

Enrolled House Bill 2669

Sponsored by COMMITTEE ON BUSINESS, LABOR AND CONSUMER AFFAIRS (at the request of Oregon Petroleum Association)

CHAPTER

AN ACT

Relating to service contracts; creating new provisions; and amending ORS 646.267.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 646.267 is amended to read:

646.267. (1) For the purposes of this section, a service contract is a contract or agreement to perform or indemnify for a specific duration the repair, replacement or maintenance of property for operational or structural failure due to a defect in materials, workmanship or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including but not limited to rental and emergency road service. A service contract may also provide for the repair, replacement or maintenance of property for damage resulting from lightning, power surges or accidental damage from handling. Consideration for a service contract must be stated separately from the price of the consumer product. The term "service contract" does not include insurance policies issued by insurers under the Insurance Code, or maintenance agreements.

(2) An obligor *[shall]* **may** not issue, sell or offer for sale a service contract in this state unless the obligor has complied with the provisions of this section and ORS 646.269 and 646.271.

(3) All obligors of service contracts issued, sold or covering property located in this state shall file a registration with the Director of the Department of Consumer and Business Services on a form, at a fee and at a frequency prescribed by the director pursuant to ORS 646.281.

(4) An obligor shall keep accurate accounts, books and records concerning transactions involving service contracts.

(5) **Except as provided in subsection (6) of this section, [in order]** to ensure the faithful performance of an obligor's obligations to its contract holders, each obligor shall provide the director with one of the following as proof of financial stability:

(a) A copy of the obligor's or, if the obligor's financial statements are consolidated with those of its parent company, the obligor's parent company's most recent Form 10-K filed with the Securities and Exchange Commission which shows a net worth of the obligor or its parent company of at least \$100 million provided the Form 10-K was filed with the Securities and Exchange Commission within the last calendar year. If the obligor's parent company's Form 10-K is filed to meet the obligor's financial stability requirement, then the parent company shall agree to guarantee the obligations of the obligor relating to service contracts sold by the obligor in this state.

(b) Evidence of a reimbursement insurance policy described in ORS 742.390 that is obtained by the obligor and issued by an authorized insurer that insures all service contracts issued by the obligor.

(6)(a) An obligor of a home service agreement as defined in ORS 731.164 shall file with the director a surety bond executed to the State of Oregon in the sum of \$25,000. The surety bond shall be issued by a surety company authorized to do business in this state. An obligor of a home service agreement is not required to file proof of financial stability under subsection (5) of this section.

(b) The surety bond shall be issued on the condition that the obligor comply with all provisions of ORS 646.263 to 646.285 and fully perform on all contracts or agreements entered into.

(c) The surety bond shall be continuous until canceled and shall remain in full force and unimpaired at all times to comply with this section. The surety shall give the director at least 30 days' written notice by registered or certified mail before the surety cancels or terminates its liability under the bond.

(d) Any person who suffers damage as a result of a violation of any provision of ORS 646.263 to 646.285 or any rule adopted by the director pursuant to ORS 646.263 to 646.285 shall have a right of action under the bond. An action under the bond may be brought by the state or by any person with a right of action by filing a complaint in a court of competent jurisdiction not later than one year after the surety bond is canceled or terminated. The court may award the prevailing plaintiff reasonable attorney fees and costs in an action under the bond.

(e) **The aggregate liability of the surety shall not exceed the principal sum of the bond.**

[(6)] (7) Filing requirements are as follows:

(a) The obligor shall file with the director proof of financial stability **or a surety bond** as required by [subsection (5)] **subsection (5) or (6)** of this section.

(b) The director may adopt rules concerning the procedure for filing the proof of financial stability **or the surety bond**.

(c) [No person shall] **A person may not** file or cause to be filed with the director any article, certificate, report, statement, application or any other information required or permitted to be filed under this subsection [known to such person] **that the person knows** to be false or misleading in any material respect.

[(7)] (8) Service contract sellers and their employees marketing, selling or offering to sell service contracts for obligors who comply with this section and ORS 646.269 and 646.271 are exempt from the requirements of the Insurance Code including, but not limited to, the requirement to belong to the Oregon Insurance Guaranty Association.

[(8)] (9) Obligor complying with ORS 646.269 and 646.271 are not required to comply with the Insurance Code including, but not limited to, the requirement to belong to the Oregon Insurance Guaranty Association.

[(9)] (10) If a service contract seller is not the same person as the obligor under the service contract, the service contract seller shall remit the agreed-upon consumer purchase price of the service contract to the obligor within 30 days of the sale of such service contract or upon such terms and conditions as may be agreed to in writing between the service contract seller and obligor.

SECTION 2. The amendments to ORS 646.267 by section 1 of this 2005 Act apply only to service contracts offered for sale or entered into on or after the effective date of this 2005 Act.

Passed by House May 18, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 10, 2005

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President of Senate

Received by Governor:

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Approved:

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Governor

Filed in Office of Secretary of State:

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Secretary of State