

I Mina'Trentai Dos Na Liheslaturan Guahan
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
176-32 (COR), P.L. 32-087	Vicente (ben) 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.	08/28/13 9:31 a.m.	08/28/13	Committee on Aviation, Ground Transportation, Regulatory concerns, and Future Generations	10/24/13 2:00 p.m.	11/04/13 10:07 a.m.	Fiscal Note Requested 08/28/13 Fiscal Note Received 09/25/13
	DATE PASSED	TITLE	TRANSMITTED		DUE DATE	<small>DATE SIGNED BY I MAGA'LAHEN GUAHAN</small>	PUBLIC LAW NO.	NOTES
	11/12/2013	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.	11/15/13	11:28 a.m.	11/27/2013	11/27/2013	32-087	Filed Fiscal Note Re'cd 11/22/13

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

NOV 27 2013

32-13-1026
Office of the Speaker
Judith T. Won Pat, Ed. D.

Date 11.29.13
Time 9:52 AM
Received by: [Signature]

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina' trentai Dos Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

Dear Madame Speaker:

Transmitted herewith is Bill No. 176-32 (COR) "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" which I signed into law on November 27, 2013 as **Public Law 32-087**.

Senseramente,

EDDIE BAZA CALVO

2013 NOV 29 AM 10:16



I MINA TRENDAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Bill No. 176-32 (COR)**, "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", was on the 12th day of November 2013, duly and regularly passed.



Judith T. Won Pat, Ed.D.
Speaker

Attested:




Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 15th day of Nov.,
2013, at 11:28 o'clock A.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date: NOV 27 2013

Public Law No. 32-087

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

Bill No. 176-32 (COR)

Introduced by:

Vicente (ben) C. Pangelinan
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
B. J.F. Cruz
Chris M. Dueñas
Michael T. Lintiacó
Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
R. J. Respicio
Dennis G. Rodriguez, Jr.
Michael F. Q. San Nicolas
Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

**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.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 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

1 (DRT) regardless of the fact that the DRT has opined that they are insurance
2 products under Guam's definition of insurance.

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

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

12 **Section 2. Service Contracts.** A new Article 2 is hereby *added* to
13 Chapter 12, Division 2 of Title 22, Guam Code Annotated, to read:

14 **“ARTICLE 2**

15 **SERVICE CONTRACTS**

- 16 § 12201. Service Contracts Excepted.
17 § 12202. Definitions.
18 § 12203. License Required.
19 § 12204. Financial Responsibility.
20 § 12205. Powers and Duties.
21 § 12206. Recordkeeping.
22 § 12207. Filing of Annual Report.
23 § 12208. Receipt and Disclosures.
24 § 12209. Returns and Refunds.
25 § 12210. Prohibited Acts.
26 § 12211. Rules.
27 § 12212. Enforcement.

1 § 12213. Effective Date.

2 § 12214. Severability.

3 **§ 12201. Service Contracts Excepted.** The marketing, sale,
4 offering for sale, issuance, making, proposing to make and administration of
5 a service contract *shall not* be construed to be the business of insurance, and
6 *shall* be exempt from regulation as insurance under this Division. Express or
7 implied warranties *shall* be exempt from the requirements under this Article.

8 **§ 12202. Definitions.**

9 (a) *Administrator* means a person appointed or designated by a
10 provider who administers service contracts and service contract plans on
11 behalf of the provider, and subject to the requirements of this Article.

12 (b) *Commissioner* means the Insurance and Banking
13 Commissioner.

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

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

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

23 (f) *Reimbursement insurance policy* means a policy of insurance
24 issued to a service contract provider by an authorized insurer. Pursuant to
25 this insurance policy, the insurer agrees, for the benefit of the service
26 contract holders, to discharge all of the obligations and liabilities of the
27 service contract provider under the terms of the issued service contracts or in

1 the event of non-performance by the insured service contract provider. A
2 reimbursement insurance policy insurer *shall not* terminate the policy until it
3 has issued a notice of termination required by the Commissioner under the
4 insurance laws, rules, or regulations of the government of Guam. The
5 termination of a reimbursement insurance policy *shall not* reduce the
6 insurer's responsibility for service contracts issued by service contract
7 providers prior to the date of termination. A service contract provider *shall*
8 be considered the agent of the reimbursement insurance policy insurer for
9 purposes of determining duties owed by the insurer to service contract
10 holders in accordance with the service contract, and this Article. Insurers are
11 deemed to have received the premiums for the insurance upon the payment
12 of provider fees by consumers for service contracts issued by the insured
13 service contract provider. "All obligations and liabilities" include:

14 (1) the failure or inability of the insured service contract
15 provider to perform under the terms and conditions of the provider's
16 issued service contracts; and

17 (2) in the event of cancellation, the service contract
18 provider's failure or inability to return the unearned portion of the
19 paid service contract fee to the service contract holder.

20 (g) *Service contract*, for the purposes of this Article, means a
21 contract or agreement for a separately stated consideration for a specific
22 duration to perform the repair, replacement or maintenance of goods or
23 indemnification for repair, replacement or maintenance, for the operational
24 or structural failure of any motor vehicle or other goods due to a defect in
25 materials, workmanship, accidental damage from handling, or normal wear
26 and tear, with or without additional provisions for incidental payment of
27 indemnity under limited circumstances, including, but *not* limited to, towing,

1 rental and emergency road service, and road hazard protection. Motor
2 vehicle manufacturer and original equipment manufacturer (OEM)-backed
3 contracts *shall* be exempt from the requirements in this Article. Service
4 contracts may provide for repair, replacement, or maintenance of goods for
5 damage resulting from power surges or interruption. Service contracts also
6 include a contract or agreement sold for a separately stated consideration for
7 a specific duration that provides for any of the following:

8 (1) the repair or replacement or indemnification for the
9 repair or replacement of a motor vehicle for the operational or
10 structural failure of one or more parts or systems of the motor vehicle
11 brought about by the failure of an additive product to perform as
12 represented;

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

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

21 (4) the repair of small motor vehicle windshield chips or
22 cracks, but which expressly excludes the replacement of the entire
23 windshield; or

24 (5) the repair of damage to the interior components of a
25 motor vehicle caused by wear and tear, but which expressly excludes
26 the replacement of any part or component of a motor vehicle's
27 interior.

1 (h) *Service Contract Provider* means a person who is contractually
2 obligated to the service contract holder under the terms of the service
3 contract.

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

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

8 (k) *Warranty* means a warranty made without consideration, solely
9 by the manufacturer, importer, or seller of goods or services, that is *not*
10 negotiated or separated from the sale of the product and is incidental to the
11 sale of the product, that provides repair or replacement for defective parts,
12 mechanical or electrical breakdown, labor, or other remedial measures.

13 **§ 12203. License Required.** It *shall* be unlawful for any person to
14 act as, or offer to act as, or hold himself or herself out to be a service
15 contract provider, nor may a service contract be sold to a consumer, *unless*
16 the service contract provider has a valid license as a service contract
17 provider issued by the Commissioner. A service contract provider *shall*
18 make an application to the Commissioner upon a form prescribed by the
19 Commissioner, and *shall* pay to the Commissioner a fee as provided under
20 this Article. A service contract provider *shall* update the application
21 information and documents annually and furnish such updates to the
22 Commissioner. The application *shall* include or be accompanied by the
23 following information and documents:

24 (a) all basic organizational documents of the service contract
25 provider, including any articles of incorporation, articles of association,
26 partnership agreement, trade name certificate, trust agreement, shareholder

1 agreement, bylaws, and other applicable documents, and all amendments to
2 those documents;

3 (b) the identities of the service contract provider's executive
4 officers directly responsible for the service contract provider's service
5 contract business, and, if more than fifty percent (50%) of the service
6 contract provider's gross revenue is derived from the sale of service
7 contracts, the identities of the service contract provider's directors and
8 stockholders having beneficial ownership of ten percent (10%) or more of
9 any class of securities;

10 (c) audited annual financial statements *or* other financial reports
11 acceptable to the Commissioner for the two most recent years, which prove
12 that the applicant is solvent, and any information the Commissioner may
13 require in order to review the current financial condition of the applicant;

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

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

17 **§ 12204. Financial Responsibility.**

18 (a) Any service contract provider applying for a license *shall* be
19 solvent and *shall* meet the minimum requirements under this Section. *If* the
20 financial responsibility requirement under this Section is to be maintained by
21 the service contract provider's parent company, the parent company *shall*
22 guarantee the service contract provider's obligations under service contracts
23 sold by the service contract provider licensed under this Article.

24 (b) The service contract provider *shall* provide one of the
25 following:

26 (1) provide both:

1 (A) maintain a funded reserve account for all
2 obligations under service contracts issued and in force on
3 Guam. The reserves *shall not* be less than forty percent (40%)
4 of the gross consideration received from the sale of the service
5 contract, less claims paid, for all in force contracts. The reserve
6 account *shall* be subject to examination by the Commissioner;
7 and

8 (B) place in trust with the Commissioner, for all
9 service contracts issued and in force on Guam, a financial
10 security deposit having a value that is the larger of Forty
11 Thousand Dollars (\$40,000) or five percent (5%) of the gross
12 consideration received, less claims paid for the sale of the
13 service contracts. The financial security deposit *shall* consist of
14 one of the following:

15 (i) a surety bond issued by an authorized
16 surety;

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

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

23 (iv) a letter of credit issued by a qualified
24 financial institution; or

25 (v) another form of security authorized by the
26 Commissioner by rule, subject to the approval of *I*
27 *Liheslaturan Guåhan*.

1 Service contracts for those service contract providers that
2 provide the security in Subsections (A) and (B) of §
3 12204(b)(1) *shall* contain a statement in substantially the same
4 format:

5 *“The service contract provider’s obligations stated in*
6 *this service contract are backed by the full faith and credit of*
7 *the service contract provider.”*

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

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

15 (B) contain a statement in substantially the following
16 format:

17 *“The service contract provider’s obligations stated in*
18 *this service contract are covered by a reimbursement insurance*
19 *policy. If your service contract provider fails to pay or provide*
20 *service on your claim, or a cancellation refund, or any other*
21 *covered obligation under this service contract within sixty (60)*
22 *days after that claim or request has been made by you to this*
23 *service contract provider, you may then directly present your*
24 *claim or request for service or payment to your service contract*
25 *provider’s insurance company.”*

26 **§ 12205. Powers and Duties.** The Commissioner *shall*:

1 (a) receive applications for certification or license of service
2 contract providers;

3 (b) establish the procedure for processing applications made under
4 this Article;

5 (c) retain all applications and other records submitted to him or
6 her;

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

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

10 (f) approve/disapprove applications for license;

11 (g) establish, suspend, revoke, or reprimand service contract
12 licenses; and

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

14 **§ 12206. Recordkeeping.**

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

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

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

21 (2) the name and address of each service contract holder, to
22 the extent that the name and address have been furnished by the
23 service contract holder;

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

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

4 (c) The service contract provider for each service contract *shall*
5 retain records required under this Section for *at least* one year after coverage
6 under the contract has expired. A service contract provider discontinuing
7 business on Guam *shall* maintain records required under this Section until it
8 provides the Commissioner with satisfactory proof that the service contract
9 provider has discharged all contractual obligations to contract holders on
10 Guam.

11 (d) The records required under this Section may be, but are *not*
12 required to be, maintained on a computer disk, computer drive or server or
13 other electronic recordkeeping technology. *If* records are maintained in a
14 form other than hard copy, the records *shall* be in a form allowing
15 duplication as a legible hard copy at the request of the Commissioner.

16 (e) Upon request of the Commissioner, the service contract
17 provider *shall* make available to the Commissioner all accounts, books, and
18 records concerning service contracts sold by the service contract provider
19 reasonably necessary to enable the Commissioner to determine compliance
20 or noncompliance with this Article.

21 **§ 12207. Filing of Annual Report.**

22 (a) Every registered service contract provider must file an annual
23 report for the preceding calendar year with the Commissioner on or before
24 July 1st of each year, or within any extension of the time the Commissioner
25 for good cause may grant. The report must be in the form and contain those
26 matters as the Commissioner prescribes, and *shall* be verified by at least two
27 officers of the service contract provider, or for service contract providers

1 with a single officer, the sole officer of service contract providers with a
2 single officer.

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

6 (c) As part of any investigation by the Commissioner, the
7 Commissioner may require a service contract provider to file monthly
8 financial reports whenever, in the Commissioner's discretion, there is a need
9 to more closely monitor the financial activities of the service contract
10 provider. If the Commissioner requires monthly financial reports, the service
11 contract provider *shall* file monthly financial statements, which *shall* be filed
12 with the Commissioner *no later than* the twenty-fifth (25th) day of the month
13 following the month for which the financial report is being filed. These
14 monthly financial reports are the internal financial statements of the service
15 contract provider. The monthly financial reports that are filed with the
16 Commissioner constitute information that might be damaging to the service
17 contract provider if made available to its competitors, and therefore *shall* be
18 kept confidential by the Commissioner. This information may *not* be made
19 public or be subject to subpoena, other than by the Commissioner, and then
20 *only* for the purpose of enforcement actions taken by the Commissioner.

21 **§ 12208. Receipt and Disclosures.**

22 (a) Service contract providers *shall* provide purchasers of a service
23 contract with:

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

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

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

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

9 (c) All service contracts *shall* have the following information:

10 (1) the name and address of the service contract provider and
11 the administrator of the service contract, if different from the service
12 contract provider;

13 (2) the identity of the service contract seller and the service
14 contract holder, to the extent that the service contract holder has
15 furnished the service contract seller, administrator, or service contract
16 provider with that information;

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

18 (4) the procedure the service contract holder must follow to
19 obtain service;

20 (5) any deductible amount that applies;

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

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

25 (8) any restrictions governing the transferability of the
26 service contract that apply;

1 (9) the terms, restrictions, or conditions governing the return
2 or cancellation of the service contract by either the service contract
3 provider or service contract holder prior to the service contract's
4 termination or expiration date;

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

8 (11) a provision for, or exclusion of consequential damages or
9 pre-existing conditions that apply.

10 The information under Subsections (1) and (2) *shall not* be required to
11 be preprinted on the service contract and *may* be added to the service
12 contract at the time of sale. The purchase price under Subsection (3) *shall*
13 *not* be required to be preprinted on the service contract and *may* be
14 negotiated with the service contract holder at the time of sale.

15 **§ 12209. Returns and Refunds.**

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

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

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

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

24 (b) Upon return of the service contract to the service contract
25 provider within the applicable time period, and if *no* claim has been made
26 under the service contract prior to its return to the service contract provider,
27 the service contract *shall* be void and the service contract provider *shall*

1 refund to, or credit the account of, the service contract holder with the full
2 purchase price of the service contract. A ten percent (10%) penalty per
3 month *shall* be added to a refund that is *not* paid or credited within sixty (60)
4 days after the return of the service contract to the service contract provider.

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

9 (d) Upon cancellation of a service contract by the service contract
10 provider, the service contract provider, *at least* five (5) days prior to
11 cancellation, *shall* mail to the service contract holder at the service contract
12 holder's last known address, a written prior notice of cancellation that states
13 the effective date of the cancellation; provided, that prior notice under this
14 Subsection *shall not* be required if the cancellation is for:

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

17 (2) a material misrepresentation by the service contract
18 holder to the service contract provider; or

19 (3) a substantial breach of duties of the service contract
20 holder under the service contract, relating to a covered product or its
21 use.

22 **§ 12210. Prohibited Acts.**

23 (a) *No* service contract provider *shall* use in its name, the word
24 insurance, casualty, surety, mutual, guarantee, or any other word descriptive
25 of the insurance, casualty, or surety business, or a name deceptively similar
26 to the name or description of any insurance or surety corporation, or to the
27 name of any other service contract provider. This Section *shall not* apply to

1 a service contract provider using any language prohibited by this Section in
2 its name prior to July 1, 2013.

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

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

9 **§ 12211. Rules.** The Commissioner *may* adopt rules to implement
10 and administer this Article pursuant to the Administration Adjudication Act.

11 **§ 12212. Enforcement.**

12 (a) The Commissioner *shall* take any action necessary or
13 appropriate to enforce this Article, and the rules adopted and orders issued
14 hereunder. The Commissioner *shall* conduct investigations and examinations
15 of service contract providers and administrators, or other persons, upon
16 receipt of a consumer complaint. *If* a service contract provider has violated
17 this Article, or rules or orders under this Article, the Commissioner *shall*
18 issue an order:

19 (1) requiring a person to cease and desist from violating this
20 Article, or rules or orders under this Article;

21 (2) prohibiting a person from selling or offering for sale
22 service contracts in violation of this Article until full remedy is
23 afforded to comply with this Article; and

24 (3) imposing a civil penalty, at an amount *not to exceed*
25 fifteen percent (15%) of the recourse afforded in §12204 of this
26 Article for the purpose of affording remedy to comply with the

1 provisions of this Article, on a person or any combination of the
2 foregoing, as applicable.

3 § 12213. **Effective Date.** This Act *shall* take effect upon its
4 enactment and apply prospectively.

5 § 12214. **Severability.** *If* any provision of this Act or its
6 application to any person or circumstance is held invalid, the invalidity *shall*
7 *not* affect other provisions or applications of this Act which can be given
8 effect without the invalid provision or application and to this end the
9 provisions of this Act is severable.”



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

September 25, 2013

Memorandum

To: **Rennae Meno**
Clerk of the Legislature

From: **Senator Rory J. Respicio**
Majority Leader & Rules Chair

Subject: **Fiscal Notes**

Hafa Adai!

Attached please find the fiscal notes for the bill numbers listed below. Please note that the fiscal notes, or waivers, are issued on the bills as introduced.

FISCAL NOTES:

Bill No. 169-32(LS)

Bill No. 176-32(COR)

Please forward the same to MIS for posting on our website. Please contact our office should you have any questions regarding this matter.

Si Yu'os ma'åse'!

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Senator
Dennis G. Rodriguez, Jr.
Member

Vice-Speaker
Benjamin J.F. Cruz
Member

Legislative Secretary
Tina Rose Muña Barnes
Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

2013 SEP 25 AM 10:46

**BUREAU OF BUDGET & MANAGEMENT RESEARCH**OFFICE OF THE GOVERNOR
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GOVERNORJOHN A. RIOS
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SEP 23 2013

Senator Rory J. Respicio
Chairperson, Committee on Rules
I Mina'trentai Unu na Liheslaturan Guåhan
The 31st Guam Legislature
155 Hesler Place
Hagåtña, Guam 96932

Hafa Adai Senator Respicio:

Transmitted herewith is Fiscal Note on the following Bill Nos.: 169-32(LS) and 176-32(COR).

If you have any question(s), please do not hesitate to call the office at 475-9412/9106.

A handwritten signature in black ink, appearing to be "J.A. Rios", written over a printed name and title.

JOHN A. RIOS
Director

Enclosures
cc: Senator Vicente (ben) Pangelinan

**Bureau of Budget & Management Research
Fiscal Note of Bill No. 176-32 (COR)**

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.

Department/Agency Appropriation Information	
Dept./Agency Affected: Department of Revenue & Taxation	Dept./Agency Head: John P. Camacho
Department's General Fund (GF) appropriation(s) to date:	9,164,180
Department's Other Fund (Specify) appropriation(s) to date: Tax Collection Enhancement Fund (\$686,717) / Better Public Service Fund (\$1,390,554)	2,077,271
Total Department/Agency Appropriation(s) to date:	\$11,241,451

Fund Source Information of Proposed Appropriation			
	General Fund:	(Specify Special Fund):	Total:
FY 2012 Unreserved Fund Balance ¹		\$0	\$0
FY 2013 Adopted Revenues	\$561,985,725	\$0	\$561,985,725
FY 2013 Appro. (P.L. 31-233)	(\$548,971,874)	\$0	(\$548,971,874)
Sub-total:	\$13,013,851	\$0	\$13,013,851
Less appropriation in Bill	\$0	\$0	\$0
Total:	\$13,013,851	\$0	\$13,013,851

Estimated Fiscal Impact of Bill						
	One Full Fiscal Year	For Remainder of FY 2013 (if applicable)	FY 2014	FY 2015	FY 2016	FY 2017
General Fund	\$0	\$0	\$0	\$0	\$0	\$0
(Specify Special Fund)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0

- Does the bill contain "revenue generating" provisions?
If Yes, see attachment / x / Yes // No
- Is amount appropriated adequate to fund the intent of the appropriation?
If no, what is the additional amount required? \$ _____ / x / N/A // Yes // No
- Does the Bill establish a new program/agency?
If yes, will the program duplicate existing programs/agencies? / x / N/A // Yes // No
Is there a federal mandate to establish the program/agency? // Yes // No
- Will the enactment of this Bill require new physical facilities? // Yes / x / No
- Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason:
/ x / Requested agency comments not received as of the due date / x / Yes // No
// Other:

JM
9/11/13

Analyst: Michael M. Aflague, B&M Analyst IV Date: 9/10/13 Director: John A. Rigo, Director Date: **SEP 23 2013**

Footnotes: see attachment for revenue generating provisions.

Bureau of Budget & Management Research
Attachment to Fiscal Note Bill No. 176-32 (COR)
(for revenue generating provisions)

Projected Multi-Year Revenues					
	Year 1	Year 2	Year 3	Year 4	Year 5
General Fund	\$0	\$0	\$0	\$0	\$0
Better Public Service Fund	1/	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total	1/	\$0	\$0	\$0	\$0

Comments:

1/ The Bill would require a 'Service Provider' to pay an annual application fee of \$250 and a filing fee of \$25 to the Department of Revenue and Taxation. A 'Service Provider' may include businesses/entities within a wide range of industries, including but not limited to, automotive, electronics and construction. The anticipated revenue impact to the Better Public Service Fund will be the application and filing fee applied to all industry 'Service Providers'. It should be noted that the Bureau has requested data from the Department of Revenue and Taxation; however, information has not been provided at the time of these comments.



FILE COPY

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
THIRTY-SECOND GUAM LEGISLATURE
155 Hesler Place, Hagåtña, Guam 96910

November 13, 2013

The Honorable Edward J.B. Calvo
I Maga'lahren Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910

OFFICE OF THE GOVERNOR
CENTRAL FILES
J. Dela Rosa
RECEIVED BY
TIME 11:28 AM DATE 11/15/13

Dear *Maga'lahi* Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 35-32(COR), 74-32(LS), 75-32(LS), 91-32(COR), 94-32(COR), 98-32(LS), 99-32(LS), 108-32(COR), 112-32(COR), 116-32(COR), 133-32(COR), 134-32(COR), 140-32(COR), 141-32(COR), 143-32(COR), 145-32(LS), 150-32(COR), 153-32(COR), 154-32(COR), 156-32(COR), 157-32(COR), 158-32(COR), 160-32(COR), 161-32(COR), 162-32(LS), 165-32(COR), 170-32(LS), 176-32(COR), 189-32(COR), 193-32(COR), 194-32(COR), 195-32(COR), 196-32(COR), 200-32(COR), 205-32(COR), 210-32(COR), 211-32(COR) and 217-32(LS) which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on November 12, 2013.

Sincerely,

Tina Rose Muña Barnes
Legislative Secretary

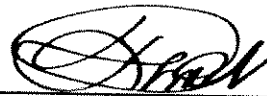
Enclosures (38)

FILE COPY

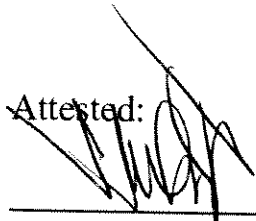
I MINA 'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Bill No. 176-32 (COR)**, "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", was on the 12th day of November 2013, duly and regularly passed.



Judith T. Won Pat, Ed.D.
Speaker

Attested: 

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 15th day of Nov.,
2013, at 11:28 o'clock A.M.



Assistant Staff Officer
***Maga'laha*'s Office**

APPROVED:

EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

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

Bill No. 176-32 (COR)

Introduced by:

Vicente (ben) C. Pangelinan

T. C. Ada

V. Anthony Ada

FRANK B. AGUON, JR.

B. J.F. Cruz

Chris M. Dueñas

Michael T. Limtiaco

Brant T. McCreadie

Tommy Morrison

T. R. Muña Barnes

R. J. Respicio

Dennis G. Rodriguez, Jr.

Michael F. Q. San Nicolas

Aline A. Yamashita, Ph.D.

Judith T. Won Pat, Ed.D.

**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.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 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

1 (DRT) regardless of the fact that the DRT has opined that they are insurance
2 products under Guam’s definition of insurance.

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

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

12 **Section 2. Service Contracts.** A new Article 2 is hereby *added* to
13 Chapter 12, Division 2 of Title 22, Guam Code Annotated, to read:

14 **“ARTICLE 2**

15 **SERVICE CONTRACTS**

- 16 § 12201. Service Contracts Excepted.
- 17 § 12202. Definitions.
- 18 § 12203. License Required.
- 19 § 12204. Financial Responsibility.
- 20 § 12205. Powers and Duties.
- 21 § 12206. Recordkeeping.
- 22 § 12207. Filing of Annual Report.
- 23 § 12208. Receipt and Disclosures.
- 24 § 12209. Returns and Refunds.
- 25 § 12210. Prohibited Acts.
- 26 § 12211. Rules.
- 27 § 12212. Enforcement.

1 § 12213. Effective Date.

2 § 12214. Severability.

3 **§ 12201. Service Contracts Excepted.** The marketing, sale,
4 offering for sale, issuance, making, proposing to make and administration of
5 a service contract *shall not* be construed to be the business of insurance, and
6 *shall* be exempt from regulation as insurance under this Division. Express or
7 implied warranties *shall* be exempt from the requirements under this Article.

8 **§ 12202. Definitions.**

9 (a) *Administrator* means a person appointed or designated by a
10 provider who administers service contracts and service contract plans on
11 behalf of the provider, and subject to the requirements of this Article.

12 (b) *Commissioner* means the Insurance and Banking
13 Commissioner.

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

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

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

23 (f) *Reimbursement insurance policy* means a policy of insurance
24 issued to a service contract provider by an authorized insurer. Pursuant to
25 this insurance policy, the insurer agrees, for the benefit of the service
26 contract holders, to discharge all of the obligations and liabilities of the
27 service contract provider under the terms of the issued service contracts or in

1 the event of non-performance by the insured service contract provider. A
2 reimbursement insurance policy insurer *shall not* terminate the policy until it
3 has issued a notice of termination required by the Commissioner under the
4 insurance laws, rules, or regulations of the government of Guam. The
5 termination of a reimbursement insurance policy *shall not* reduce the
6 insurer's responsibility for service contracts issued by service contract
7 providers prior to the date of termination. A service contract provider *shall*
8 be considered the agent of the reimbursement insurance policy insurer for
9 purposes of determining duties owed by the insurer to service contract
10 holders in accordance with the service contract, and this Article. Insurers are
11 deemed to have received the premiums for the insurance upon the payment
12 of provider fees by consumers for service contracts issued by the insured
13 service contract provider. "All obligations and liabilities" include:

14 (1) the failure or inability of the insured service contract
15 provider to perform under the terms and conditions of the provider's
16 issued service contracts; and

17 (2) in the event of cancellation, the service contract
18 provider's failure or inability to return the unearned portion of the
19 paid service contract fee to the service contract holder.

20 (g) *Service contract*, for the purposes of this Article, means a
21 contract or agreement for a separately stated consideration for a specific
22 duration to perform the repair, replacement or maintenance of goods or
23 indemnification for repair, replacement or maintenance, for the operational
24 or structural failure of any motor vehicle or other goods due to a defect in
25 materials, workmanship, accidental damage from handling, or normal wear
26 and tear, with or without additional provisions for incidental payment of
27 indemnity under limited circumstances, including, but *not* limited to, towing,

1 rental and emergency road service, and road hazard protection. Motor
2 vehicle manufacturer and original equipment manufacturer (OEM)-backed
3 contracts *shall* be exempt from the requirements in this Article. Service
4 contracts may provide for repair, replacement, or maintenance of goods for
5 damage resulting from power surges or interruption. Service contracts also
6 include a contract or agreement sold for a separately stated consideration for
7 a specific duration that provides for any of the following:

8 (1) the repair or replacement or indemnification for the
9 repair or replacement of a motor vehicle for the operational or
10 structural failure of one or more parts or systems of the motor vehicle
11 brought about by the failure of an additive product to perform as
12 represented;

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

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

21 (4) the repair of small motor vehicle windshield chips or
22 cracks, but which expressly excludes the replacement of the entire
23 windshield; or

24 (5) the repair of damage to the interior components of a
25 motor vehicle caused by wear and tear, but which expressly excludes
26 the replacement of any part or component of a motor vehicle's
27 interior.

1 (h) *Service Contract Provider* means a person who is contractually
2 obligated to the service contract holder under the terms of the service
3 contract.

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

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

8 (k) *Warranty* means a warranty made without consideration, solely
9 by the manufacturer, importer, or seller of goods or services, that is *not*
10 negotiated or separated from the sale of the product and is incidental to the
11 sale of the product, that provides repair or replacement for defective parts,
12 mechanical or electrical breakdown, labor, or other remedial measures.

13 **§ 12203. License Required.** It *shall* be unlawful for any person to
14 act as, or offer to act as, or hold himself or herself out to be a service
15 contract provider, nor may a service contract be sold to a consumer, *unless*
16 the service contract provider has a valid license as a service contract
17 provider issued by the Commissioner. A service contract provider *shall*
18 make an application to the Commissioner upon a form prescribed by the
19 Commissioner, and *shall* pay to the Commissioner a fee as provided under
20 this Article. A service contract provider *shall* update the application
21 information and documents annually and furnish such updates to the
22 Commissioner. The application *shall* include or be accompanied by the
23 following information and documents:

24 (a) all basic organizational documents of the service contract
25 provider, including any articles of incorporation, articles of association,
26 partnership agreement, trade name certificate, trust agreement, shareholder

1 agreement, bylaws, and other applicable documents, and all amendments to
2 those documents;

3 (b) the identities of the service contract provider's executive
4 officers directly responsible for the service contract provider's service
5 contract business, and, if more than fifty percent (50%) of the service
6 contract provider's gross revenue is derived from the sale of service
7 contracts, the identities of the service contract provider's directors and
8 stockholders having beneficial ownership of ten percent (10%) or more of
9 any class of securities;

10 (c) audited annual financial statements *or* other financial reports
11 acceptable to the Commissioner for the two most recent years, which prove
12 that the applicant is solvent, and any information the Commissioner may
13 require in order to review the current financial condition of the applicant;

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

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

17 **§ 12204. Financial Responsibility.**

18 (a) Any service contract provider applying for a license *shall* be
19 solvent and *shall* meet the minimum requirements under this Section. *If* the
20 financial responsibility requirement under this Section is to be maintained by
21 the service contract provider's parent company, the parent company *shall*
22 guarantee the service contract provider's obligations under service contracts
23 sold by the service contract provider licensed under this Article.

24 (b) The service contract provider *shall* provide one of the
25 following:

26 (1) provide both:

1 (A) maintain a funded reserve account for all
2 obligations under service contracts issued and in force on
3 Guam. The reserves *shall not* be less than forty percent (40%)
4 of the gross consideration received from the sale of the service
5 contract, less claims paid, for all in force contracts. The reserve
6 account *shall* be subject to examination by the Commissioner;
7 and

8 (B) place in trust with the Commissioner, for all
9 service contracts issued and in force on Guam, a financial
10 security deposit having a value that is the larger of Forty
11 Thousand Dollars (\$40,000) or five percent (5%) of the gross
12 consideration received, less claims paid for the sale of the
13 service contracts. The financial security deposit *shall* consist of
14 one of the following:

15 (i) a surety bond issued by an authorized
16 surety;

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

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

23 (iv) a letter of credit issued by a qualified
24 financial institution; or

25 (v) another form of security authorized by the
26 Commissioner by rule, subject to the approval of *I*
27 *Liheslaturan Guåhan*.

1 Service contracts for those service contract providers that
2 provide the security in Subsections (A) and (B) of §
3 12204(b)(1) shall contain a statement in substantially the same
4 format:

5 *“The service contract provider’s obligations stated in*
6 *this service contract are backed by the full faith and credit of*
7 *the service contract provider.”*

8 (2) insure the performance for all service contracts issued by
9 the service contract provider by a reimbursement insurance policy
10 issued by an insurer holding a certificate of authority from the
11 Commissioner, and who is in good standing with the Commissioner.
12 Service contracts insured by a reimbursement insurance policy shall:

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

15 (B) contain a statement in substantially the following
16 format:

17 *“The service contract provider’s obligations stated in*
18 *this service contract are covered by a reimbursement insurance*
19 *policy. If your service contract provider fails to pay or provide*
20 *service on your claim, or a cancellation refund, or any other*
21 *covered obligation under this service contract within sixty (60)*
22 *days after that claim or request has been made by you to this*
23 *service contract provider, you may then directly present your*
24 *claim or request for service or payment to your service contract*
25 *provider’s insurance company.”*

26 **§ 12205. Powers and Duties.** The Commissioner shall:

1 (a) receive applications for certification or license of service
2 contract providers;

3 (b) establish the procedure for processing applications made under
4 this Article;

5 (c) retain all applications and other records submitted to him or
6 her;

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

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

10 (f) approve/disapprove applications for license;

11 (g) establish, suspend, revoke, or reprimand service contract
12 licenses; and

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

14 **§ 12206. Recordkeeping.**

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

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

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

21 (2) the name and address of each service contract holder, to
22 the extent that the name and address have been furnished by the
23 service contract holder;

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

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

4 (c) The service contract provider for each service contract *shall*
5 retain records required under this Section for *at least* one year after coverage
6 under the contract has expired. A service contract provider discontinuing
7 business on Guam *shall* maintain records required under this Section until it
8 provides the Commissioner with satisfactory proof that the service contract
9 provider has discharged all contractual obligations to contract holders on
10 Guam.

11 (d) The records required under this Section may be, but are *not*
12 required to be, maintained on a computer disk, computer drive or server or
13 other electronic recordkeeping technology. *If* records are maintained in a
14 form other than hard copy, the records *shall* be in a form allowing
15 duplication as a legible hard copy at the request of the Commissioner.

16 (e) Upon request of the Commissioner, the service contract
17 provider *shall* make available to the Commissioner all accounts, books, and
18 records concerning service contracts sold by the service contract provider
19 reasonably necessary to enable the Commissioner to determine compliance
20 or noncompliance with this Article.

21 **§ 12207. Filing of Annual Report.**

22 (a) Every registered service contract provider must file an annual
23 report for the preceding calendar year with the Commissioner on or before
24 July 1st of each year, or within any extension of the time the Commissioner
25 for good cause may grant. The report must be in the form and contain those
26 matters as the Commissioner prescribes, and *shall* be verified by at least two
27 officers of the service contract provider, or for service contract providers

1 with a single officer, the sole officer of service contract providers with a
2 single officer.

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

6 (c) As part of any investigation by the Commissioner, the
7 Commissioner may require a service contract provider to file monthly
8 financial reports whenever, in the Commissioner's discretion, there is a need
9 to more closely monitor the financial activities of the service contract
10 provider. If the Commissioner requires monthly financial reports, the service
11 contract provider *shall* file monthly financial statements, which *shall* be filed
12 with the Commissioner *no later than* the twenty-fifth (25th) day of the month
13 following the month for which the financial report is being filed. These
14 monthly financial reports are the internal financial statements of the service
15 contract provider. The monthly financial reports that are filed with the
16 Commissioner constitute information that might be damaging to the service
17 contract provider if made available to its competitors, and therefore *shall* be
18 kept confidential by the Commissioner. This information may *not* be made
19 public or be subject to subpoena, other than by the Commissioner, and then
20 *only* for the purpose of enforcement actions taken by the Commissioner.

21 **§ 12208. Receipt and Disclosures.**

22 (a) Service contract providers *shall* provide purchasers of a service
23 contract with:

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

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

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

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

9 (c) All service contracts *shall* have the following information:

10 (1) the name and address of the service contract provider and
11 the administrator of the service contract, if different from the service
12 contract provider;

13 (2) the identity of the service contract seller and the service
14 contract holder, to the extent that the service contract holder has
15 furnished the service contract seller, administrator, or service contract
16 provider with that information;

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

18 (4) the procedure the service contract holder must follow to
19 obtain service;

20 (5) any deductible amount that applies;

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

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

25 (8) any restrictions governing the transferability of the
26 service contract that apply;

1 (9) the terms, restrictions, or conditions governing the return
2 or cancellation of the service contract by either the service contract
3 provider or service contract holder prior to the service contract's
4 termination or expiration date;

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

8 (11) a provision for, or exclusion of consequential damages or
9 pre-existing conditions that apply.

10 The information under Subsections (1) and (2) *shall not* be required to
11 be preprinted on the service contract and *may* be added to the service
12 contract at the time of sale. The purchase price under Subsection (3) *shall*
13 *not* be required to be preprinted on the service contract and *may* be
14 negotiated with the service contract holder at the time of sale.

15 **§ 12209. Returns and Refunds.**

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

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

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

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

24 (b) Upon return of the service contract to the service contract
25 provider within the applicable time period, and if *no* claim has been made
26 under the service contract prior to its return to the service contract provider,
27 the service contract *shall* be void and the service contract provider *shall*

1 refund to, or credit the account of, the service contract holder with the full
2 purchase price of the service contract. A ten percent (10%) penalty per
3 month *shall* be added to a refund that is *not* paid or credited within sixty (60)
4 days after the return of the service contract to the service contract provider.

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

9 (d) Upon cancellation of a service contract by the service contract
10 provider, the service contract provider, *at least* five (5) days prior to
11 cancellation, *shall* mail to the service contract holder at the service contract
12 holder's last known address, a written prior notice of cancellation that states
13 the effective date of the cancellation; provided, that prior notice under this
14 Subsection *shall not* be required if the cancellation is for:

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

17 (2) a material misrepresentation by the service contract
18 holder to the service contract provider; or

19 (3) a substantial breach of duties of the service contract
20 holder under the service contract, relating to a covered product or its
21 use.

22 **§ 12210. Prohibited Acts.**

23 (a) *No* service contract provider *shall* use in its name, the word
24 insurance, casualty, surety, mutual, guarantee, or any other word descriptive
25 of the insurance, casualty, or surety business, or a name deceptively similar
26 to the name or description of any insurance or surety corporation, or to the
27 name of any other service contract provider. This Section *shall not* apply to

1 a service contract provider using any language prohibited by this Section in
2 its name prior to July 1, 2013.

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

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

9 § 12211. **Rules.** The Commissioner *may* adopt rules to implement
10 and administer this Article pursuant to the Administration Adjudication Act.

11 § 12212. **Enforcement.**

12 (a) The Commissioner *shall* take any action necessary or
13 appropriate to enforce this Article, and the rules adopted and orders issued
14 hereunder. The Commissioner *shall* conduct investigations and examinations
15 of service contract providers and administrators, or other persons, upon
16 receipt of a consumer complaint. *If* a service contract provider has violated
17 this Article, or rules or orders under this Article, the Commissioner *shall*
18 issue an order:

19 (1) requiring a person to cease and desist from violating this
20 Article, or rules or orders under this Article;

21 (2) prohibiting a person from selling or offering for sale
22 service contracts in violation of this Article until full remedy is
23 afforded to comply with this Article; and

24 (3) imposing a civil penalty, at an amount *not to exceed*
25 fifteen percent (15%) of the recourse afforded in §12204 of this
26 Article for the purpose of affording remedy to comply with the

1 provisions of this Article, on a person or any combination of the
2 foregoing, as applicable.

3 **§ 12213. Effective Date.** This Act *shall* take effect upon its
4 enactment and apply prospectively.

5 **§ 12214. Severability.** *If* any provision of this Act or its
6 application to any person or circumstance is held invalid, the invalidity *shall*
7 *not* affect other provisions or applications of this Act which can be given
8 effect without the invalid provision or application and to this end the
9 provisions of this Act is severable.”

LEGISLATIVE SESSION

I MINA'TRENTAI DOS NA LIHESLATURAN

2013 (FIRST) Regular Session

Voting Sheet

Bill No. 176-32 (COR)

Speaker Antonio R. Unipingo Legislative Session Hall
November 12, 2013

NAME	Yea	Nay	Not Voting/ Abstained	Out During Roll Call	Absent
Senator Thomas "Tom" C. ADA	✓				
Senator V. Anthony "Tony" ADA		✓			
Senator Frank Blas AGUON Jr.	✓				
Vice-Speaker Benjamin J.F. CRUZ	✓				
Senator Christopher M. DUENAS	✓				
Senator Michael LIMTIACO	✓				
Senator Brant McCREADIE	✓				
Senator Thomas "Tommy" MORRISON	✓				
Senator Tina Rose MUÑA BARNES	✓				
Senator Vicente (ben) Cabrera PANGELINAN	✓				
Senator Rory J. RESPICIO	✓				
Senator Dennis G. RODRIGUEZ, Jr.	✓				
Senator Michael F. Q.SAN NICOLAS	✓				
Speaker Judith T. WON PAT, Ed.D.	✓				
Senator Aline A. YAMASHITA, Ph.D.	✓				

TOTAL

14
Yea

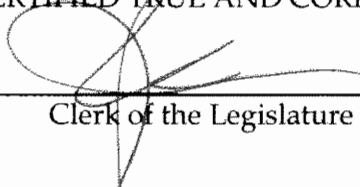
1
Nay

Not Voting/
Abstained

Out During
Roll Call

Absent

CERTIFIED TRUE AND CORRECT:


Clerk of the Legislature

I = Pass



Senator Michael F.Q. San Nicolas

Chairman - Committee on Aviation, Ground Transportation, -
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



OCT 31 2013

The Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Dos na Liheslaturan Guåhan
155 Hesler Place
Hagatna, Guam 96910

VIA: The Honorable Rory J. Respicio
Chairman
Committee on Rules, Federal, Foreign & Micronesian Affairs,
Human & Natural Resources, and Election Reform

2013 NOV -11 PM 10:07
[Handwritten signature]

RE: Committee Report on Bill No. 176-32 (COR)

Dear Speaker Won Pat,

Håfa adai! Transmitted herewith is the Committee Report on Bill No. 176-32 (COR) – “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.”

Committee votes are as follows:

- 3 TO DO PASS
- 0 TO NOT PASS
- 4 TO REPORT OUT ONLY
- 0 TO ABSTAIN
- 0 TO PLACE IN INACTIVE FILE

Respectfully,

[Handwritten signature of Michael F.Q. San Nicolas]
MICHAEL F.Q. SAN NICOLAS



Senator Michael F.Q. San Nicolas

Chairman - Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



COMMITTEE REPORT

Bill No. 176-32 (COR)

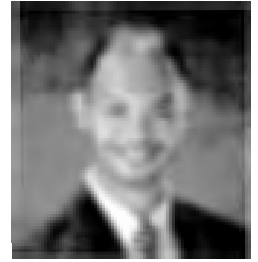
Introduced by V.C. Pangelinan

“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.”



Senator Michael F.Q. San Nicolas

Chairman - Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



OCT 31 2013

MEMORANDUM

TO: All Members
Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations

RE: **Committee Report on Bill No. 176-32 (COR)**

Håfa adai! Transmitted herewith for your consideration is the Committee Report on Bill No. 176-32 (COR) – “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.”

This report includes the following:

- Committee Voting Sheet
- Report Digest
- Copy of Bill No. 176-32 (COR)
- Public Hearing Sign-in Sheet
- Written Testimony
- Fiscal Note
- Copy of COR Referral of Bill No. 176-32 (COR)
- Notices of Public Hearing
- Copy of the Public Hearing Agenda

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact my office.

Respectfully,


MICHAEL F.Q. SAN NICOLAS



Senator Michael F.Q. San Nicolas

Chairman - Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



COMMITTEE VOTING SHEET

Bill No. 176-32 (COR) – “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.”

	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
Senator Michael F.Q. San Nicolas Chairman 10/30/13				✓		
Senator Thomas C. Ada Vice Chairman				✓		
Speaker Judith T. Won Pat, Ed.D. Member				10/31		
Vice Speaker Benjamin J.F. Cruz Member						
Senator Tina Rose Muña Barnes Member		✓				
Senator Vicente C. Pangelinan Member		✓				
Senator Rory J. Respicio Member		10/31/13				
Senator V. Anthony Ada Member				10/31		
Senator Aline A. Yamashita, Ph.D. Member						



Senator Michael F.Q. San Nicolas

Chairman - Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



COMMITTEE REPORT DIGEST

I. OVERVIEW

Bill No. 176-32 (COR) was introduced on August 28, 2013 by Senator Vicente C. Pangelinan. The bill was subsequently referred by the Committee on Rules to the Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations on August 28, 2013.

The Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations convened a public hearing on October 24, 2013 at 2:07 p.m. in *I Liheslatura's* Public Hearing Room. Among the items on the hearing agenda was Bill 176-32 (COR). The hearing was adjourned at 2:33 p.m.

Public Notice Requirements

Public Hearing notices were disseminated via electronic mail to all senators and all main media broadcasting outlets on October 17, 2013, and again on October 22, 2013.

Senators Present

Senator Michael F.Q. San Nicolas, Chairman
Senator Vicente C. Pangelinan, Committee Member
Senator V. Anthony Ada, Committee Member
Senator Tommy A. Morrison

Oral Testimony

Richard Johnson, Blair, Sterling, Johnson, and Martinez

Written Testimony

Elizabeth Kastigar, Senior Counsel, The Warranty Group

II. TESTIMONY & DISCUSSION

Chairman Michael San Nicolas: We will go ahead and begin with public testimony on Bill No. 176-32. I will yield to the author for his opening comments.

Senator Vicente Pangelinan: Thank you, Mister Chairman. Bill 176-32 is a bill that gets its genesis from Bill No. 64-32 which was passed by the Legislature but unfortunately vetoed by the Governor. In his veto message, the Governor had pointed out that his concern with the regards to the bill and the concept that was embodied by the bill was the existence of the word "property." He felt that when you include that word it may be interpreted to include real property and, thus, tied into construction, property warranties of the contractors, and the real estate. The existence of that interpretation could lead to an overly long length of time for the service contract to be provided. That was the single concern he pointed out with regards to what the bill was intending to provide. We looked at it and reviewed it and we still believe that the existence of statute that would allow the continuance of these extended warranty contracts. I say continuance because they had existed before and when the Department of Revenue and Taxation decided to issue a ruling, it put an end to the extension of these unless these companies became licensed as insurance companies and fall under the insurance regulations. We, at that time

in reviewing that interpretation, felt that there was enough service and safeguards being provided in existing statutes and legislation across the country that provided for the existence of service contracts warranties or extended warranties and not require that they be subject to the more rigorous requirements of being formed and subject to insurance policies and insurance companies. We then looked at those concerns, removed the word “property” so there is no misinterpretation or the intention, and reintroduced the bill with that change. We sent the bill to the Governor informing him that a new bill had been introduced with that change there and solicited his comments on whether or not this was going to be sufficient. The Governor did not formally respond to us and we received no feedback, negative or otherwise, from his office with this change in the bill. So, we are proceeding with the introduction of Bill 176 with that change that was of concern to the Governor. We hope that would meet the requirements of his concerns and proceed to allowing, once again, the offering of extended warranty service contracts that had existed in the past and provide opportunities for businesses to provide this service to the consumers of Guam and to the businesses of Guam. Thank you very much for the opportunity to present that introduction on the history of Bill No. 176.

Chairman San Nicolas: Thank you very much. On Bill 176-32, we only have a single individual signed up. Mr. Johnson, you did not indicate whether or not you would be offering testimony.

Mr. Richard Johnson: Our client, The Warranty Group, is the one who requested the advice from the Department of Revenue and Taxation and was told that they would have to register as an insurer, which was not the case anywhere else. That being the case, my client asked me to approach a senator who might be interested. We approached Senator Pangelinan and worked with him in getting the first bill done and we have worked with him on getting the second bill done. My client submitted their own testimony by email. I hope you have received it. I’ll let their testimony speak for itself. I just wanted to make sure I was here and was heard if anybody had any questions or concerns about the bill, I could try to deal with them.

Chairman San Nicolas: Thank you, Mister Johnson. There being no other individuals who signed up for testimony, Mister Speaker, did you have any questions?

Senator Pangelinan: No. I think the record on the initial public hearing is quite extensive. We solicited the automobile dealers and such, and they all presented positive testimony supporting it. At that time, we all did not feel there was a problem with the word “property,” I think the Governor’s concern is legitimate and, by addressing it, we can move forward on providing opportunities for our community to receive this service as well as entrepreneurs and businesses who may want to provide this additional services to businesses that may not want to do it in house but contract it out. I think all the way around that this will provide opportunities for the people in our community as well as a service that can be provided in our community.

Chairman San Nicolas: Thank you Mister Johnson.

Mr. Johnson: Thank you, Senator Pangelinan, for your work on the bill.

Chairman San Nicolas: There being no other individuals testifying with regards to Bill 176-32, it will be considered as being heard for the record.


III. FINDINGS AND RECOMMENDATIONS

The Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations hereby reports out Bill No. 176-32 (COR) with the recommendation TO REPORT OUT ONLY.

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.**

2013 AUG 20 AM 9:31

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Statement and Intent. *I Liheslaturan Guåhan*

finds that under current Guam law, the definition of insurance as interpreted by the Insurance Commissioner classifies service contracts, also known as extended warranties, as an insurance product. However, service contracts are being sold on Guam and are *not* being regulated by the Department of Revenue and Taxation (DRT) regardless of the fact that the DRT has opined that they are insurance products under Guam's definition of insurance.

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

I Liheslaturan Guåhan finds that service contracts can be a beneficial consumer product and should be made readily available without undue and 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 1st 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 (25th) 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.”



I Mina'Trentai Dos na Liheslaturan Guåhan

Committee on Aviation, Ground Transportation,
Regulatory Concerns, and Future Generations
SENATOR MICHAEL F.Q. SAN NICOLAS

October 24, 2013

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.

NAME (Please print)	AGENCY/ ORGANIZATION	CONTACT NUMBER	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR
<i>Richard Johnson</i>	<i>Bless Sterling</i>	<i>477-7857</i>			<input checked="" type="checkbox"/>	



the warranty group

October 22, 2013

Honorable Michael F.Q. San Nicolas
Chairman, Committee on Aviation, Ground Transportation, Regulatory Concerns, and Future
Generations
Thirty-Second Guam Legislature
155 Hesler Place
Hagatna, Guam 96910
senatorsannicolas@gmail.com

Re: Bill No 176-32 (COR) Service Contracts

Dear Chairman San Nicolas:

Automotive Warranty Services, Inc. ("AWS") appreciates of the ability to submit testimony on Bill 176-32 authorizing Guam dealerships and consumer retailers to offer service contracts to their consumers. AWS supports enactment of the Bill into law.

Service contracts are an efficient way for consumers to protect what can be major purchases such as an automobile, major appliances or small electronics. Consumers spend a lot of time researching these purchases. The service contract delivers the additional peace of mind that if a repair, replacement, technical support or related emergency services arise from such a purchase, there is a quick and effective means for continued use and enjoyment of product.

As additional support for your legislation, we respectfully submit for your consideration and review, a White Paper which outlines the supports removing service contract from insurance treatment.

We understand prior legislation (Senate Bill 64-23) was vetoed by the Governor in June of this year. In direct response to the objection generating that veto, all reference to residential or real property has been deleted from the definition of service contract in the current legislation. The definition of service contract is no longer so expansive. The administration recognized the importance of this legislation and noted a desire to work to create a version with adequate consumer protections. We believe the current Bill achieves the common goal of protecting consumers while eliminating unnecessary regulation.

With the removal of the objectionable terms, we believe this Bill should be successful.

AWS appreciates Senator Pangelinan's efforts in introducing and promoting this legislation and your Committee's efforts in promptly hearing it. We would be happy to answer any questions or provide additional information as may be required.

Very truly yours,

Elizabeth Kastigar
Senior Counsel



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
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Senator
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Member

Speaker
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Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

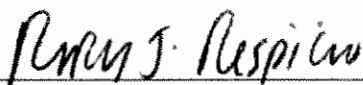
Senator
Aline Yamashita
Member

Certification of Waiver of Fiscal Note Requirement

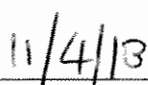
This is to certify that the Committee on Rules submitted to the Bureau of Budget and Management Research (BBMR) a request for a fiscal note, or applicable waiver, on **BILL NO. 176-32 (COR) – “AN ACT TO ADD A NEW ARTICLE 2 TO CHAPTER 12, DIVISION 2, TITLE 22 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE LICENSING OF SERVICE CONTRACTS SOLD ON GUAM.”** – on November 4, 2013. COR hereby certifies that BBMR confirmed receipt of this request on August 28, 2013 at 11:45 A.M.

COR further certifies that a response to this request was not received. **Therefore, pursuant to 2 GCA §9105, the requirement for a fiscal note, or waiver thereof, on Bill 176-32 (COR) to be included in the committee report on said bill, is hereby waived.**

Certified by:



Senator Rory J. Respicio
Chairperson, Committee on Rules



Date



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
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Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

August 28, 2013

VIA E-MAIL
john.rios@bbmr.guam.gov

John A. Rios
Director
Bureau of Budget & Management Research
P.O. Box 2950
Hagåtña, Guam 96910

RE: Request for Fiscal Notes– Bill Nos. 172-32(COR), 173-32(LS), 174-32(LS), 175-32(COR), and 176-32(COR)

Hafa Adai Mr. Rios:

Transmitted herewith is a listing of *I Mina'trentai Dos na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

Si Yu'os ma'åse' for your attention to this matter.

Very Truly Yours,

Senator Rory J. Respicio
Chairperson, Committee on Rules

Attachments (1)

Cc: Clerk of the Legislature

2013 AUG 29 PM 1:38
FAM



COMMITTEE ON RULES

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MINORITY LEADER

Senator
Aline Yamashita
Member

August 28, 2013

MEMORANDUM

To: **Rennae Meno**
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: **Senator Rory J. Respicio**
Majority Leader & Rules Chair

Subject: Referral of Bill No. 176-32(COR)

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 176-32(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Attachment

I Mina'Trentai Dos Na Lihelaturan Guahan

Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
176-32 (COR)	Vicente (ben) 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.	08/28/13 9:31 a.m.	08/28/13	Committee on Aviation, Ground Transportation, Regulatory concerns, and Future Generations			Fiscal Note Requested 08/28/13



Senator Michael San Nicolas <senatorsannicolas@gmail.com>

First Public Notice - October 24, 2013 Public Hearing

Senator Michael San Nicolas <senatorsannicolas@gmail.com>

Thu, Oct 17, 2013 at 3:58 PM

To: Senator Michael San Nicolas <senatorsannicolas@gmail.com>

Bcc: aperez@gpagwa.com, Duane George <dmgeorge@guampdn.com>, Ed Davis <edavis@k57.com>, Jon Anderson <editor@mvguam.com>, Gerry Partido <gerry@mvguam.com>, gmmsinc@guam.net, Jason Salas <jason@kuam.com>, John Davis <john@kuam.com>, Kelly Cho <kcn.kelly@gmail.com>, Korean News <koreannews@guam.net>, KPRG <kprg@guam.net>, PDN Lifestyle <life@guampdn.com>, mabuhaynews@yahoo.com, Mindy Aguon <mindy@kuam.com>, Masako Watanabe <mwatanabe@guampdn.com>, K57 <news@k57.com>, Patti Arroyo <parroyo@k57.com>, radioprod@kuam.com, Ray Gibson <rgibson@k57.com>, Sabrina Salas Matanane <sabrina@kuam.com>, Steve Limtiaco <slimtiaco@guampdn.com>, sports@mvguam.com, tcoffman@k57.com, dcristost@guam.gannett.com, weavert@pstripes.osd.mil, Pacific Daily News <news@guampdn.com>, jtyquiengco@spbgua.com, Kevin Kerrigan <kevin@spbgua.com>, hill.bruce@abc.net.au, Bruce Hill <pacificjournalist@gmail.com>, parroyo@spbgua.com, editor@saipantribune.com, Clynt Ridgell <clynt@spbgua.com>, mcpherson.kathryn@abc.net.au, cimiculka@guampdn.com, arcordoba@guampdn.com, communications@guam.gov, Troy Torres <troy.torres@guam.gov>, phnotice@guamlegislature.org, "jalerta1 ." <alerta.jermaine@gmail.com>, Matthew Baza <baza.matthew@gmail.com>, Delisa Kloppenburg <delisakloppenburg@gmail.com>, Louella Losinio <louella@mvguam.com>, david@mvguam.com, John Paul Manuel <jpmanuel@gmail.com>, josh@spbgua.com, Speaker Judi Won Pat <speaker@judiwonpat.com>, Vice Speaker Benjamin Cruz <senadotbjcruz@aol.com>, Senator Tina Muña Barnes <senator@tinamunabarnes.com>, Senator Rory Respicio <rorryforguam@gmail.com>, "Dennis Rodriguez, Jr." <senatordrodriguez@gmail.com>, Senator Ben Pangelinan <senbenp@guam.net>, Senator Tom Ada <office@senatorada.org>, Senator Aline Yamashita <aline4families@gmail.com>, Senator Tony Ada <tony@tonyada.com>, Senator Chris Duenas <duenasenator@gmail.com>, Brant McCreadie <brantforguam@gmail.com>, Senator Brant McCreadie <senatorbrantmccreadie@gmail.com>, "Senator Frank Aguon, Jr." <aguon4guam@gmail.com>, Senator Mike Limtiaco <mike@mikelimtiaco.com>, Senator Tommy Morrison <tommy@senatormorrison.com>, mayormcdonald@hotmail.com, agatmayorsoffice@hotmail.com, asanmainamayorsoffice@yahoo.com, bmomayor@teleguam.net, bmovmayor@teleguam.net, Jessy Gogue <ocp.mayor@gmail.com>, MELISSA SAVARES <melissa.savares@gmail.com>, peter_daigo@hotmail.com, hagatnamayor@hotmail.com, Doris Lujan <mayordorisfloreslujan@gmail.com>, nblas_mangilaomayor@yahoo.com, vicemayor_allan.ungacta@yahoo.com, mayorerneestc@yahoo.com, mtm_mayors_office@yahoo.com, pitimayor@yahoo.com, Robert Hofmann <guammayor@gmail.com>, rudyiriarte@gmail.com, talofofomayor@gmail.com, "Mayor Louise C. Rivera" <mayorlcrivera.tatuha@gmail.com>, "Vice Mayor Ken C. Santos" <vicemayorksantos.tatuha@gmail.com>, Umatac Mayor <umatacmo@gmail.com>, koner.r@gmail.com, arleen81@gmail.com, kenjoeada@yahoo.com, anghet@hotmail.com, Ken Quintanilla <kenq@kuam.com>, raymond.gibson@guam.gov, Dale Alvarez <dalealvarez@gmail.com>, Responsible Guam <responsibleguam@gmail.com>, christopherchenay@gmail.com, floterlaje@gmail.com, Regine Biscoe Lee <regineb.lee@gmail.com>, chuck.ada@guamairport.net, peterroy@guamairport.net, lorilee.crisostomo@bsp.guam.gov, doagridir@yahoo.com, carl.dominguez@dpw.guam.gov, eduardo.ordonez@clb.guam.gov, cgarcia@investguam.com, eric.palacios@epa.guam.gov, felixberto.dungca@grta.guam.gov, kpangelinan@visitguam.org, ndenight@visitguam.org, jbrown@portguam.com, monte.mafnas@dlim.guam.gov, david.camacho@galc.guam.gov, Michael Duenas <mjduenas@ghura.org>, fcamacho@ghura.org, martin.benavente@ghc.guam.gov, alfredo.antolin@dol.guam.gov, joseph.cameron@hrra.guam.gov, cgogue@pbsguam.org, adonis.mendiola@dya.guam.gov, jose.sanagustin@doc.guam.gov, pedro.leonguerrero@cqa.guam.gov, joey.sannicolas@gfd.guam.gov, fred.bordallo@gpd.guam.gov, chief@gpd.guam.gov, jim.mcdonald@ghs.guam.gov, benito.servino@disid.guam.gov, james.gillan@dphss.guam.gov, leo.casil@dphss.guam.gov, joseph.verga@gmha.org, john.rios@bbmr.guam.gov, benita.manglona@doa.guam.gov, anthony.blaz@doa.guam.gov, John Camacho <jpcamacho@revtax.gov.gu>, Marie Benito <mmbenito@revtax.gov.gu>, benny.m.paulino@us.army.mil, john.unpingco@gvao.guam.gov, jonfernandez@gdoe.net, mary.okada@guamcc.edu, raunderwood@uguam.uog.edu, jflores@gpagwa.com, AG Law <law@guamag.org>, rey.vega@mail.dmhsa.guam.gov, henry.taitano@guam.gov, Julian Janssen

<julian.c.janssen@gmail.com>, Gerry Partido <gerrypartido@gmail.com>, eddiecalvo@yahoo.com, Ray Tenorio <ray.tenorio@guam.gov>, mstaijeron <mstaijeron@investguam.com>, tsantos <tsantos@investguam.com>, manny.cruz@dol.guam.gov, frank <frank@mvguam.com>, dkaoki@guampdn.com, jpsablan@guampdn.com, jean <jean@guamlegislature.org>

Hafa adai all,

The following is an updated public notice for the hearing scheduled to be conducted on Thursday, October 24, 2013, 2:00 p.m. In addition to Bills 210-32 (COR) and Bill 211-32 (COR), please be advised that Bill No. 176-32 (COR) will also be heard. A copy of Bill 176-32 (COR) is attached. If you have any questions or need additional information, please contact the Office of Senator Michael F.Q. San Nicolas.

FIRST PUBLIC NOTICE

FOR IMMEDIATE RELEASE

October 17, 2013

In accordance with the Open Government Law, relative to notice for public meetings, please be advised that the Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations will be conducting a public hearing on **Thursday, October 24, 2013, 2:00 p.m.** at *I Liheslaturan Guåhan's* Public Hearing Room for the following items:

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.

Bill No. 210-32 (COR), introduced by M.F.Q. San Nicolas, V.C. Pangelinan, T.C. Ada, B.J.F. Cruz, and B.T. McCreddie: AN ACT TO ADD A NEW (yy) TO §1102, CHAPTER 1, AND AMEND §§ 12104, 12106, AND 12107, OF CHAPTER 12, EACH OF TITLE 16, GUAM CODE ANNOTATED, RELATIVE TO INFORMING THE LIENHOLDER AND INSURER WHEN A VEHICLE HAS BEEN TOWED AND PROVIDING FOR THE LIABILITY OF A TOWING COMPANY FOR DAMAGE SUSTAINED BY A VEHICLE WHILE IN ITS CUSTODY.

Bill No. 211-32 (COR), introduced by M.F.Q. San Nicolas: AN ACT TO ADOPT THE BANKING AND INSURANCE BOARD PROPOSED REGULATIONS UNDER THE GUAM SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2010.

If written testimonies are to be presented at the hearings, copies should be delivered prior to the hearing date. Testimonies should be addressed to Senator Michael F.Q. San Nicolas and will be accepted via hand delivery to our office; our mailbox at the Main Legislature Building at 155 Hesler Place, Hagatna, Guam 96910; or via email to senatorsannicolas@gmail.com. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Michael F.Q. San Nicolas at 472-6453.


###


Regards,


Jermaine Alerta

[Quoted text hidden]

3 attachments

 **Bill No. 210-32 (COR).pdf**
126K

 **Bill No. 211-32 (COR).pdf**
737K

 **Bill No. 176-32 (COR).pdf**
195K



Senator Michael San Nicolas <senatorsannicolas@gmail.com>

Second Public Notice - October 24, 2013 Public Hearing

Senator Michael San Nicolas <senatorsannicolas@gmail.com>

Tue, Oct 22, 2013 at 9:08 AM

To: Senator Michael San Nicolas <senatorsannicolas@gmail.com>

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SECOND PUBLIC NOTICE

FOR IMMEDIATE RELEASE

October 22, 2013

In accordance with the Open Government Law, relative to notice for public meetings, please be advised that the Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations will be conducting a public hearing on **Thursday, October 24, 2013, 2:00 p.m.** at *I Liheslaturan Guåhan*'s Public Hearing Room for the following items:

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.


Bill No. 210-32 (COR), introduced by M.F.Q. San Nicolas, V.C. Pangelinan, T.C. Ada, B.J.F. Cruz, and B.T. McCreadie: AN ACT TO ADD A NEW (yy) TO §1102, CHAPTER 1, AND AMEND §§ 12104, 12106, AND 12107, OF CHAPTER 12, EACH OF TITLE 16, GUAM CODE ANNOTATED, RELATIVE TO INFORMING THE LIENHOLDER AND INSURER WHEN A VEHICLE HAS BEEN TOWED AND PROVIDING FOR THE LIABILITY OF A TOWING COMPANY FOR DAMAGE SUSTAINED BY A VEHICLE WHILE IN ITS CUSTODY.


Bill No. 211-32 (COR), introduced by M.F.Q. San Nicolas: AN ACT TO ADOPT THE BANKING AND INSURANCE BOARD PROPOSED REGULATIONS UNDER THE GUAM SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2010.


If written testimonies are to be presented at the hearing, copies should be delivered prior to the hearing date. Testimonies should be addressed to Senator Michael F.Q. San Nicolas and will be accepted via hand delivery to our office; our mailbox at the Main Legislature Building at 155 Hesler Place, Hagatna, Guam 96910; or via email to senatorsannicolas@gmail.com. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Michael F.Q. San Nicolas at 472-6453.

###

3 attachments

 **Bill No. 176-32 (COR).pdf**
195K

 **Bill No. 210-32 (COR).pdf**
126K

 **Bill No. 211-32 (COR).pdf**
737K



Senator Michael F.Q. San Nicolas

Chairman - Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



PUBLIC HEARING

October 24, 2013

2:00 p.m.

Public Hearing Room
I Liheslaturan Guåhan

AGENDA

- I. Call to Order

- II. Opening Remarks/Announcements

- III. Items for Public Consideration

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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- IV. Closing Remarks

- V. Adjournment



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
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Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Senator
Dennis G. Rodriguez, Jr.
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Vice-Speaker
Benjamin J.F. Cruz
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Legislative Secretary
Tina Rose Muña Barnes
Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

August 28, 2013

MEMORANDUM

To: Rennae Meno
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: Senator Rory J. Respicio
Majority Leader & Rules Chair

Subject: Referral of Bill No. 176-32(COR)

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 176-32(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Attachment



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
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Senator
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Member

August 28, 2013

VIA E-MAIL
john.rios@bbmr.guam.gov

John A. Rios
Director
Bureau of Budget & Management Research
P.O. Box 2950
Hagåtña, Guam 96910

RE: Request for Fiscal Notes– Bill Nos. 172-32(COR), 173-32(LS),174-32(LS),
175-32(COR), and 176-32(COR)

Hafa Adai Mr. Rios:

Transmitted herewith is a listing of *I Mina'trentai Dos na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

Si Yu'os ma'åse' for your attention to this matter.

Very Truly Yours,

Senator Rory J. Respicio
Chairperson, Committee on Rules

Attachments (1)

Cc: Clerk of the Legislature


2013 AUG 28 PM 1:38
FAM

Bill Nos.	Sponsor	Title
172-32 (COR)	Brant T. McCreadie, Aline A. Yamashita, Ph.D., T. C. Ada, Tommy Morrison, V. Anthony Ada, Dennis G. Rodriguez, Jr., T. R. Muña Barnes, R.J. Respicio, Chris M. Dueñas	AN ACT TO CREATE A NEW ARTICLE 6 & 7 TO CHAPTER 90 TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE CONSTRUCTION AND RENOVATION OF THE DEPARTMENT OF CORRECTIONS ADULT CORRECTIONAL FACILITY TO ENSURE THE SAFETY OF THE PEOPLE OF GUAM; WHICH SHALL COLLECTIVELY BE CITED AS "THE DEPARTMENT OF CORRECTIONS CONSTRUCTION INITIATIVE ACT OF 2013".
173-32 (LS)	T. R. Muña Barnes,	AN ACT TO AMEND SECTION 2 1(G) OF PUBLIC LAW 32-053 RELATIVE TO FLOOD MITIGATION PROJECTS OF THE DEPARTMENT OF PUBLIC WORKS.
174-32 (LS)	Vicente (ben) C. Pangelinan, R.J. Respicio, Michael F. Q. San Nicolas, Judith T. Won Pat, Ed.D., T. R. Muña Barnes, B. J.F. Cruz, T. C. Ada, Frank B. Aguon, Jr.	AN ACT MAKING APPROPRIATIONS FOR MEDICAL AND DENTAL INSURANCE PREMIUMS FOR EMPLOYEES OF THE EXECUTIVE AND LEGISLATIVE BRANCHES AND FOR RETIREES OF THE GOVERNMENT OF GUAM FOR FISCAL YEAR ENDING SEPTEMBER 30, 2014.
175-32 (COR)	Michael F.Q. San Nicolas, Frank B. Aguon, Jr., B.J.F. Cruz, Tommy Morrison	AN ACT TO ALLOW NON-COMMISSIONED OFFICERS TO HAVE THEIR SERVICE RECOGNIZED FOR MANAGEMENT POSITIONS OF THE GOVERNMENT OF GUAM, BY ADDING A NEW §4129 TO ARTICLE 1, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED.
176-32 (COR)	Vicente (ben) 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.

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.**

2013 AUG 29 AM 9:31

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 1st 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 (25th) 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.”