

11                       (3)    a longer time period as specified in the service contract.

12                (b)    Upon return of the service contract to the service contract  
13       provider within the applicable time period, and if *no* claim has been made  
14       under the service contract prior to its return to the service contract provider,  
15       the service contract *shall* be void and the service contract provider *shall*  
16       refund to, or credit the account of, the service contract holder with the full  
17       purchase price of the service contract. A ten percent (10%) penalty per  
18       month *shall* be added to a refund that is *not* paid or credited within sixty (60)  
19       days after the return of the service contract to the service contract provider.

20                (c)    The right to void a service contract under Subsection (b) *shall*  
21       *not* be transferred and *shall* apply *only* to the original service contract  
22       purchaser upon the terms and conditions provided in the contract and  
23       consistent with this Article.

24                (d)    Upon cancellation of a service contract by the service contract  
25       provider, the service contract provider, *at least* five (5) days prior to  
26       cancellation, *shall* mail to the service contract holder at the service contract  
27       holder's last known address, a written prior notice of cancellation that states

1 the effective date of the cancellation; provided, that prior notice under this  
2 Subsection *shall not* be required if cancellation is for:

3 (1) nonpayment of the service contract provider's fee for the  
4 service provided under the service contract;

5 (2) a material misrepresentation by the service contract  
6 holder to the service contract provider; or

7 (3) a substantial breach of duties of the service contract  
8 holder under the service contract, relating to a covered product or its  
9 use.

10 **§ 12210. Prohibited Acts.**

11 (a) No service contract provider shall use in its name, the word  
12 "insurance," "casualty," "surety," "mutual," "guarantee," or any other word  
13 descriptive of the insurance, casualty, or surety business, or a name  
14 deceptively similar to the name or description of any insurance or surety  
15 corporation, or to the name of any other service contract provider. This  
16 Section *shall not* apply to a service contract provider using any language  
17 prohibited by this Section in its name prior to July 1, 2013.

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

22 (c) No person shall condition a loan or the sale of any goods on  
23 the purchase of a service contract.

24 **§ 12211. Rules.** The Commissioner *may* adopt rules to implement  
25 and administer this Article pursuant to the Administration Adjudication Act.

26 **§ 12212. Enforcement.**

1 (a) The Commissioner *shall* take any action necessary or  
2 appropriate to enforce this Article, and the rules adopted and orders issued  
3 hereunder. The Commissioner *shall* conduct investigations and examinations  
4 of service contract providers and administrators or other persons, upon  
5 receipt of a consumer complaint. *If* a service contract provider has violated  
6 this Article, or rules or orders under this Article, the Commissioner *shall*  
7 issue an order:

8 (1) requiring a person to cease and desist from violating this  
9 Article or rules or orders under this Article;

10 (2) prohibiting a person from selling or offering for sale  
11 service contracts in violation of this Article until full remedy is  
12 afforded to comply with this Article.

13 (3) Imposing a civil penalty, at an amount *not* to exceed  
14 fifteen percent (15%) of the recourse afforded in §12204 of this  
15 Article for the purpose of affording remedy to comply with the  
16 provisions of this Article, on a person or any combination of the  
17 foregoing, as applicable.

18 **§ 12213. Effective Date.** This Act *shall* take effect upon its  
19 enactment and apply prospectively.

20 **§ 12214. Severability.** *If* any provision of this Act or its  
21 application to any person or circumstance is held invalid, the invalidity *shall*  
22 *not* affect other provisions or applications of this Act which can be given  
23 effect without the invalid provision or application and to this end the  
24 provisions of this Act is severable.”