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TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Tuesday, March 3, 2015
1:00 p.m.

TESTIMONY ON HOUSE BILL NO. 1422, H.D. 1 – RELATING TO SERVICE CONTRACTS.

TO THE HONORABLE KARL RHOADS, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").

The Department supports the intent of this bill, which would provide consumers with more information to make informed decisions regarding their service contracts.

We thank the committee for the opportunity to present testimony on this matter.



To: The Honorable Karl Rhoads, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary

From: Mark Sektnan, Vice President
Property Casualty Insurers Association of America

Re: HB 1422 HD1 – Relating to Service Contracts
PCI Position: Request for Amendments

Date: Tuesday, March 3, 2015
1:00 p.m., Conference Room 325

Aloha Chair Rhoads, Vice Chair San Buenaventura and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) respectfully requests amendments to HB 1422 HD1 and disclosures related to “service contract buyback agreements.” PCI is a national trade association that represents over 1,000 property and casualty insurance companies. In Hawaii, PCI member companies write approximately 34.6 percent of all property casualty insurance sold in Hawaii.

PCI supports the intent of HB 1422 HD1 to require the provision of notice to consumers regarding the effect of certain actions on their rights under any service contract buyback agreement (SCBA) they may have purchased. As currently drafted, however, HB 1422 HD1 requires the wrong party to provide the necessary disclosure. I have attached proposed amendments to address this issue.

Service Contract Buyback Agreements (SCBA) are a new type of financial services product that, for separate consideration, provides a consumer a full refund of the purchase price of a motor vehicle service contract (MVSC) if a consumer does not file a claim under the MVSC during the life of the MVSC. HB 1422 HD1 requires the seller of the MVSC to inform a consumer who intends on filing a claim under his or her MVSC that the filing of such a claim will nullify the right to a refund under the SCBA. However, the sellers of MVSCs and SCBAs are typically unrelated parties. There is no way for the seller of an MVSC to know whether the purchaser of an MVSC has also purchased an SCBA with respect to that particular MVSC and, therefore, no way for the seller of the MVSC to know which consumers to provide the required notice to. Accordingly, we respectfully request amending HB 1422 HD1 to impose the requirement to disclose the

impact filing a claim under an MVSC will have on any SCBA on the seller of the SCBA rather than the seller of the MVSC.

For these reasons, PCI asks the committee to amend this bill. Thank you for your consideration of this request.

Attachment

SECTION 1. Chapter 481X, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§481X- Claims under an extended warranty; provider disclosure. When a contract holder makes a claim under an extended warranty for the first time within the applicable time period of the extended warranty, the provider OF ANY SERVICE CONTRACT BUYBACK AGREEMENT shall disclose to the contract holder that, pursuant to section 481X-7(b), if the claim is charged against the extended warranty, the contract holder shall no longer be entitled to a refund of the full purchase price of the extended warranty."

SECTION 2. Section 481X-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply to:

(1) Express or implied warranties; provided that express or implied warranties shall not be deemed to include extended warranties;

(2) Maintenance agreements; and

(3) Warranties, service contracts, and maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated by the public utilities commission or the department of commerce and consumer affairs."

SECTION 3. Section 481X-2, Hawaii Revised Statutes, is amended to read:

§ 481X-2. Definitions

As used in this chapter:

"Administrator" means a person appointed or designated by a provider who administers service contracts and service contract plans **or service contract buyback agreements** on behalf of the provider and subject to the requirements of this chapter.

"Commissioner" means the insurance commissioner.

"Consumer" means a natural person who buys, other than for purposes of resale, any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes, and not for business or research purposes.

"Contract holder" means a person who is the purchaser or holder of a service contract **or service contract buyback agreement**.

"Contractual liability insurance policy" means a policy of insurance that is issued to a provider, insures the provider's service contracts **or service contract buyback agreements**, and may provide:

(1) Reimbursement to the provider for sums that the provider is legally obligated to pay under the insured service contract **or service contract buyback agreements**; or

(2) The service that the provider is legally obligated to perform under the insured service contract .

"Maintenance agreement" means a contract of limited duration that provides scheduled maintenance only.

“Nonoriginal manufacturer's parts” means replacement parts not made for or by the original manufacturer of the property, commonly referred to as “after market parts”.

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

“Premium” means the consideration paid to an insurer for a contractual liability insurance policy.

“Provider” means a person who is contractually obligated to the service contract holder under the terms of the service contract **or a person who is contractually obligated to the purchaser of a service contract buyback agreement.**

“Provider fee” means the consideration paid for a service contract **or service contract buyback agreement.**

“Service contract” means a contract or agreement for a separately stated consideration and a specific duration, to perform or indemnify the repair, replacement, or maintenance of property for operational or structural failure due either to a defect in materials or artisanship, or to normal wear and tear, with or without additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. Service contracts may provide for the repair, replacement, or maintenance of property damaged by power surges, or accidentally damaged during handling. A "service contract" includes an extended warranty."

“Service contract buyback agreement” means a contract or agreement that is separate and apart from a service contract and which is paid for with separately stated consideration that offers to refund to a contract holder the provider fee paid for a service contract if no claim is made under the service contract purchased.

“Warranty” means a warranty made without consideration, solely by the manufacturer, importer, or seller of property or services, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that provides repair or replacement for defective parts, mechanical or electrical breakdown, labor, or other remedial measures.

[§ 481X-3]. Registration

(a) Before conducting business in this State, a provider shall register with the commissioner on a form prescribed by the commissioner, and shall pay to the commissioner a fee as provided under section 431:7-101.

(b) Provider registration shall be updated annually and shall contain the following information:

- (1) The address of the principal office of the provider;
- (2) The name and address of the provider's agent for the service of process in this State, if other than the provider;
- (3) The identities of the provider's executive officer or officers directly responsible for the provider's service contract business;
- (4) The name, address, and telephone number of any administrators designated by the provider to be responsible for the administration of service contracts in this State;

- (5) A copy of each service contract form **or service contract buyback agreement** the provider proposes to use in this State; and
- (6) A statement that the provider is in compliance with the financial responsibility requirements of section 481X-4 and that details how the provider intends to meet the requirements, and proof of compliance with the requirements.

§ 481X-4. Financial responsibility

A provider shall comply with the requirements under any one of the following paragraphs, and shall not be subject to any other financial security requirements under state law:

- (1) The provider shall insure all service contracts under a contractual liability insurance policy issued by an insurer authorized to transact insurance in this State or issued pursuant to part III of article 8 of chapter 431;
- (2) The provider shall:
 - (A) Maintain a funded reserve account for all obligations under service contracts issued and in force in this State. The reserves shall not be less than forty per cent of the gross consideration received from the sale of the service contract, less claims paid, for all in force contracts. The reserve account shall be subject to examination by the commissioner; and
 - (B) Place in trust with the commissioner, for all service contracts issued and in force in this State, a financial security deposit having a value that is the larger of \$25,000 or five per cent of the gross consideration received, less claims paid for the sale of the service contracts. The financial security deposit shall consist of one of the following:
 - (i) A surety bond issued by an authorized surety;
 - (ii) Securities of the type eligible for deposit by authorized insurers in this State;
 - (iii) Cash;
 - (iv) A letter of credit issued by a qualified financial institution; or
 - (v) Another form of security authorized by the commissioner by rule; or
- (3) The provider or its parent company shall:
 - (A) Maintain a net worth or stockholders' equity of at least \$100,000,000; and
 - (B) Upon request, provide the commissioner with a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the last calendar year, or if the company does not file with the Securities and Exchange Commission, a copy of the provider's or the provider's parent company's audited financial statements.

If the financial responsibility requirement under this paragraph is to be maintained by the provider's parent company, the parent company shall guarantee the provider's obligations under service contracts sold by the provider in this State.

(4) A provider of a service contract buyback agreement must comply with subsection (1) of this section with respect to service contract buyback agreements sold in this this state.

[§ 481X-5]. Recordkeeping

- (a) The provider or provider's administrator shall keep accurate accounts, books, and records of all transactions regulated under this chapter.
- (b) Accounts, books, and records maintained as required by this section shall include the following:
- (1) Copies of each type of service contract **or service contract buyback agreement** sold;
 - (2) The name and address of each contract holder, to the extent that the name and address have been furnished by the contract holder;
 - (3) A list of the locations where the provider's service contracts **or service contract buyback agreements** are marketed, sold, or offered for sale; and
 - (4) Recorded claims files which at a minimum shall contain the date and description of each claim under the provider's service contracts **or service contract buyback agreements**.
- (c) The provider for each service contract **or service contract buyback agreement** shall retain records required under this section for at least one year after coverage under the contract **or agreement** has expired. A provider discontinuing business in this State shall maintain records required under this section until it provides the commissioner with satisfactory proof that the provider has discharged all contractual obligations to contract holders in this State.
- (d) The records required under this section may be, but are not required to be, maintained on a computer disk or other recordkeeping technology. If records are maintained in a form other than hard copy, the records shall be in a form allowing duplication as legible hard copy at the request of the commissioner.
- (e) Upon request of the commissioner, the provider shall make available to the commissioner all accounts, books, and records concerning service contracts **or service contract buyback agreements** sold by the provider reasonably necessary to enable the commissioner to determine compliance or noncompliance with this chapter.

[§ 481X-6]. Service contracts; receipt; disclosures

- (a) Providers shall provide purchasers of a service contract **or service contract buyback agreement** with:
- (1) A receipt for or other written evidence of the purchase of the service contract **or service contract buyback agreement** that shall be provided to the service contract holder;
 - (2) A copy of the service contract **or service contract buyback agreement** that shall be provided within a reasonable period of time from the date of purchase; and
 - (3) Except for offers or sales of service contracts **or service contract buyback agreements** by telephone, mail, or electronic means, a written copy of the basic terms and conditions of the service contract **or service contract buyback agreement** to be made available to the purchaser where the purchaser is physically present at the point of sale.

(b) Service contracts **and service contract buyback agreements** shall be written in clear, understandable language, and shall be printed or typed in a typeface and format that is easy to read.

(c) All service contracts **and service contract buyback agreement** shall:

(1) State the name and address of:

(A) The provider; and

(B) The administrator of the contract, if different from the provider;

(2) Identify:

(A) The ~~service contract~~ seller; and

(B) The contract holder, to the extent that the contract holder has furnished the contract seller, administrator, or provider with that information;

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

(4) The procedure the contract holder must follow to obtain service **or make a claim**;

(5) Any deductible amount that applies;

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

(7) Where the contract covers a motor vehicle, whether the use of nonoriginal manufacturer's parts is allowed;

(8) Any restrictions governing the transferability of the service contract **or service contract buyback agreement** that apply;

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

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

(11) Any provision for, or exclusion of consequential damages or preexisting conditions that applies.

The information under paragraphs (1) and (2) shall not be required to be preprinted on the service contract and may be added to the service contract **or service contract buyback agreement** at the time of sale. The purchase price under paragraph (3) shall not be required to be preprinted on the service contract **or service contract buyback agreement** and may be negotiated with the contract holder at the time of sale.

(d) Service contracts **and service contract buyback agreements** insured under a contractual liability insurance policy shall include the name and address of the insurer and contain a statement substantially similar to the following:

“Obligations of the provider under this ~~service~~ contract are insured under a ~~service contract~~ contractual

liability insurance policy.”

(e) Service contracts not insured under a contractual liability insurance policy shall contain a statement substantially similar to the following:

“Obligations of the provider under this service contract are backed by the full faith and credit of the provider.”

(f) Subparagraphs (c)(7) and (c)(10)-(11) shall not apply to service contract buyback agreements.

[§ 481X-8]. Contractual liability insurance policies

(a) Contractual liability insurance policies in this State shall provide that if covered service **or payment** is not provided by the ~~service contract~~ provider or administrator within sixty days of proof of loss by the contract holder, the contract holder is entitled to apply directly to the contractual liability insurance company for services **or payment** under the service contract **or service contract buyback agreement** that are covered under the policy.

(b) A contractual liability insurance policy insurer shall not terminate the policy until it has issued a notice of termination required by the commissioner under the insurance laws of this State. The termination of a contractual liability insurance policy shall not reduce the insurer's responsibility for service contracts **or service contract buyback agreements** issued by providers prior to the date of termination.

(c) A provider covered by a contractual liability insurance policy shall be considered the agent of the contractual liability insurance policy insurer, for purposes of determining duties owed by the insurer to contract holders in accordance with the service contract and this chapter.

(d) Insurers issuing reimbursement insurance to providers are deemed to have received the premiums for the insurance upon the payment of provider fees by consumers for service contracts **or service contract buyback agreements** issued by the insured provider.

[§ 481X-9]. Applicability of premium taxes

~~Service contract~~ provider fees shall not be subject to premium taxes. Contractual liability insurance policies shall be subject to premium taxes.

[§ 481X-10]. Prohibited acts

(a) No provider shall use in its name, the word “insurance”, “casualty”, “surety”, “mutual”, or any other word descriptive of the insurance, casualty, or surety business, or a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other provider; provided that the word “guaranty” or similar word may be used by a provider. This section shall not apply to a provider using any language prohibited by this section in its name prior to July 1, 2000.

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

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

[§ 481X-11]. Rules

The commissioner may adopt rules pursuant to chapter 91 to implement this chapter.

[§ 481X-12]. Enforcement

(a) The commissioner may take any action necessary or appropriate to enforce this chapter, and the rules adopted and orders issued hereunder. The commissioner may conduct investigations and examinations of providers, administrators, insurers, or other persons. If a provider has violated this chapter, or rules or orders under this chapter, the commissioner may issue an order:

- (1) Requiring a person to cease and desist from violating this chapter or rules or orders under this chapter;
- (2) Prohibiting a person from selling or offering for sale service contracts **or service contract buyback agreements** in violation of this chapter; or
- (3) Imposing a civil penalty on a person or any combination of the foregoing, as applicable.

(b) A person aggrieved by an order under this section may request a hearing before the commissioner, conducted subject to chapter 91. The hearing request shall be filed with the commissioner within twenty days of the effective date of the commissioner's order. Upon filing of a hearing request, the order shall be suspended from its effective date, until completion of the hearing and final decision of the commissioner. At the hearing, the commissioner shall have the burden of proof to show that the order is justified.

(c) The commissioner may bring an action in any court of competent jurisdiction, for an injunction or other appropriate relief to remedy threatened or existing violations of this chapter, rules established pursuant to this chapter, or orders of the commissioner. An action filed under this section may also seek restitution on behalf of persons aggrieved by a violation of this chapter, rules established pursuant to this chapter, or orders of the commissioner.

(d) Violations of this chapter, rules established pursuant to this chapter, or orders of the commissioner shall be considered unfair or deceptive acts or practices in the conduct of trade or commerce under section 480-2.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on June 30, 2112.