

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) REGULAR SESSION

Bill No. 64-32(COR)

Introduced by:

V.C. Pangelinan

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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

BE IT ENACTED BY THE PEOPLE OF GUAM:

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

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

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

4 **SECTION 2. Service Contracts.** A new Article 2 is hereby
5 added to Chapter 12, Division 2, Title 22 of the Guam Code Annotated to
6 read:

7 **“Article 2**

8 **Service Contracts**

9 § 12201. Service Contracts Excepted.

10 § 12202. Definitions.

11 § 12203. License Required.

12 § 12204. Financial Responsibility.

13 § 12205. Powers and Duties.

14 § 12206. Recordkeeping.

15 § 12207. Filing of Annual Report.

16 § 12208. Receipt and Disclosures.

17 § 12209. Returns and Refunds.

18 § 12210. Prohibited Acts.

19 § 12211. Rules.

20 § 12212. Enforcement.

21 § 12213. Effective Date.

22 § 12214. Severability.

23
24 **§ 12201. Service Contracts Excepted.** The marketing, sale, offering for
25 sale, issuance, making, proposing to make and administration of a service
26 contract shall not be construed to be the business of insurance and *shall* be
27 exempt from regulation as insurance under this division.

1 **§ 12202. Definitions.**

2 (a) “Administrator” means a person appointed or designated by a
3 provider who administers service contracts and service contract plans on
4 behalf of the provider and subject to the requirements of this Chapter.

5 (b) “Commissioner” means the Insurance and Banking
6 Commissioner.

7 (c) “Consumer” means an individual who buys any tangible
8 personal property that is primarily for personal, family, or household use.

9 (d) “Non-original manufacturer’s parts” means replacement parts
10 not made for or by the original manufacturer of the property, commonly
11 referred to as “after market parts.”

12 (e) “Person” means an individual, limited liability partnership,
13 partnership, limited liability company, corporation, incorporated or
14 unincorporated association, joint stock company, reciprocal, syndicate, or
15 any similar entity or combination of entities acting in concert.

16 (f) “Service contract” for the purposes of this section means a
17 contract or agreement for a separately stated consideration for a specific
18 duration to perform the repair, replacement or maintenance of property or
19 indemnification for repair, replacement or maintenance, for the operational
20 or structural failure of any motor vehicle, residential or other property due to
21 a defect in materials, workmanship, accidental damage from handling, or
22 normal wear and tear, with or without additional provisions for incidental
23 payment of indemnity under limited circumstances, including but not limited
24 to, towing, rental and emergency road service and road hazard protection.
25 Service contracts may provide for repair, replacement, or maintenance of
26 property for damage resulting from power surges or interruption. Service

1 contracts also includes a contract or agreement sold for a separately stated
2 consideration for a specific duration that provides for any of the following:

3 (1) the repair or replacement or indemnification for the
4 repair or replacement of a motor vehicle for the operational or
5 structural failure of one or more parts or systems of the motor vehicle
6 brought about by the failure of an additive product to perform as
7 represented;

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

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

16 (4) the repair of small motor vehicle windshield chips or
17 cracks but which expressly excludes the replacement of the entire
18 windshield; or

19 (5) the repair of damage to the interior components of a
20 motor vehicle caused by wear and tear but which expressly excludes
21 the replacement of any part or component of a motor vehicle's
22 interior.

23 (g) "Service Contract Provider" means a person who is
24 contractually obligated to the service contract holder under the terms of the
25 service contract.

26 (h) "Service Contract Holder" or "contract holder" means a person
27 who is the purchaser or holder of a service contract.

1 (i) "Service Contract Seller" means the person who sells the
2 service contract to the consumer.

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 of the service contract
22 provider's gross revenue is derived from the sale of service contracts, the
23 identities of the service contract provider's directors and stockholders having
24 beneficial ownership of ten percent or more of any class of securities;

25 (c) Audited annual financial statements or other financial reports
26 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), which
4 must be deposited into 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 minimum requirements under this section. If the
9 financial responsibility requirement under this paragraph is to be maintained
10 by 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*:

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

20 (2) Place in trust with the commissioner, for all service
21 contracts issued and in force on Guam, a financial security deposit
22 having a value that is the larger of Forty Thousand Dollars
23 (\$40,000.00) or five percent (5%) of the gross consideration received,
24 less claims paid for the sale of the service contracts. The financial
25 security deposit *shall* consist of one of the following:

26 (i) a surety bond issued by an authorized surety;

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

3 (iii) cash;

4 (iv) a letter of credit issued by a qualified financial
5 institution; or

6 (v) another form of security authorized by the
7 commissioner by rule subject to the approval of *I Liheslaturan*
8 *Guåhan*.

9 **§ 12205. Powers and Duties.** The commissioner *shall*:

10 (a) receive applications for certification or license of service
11 contract providers;

12 (b) establish the procedure for processing applications made under
13 this Article;

14 (c) retain all applications and other records submitted to him or
15 her;

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

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

19 (f) approve/disapprove applications for license;

20 (g) establish, suspend, revoke, or reprimand service contract
21 licenses; and

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

23 **§ 12206. Recordkeeping.**

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

1 (b) Accounts, books, and records maintained as required by this
2 section *shall* include the following:

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

4 (2) the name and address of each service contract holder, to
5 the extent that the name and address have been furnished by the
6 service contract holder;

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

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

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

20 (d) The records required under this section may be, but are not
21 required to be, maintained on a computer disk, computer drive or server or
22 other electronic recordkeeping technology. If records are maintained in a
23 form other than hard copy, the records *shall* be in a form allowing
24 duplication as legible hard copy at the request of the commissioner.

25 (e) Upon request of the commissioner, the service contract provider
26 *shall* make available to the commissioner all accounts, books, and records
27 concerning service contracts sold by the service contract provider reasonably

1 necessary to enable the commissioner to determine compliance or
2 noncompliance with this Article.

3 **§ 12207. Filing of Annual Report.**

4 (a) Every registered service contract provider must file an annual
5 report for the preceding calendar year with the commissioner on or before
6 July 1st of each year, or within any extension of the time the commissioner
7 for good cause may grant. The report must be in the form and contain those
8 matters as the commissioner prescribes and *shall* be verified by at least two
9 officers of the service contract provider or for service contract providers
10 with a single officer, the sole officer of service contract providers with a
11 single officer.

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

15 (c) As part of any investigation by the commissioner, the
16 commissioner may require a service contract provider to file monthly
17 financial reports whenever, in the commissioner's discretion, there is a need
18 to more closely monitor the financial activities of the service contract
19 provider. Monthly financial statements *shall* be filed with the commissioner
20 no later than the twenty-fifth (25th) day of the month following the month for
21 which the financial report is being filed. These monthly financial reports are
22 the internal financial statements of the service contract provider. The
23 monthly financial reports that are filed with the commissioner constitute
24 information that might be damaging to the service contract provider if made
25 available to its competitors, and therefore *shall* be kept confidential by the
26 commissioner. This information may not be made public or be subject to

1 subpoena, other than by the commissioner and then only for the purpose of
2 enforcement actions taken by the commissioner.

3 **§ 12208. Receipt and Disclosures.**

4 (a) Service contract providers *shall* provide purchasers of a service
5 contract with:

6 (1) A receipt for or other written evidence of the purchase of
7 the service contract that *shall* be provided to the service contract
8 holder;

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

11 (3) Except for offers or sales of service contracts by
12 telephone, mail, or electronic means, a written copy of the basic terms
13 and conditions of the service contract to be made available to the
14 purchaser where the purchaser is physically present at the point of
15 sale.

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

19 (c) All service contracts *shall*:

20 (1) State the name and address of the service contract
21 provider and the administrator of the service contract, if different from
22 the service contract provider;

23 (2) Identify the service contract seller and the service
24 contract holder, to the extent that the service contract holder has
25 furnished the service contract seller, administrator, or service contract
26 provider with that information;

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

1 (4) The procedure the service contract holder must follow to
2 obtain service;

3 (5) Any deductible amount that applies;

4 (6) The specific merchandise and services to be provided,
5 and any limitations, exceptions, or exclusions;

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

8 (8) Any restrictions governing the transferability of the
9 service contract that apply;

10 (9) The terms, restrictions, or conditions governing the return
11 or cancellation of the service contract by either the service contract
12 provider or service contract holder prior to the service contract's
13 termination or expiration date;

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

17 (11) A provision for, or exclusion of consequential damages
18 or pre-existing conditions that applies.

19 The information under subsections (1) and (2) *shall* not be required to
20 be preprinted on the service contract and *may* be added to the service
21 contract at the time of sale. The purchase price under subsection (3) *shall* not
22 be required to be preprinted on the service contract and *may* be negotiated
23 with the service contract holder at the time of sale.

24 **§ 12209. Returns and Refunds.**

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

1 (1) Thirty (30) days of the date that the service contract was
2 mailed to the service contract holder;

3 (2) Twenty (20) days of the date the service contract was
4 delivered to the service contract holder, if the service contract was
5 delivered at the time of sale; or

6 (3) A longer time period as specified in the service contract.

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

16 (c) The right to void a service contract under subsection (b) *shall*
17 not be transferred and *shall* apply only to the original service contract
18 purchaser upon the terms and conditions provided in the contract and
19 consistent with this Article.

20 (d) Upon cancellation of a service contract by the service contract
21 provider, the service contract provider, at least five (5) days prior to
22 cancellation, *shall* mail to the service contract holder at the service contract
23 holder's last known address, a written prior notice of cancellation that states
24 the effective date of the cancellation; provided that prior notice under this
25 subsection *shall* not be required if cancellation is for:

26 (1) Nonpayment of the service contract provider's fee for the
27 service provided under the service contract;

1 (2) A material misrepresentation by the service contract
2 holder to the service contract provider; or

3 (3) A substantial breach of duties of the service contract
4 holder under the service contract, relating to a covered product or its
5 use.

6 **§ 12210. Prohibited Acts.**

7 (a) No service contract provider *shall* use in its name, the word
8 "insurance", "casualty", "surety", "mutual", or any other word descriptive of
9 the insurance, casualty, or surety business, or a name deceptively similar to
10 the name or description of any insurance or surety corporation, or to the
11 name of any other service contract provider; provided that the word
12 "guaranty" or similar word may be used by a service contract provider. This
13 section *shall* not apply to a service contract provider using any language
14 prohibited by this section in its name prior to July 1, 2013.

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

19 (c) No person *shall* condition a loan or the sale of any property on
20 the purchase of a service contract.

21 **§ 12211. Rules.** The commissioner *may* adopt rules to implement and
22 administer this Article pursuant to the Administration Adjudication Act.

23 **§ 12212. Enforcement.**

24 (a) The commissioner *may* take any action necessary or appropriate
25 to enforce this Article, and the rules adopted and orders issued hereunder.
26 The commissioner *may* conduct investigations and examinations of service
27 contract providers and administrators or other persons. If a service contract

1 provider has violated this Article, or rules or orders under this Article, the
2 commissioner *may* issue an order:

- 3 (1) Requiring a person to cease and desist from violating this
4 Article or rules or orders under this Article;
- 5 (2) Prohibiting a person from selling or offering for sale
6 service contracts in violation of this Article; or
- 7 (3) Imposing a civil penalty on a person or any combination
8 of the foregoing, as applicable.

9 **§ 12213. Effective Date.** This Act shall take effect upon its enactment
10 and apply prospectively.

11 **§ 12214. Severability.** *If* any provision of this Act or its application to
12 any person or circumstance is held invalid, the invalidity *shall not* affect
13 other provisions or applications of this Act which can be given effect
14 without the invalid provision or application and to this end the provisions of
15 this Act is severable.

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