



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

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

JUN 10 2013
32-13-481
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 6/10/13
Time 4:05 PM
Received by RTUPUZ

Dear Madame Speaker:

Attached is Bill No. 64-32 (COR) entitled "**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 has been vetoed.

I Liheslaturan correctly notes that "service contracts" can be a beneficial consumer product. Service contracts provide a means for consumers to pay a current, certain price in order to protect against the risk of an unknown repair cost in the future, thereby providing the consumer with an extension of the original manufacturer's warranty.

As drafted, however, Bill 64-32 dangerously expands the definition and scope of "service contracts" from its usual application to motor vehicles and other consumer retail goods to include "residential or other property." This language of "residential or other property" arguably includes not only real property, but also any other type of "property" imaginable. Under Bill 64-32, however, service contract providers are not subject to the same stringent capital and regulatory requirements as insurance companies. Defects in materials and workmanship related to residential or real property threaten the safety of the public, and therefore it is imperative that any related risks be adequately capitalized.

The administration recognizes the significance and importance of creating a legal framework that defines how services contracts may be sold and regulated in Guam. In this regard, I welcome an opportunity to work with *I Liheslatura* in revising the bill so as to achieve the common goal of protecting consumers while eliminating unnecessary regulation.

Senseramente,

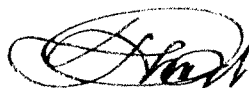
EDDIE BAZA CALVO

2013 JUN 10 PM 4:33
Ch

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

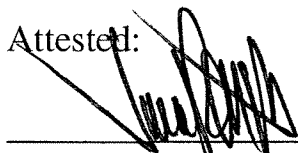
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Substitute Bill No. 64-32 (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 28th day of May, 2013, duly and regularly passed.




Judith T. Won Pat, Ed.D.
Speaker

Attested:



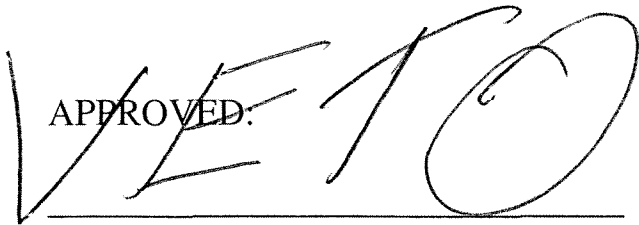
Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 29 day of May,
2013, at 12:40 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date: JUN 07 2013

Public Law No. _____

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

Bill No. 64-32 (COR)

As substituted by the Committee on
Aviation, Ground Transportation,
Regulatory Concerns, and Future
Generations; and amended on the floor.

Introduced by:

Vicente (ben) C. Pangelinan

Michael F. Q. San Nicolas

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.

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 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

1 Guam and are *not* being regulated by the Department of Revenue and Taxation
2 (DRT) regardless of the fact that the DRT has opined that they are insurance
3 products under Guam’s definition of insurance.

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

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

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

15 **“ARTICLE 2**

16 **SERVICE CONTRACTS**

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

1 § 12212. Enforcement.

2 § 12213. Effective Date.

3 § 12214. Severability.

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

9 **§ 12202. Definitions.**

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

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

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

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

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

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

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

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

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

21 (g) *Service contract* for the purposes of this Article means a
22 contract or agreement for a separately stated consideration for a specific
23 duration to perform the repair, replacement or maintenance of property or
24 indemnification for repair, replacement or maintenance, for the operational
25 or structural failure of any motor vehicle, residential or other property due to
26 a defect in materials, workmanship, accidental damage from handling, or
27 normal wear and tear, with or without additional provisions for incidental

1 payment of indemnity under limited circumstances, including, but *not*
2 limited to, towing, rental and emergency road service, and road hazard
3 protection. Motor vehicle manufacturer and original equipment
4 manufacturer (OEM)-backed contracts *shall* be exempt from the
5 requirements in this Article. Service contracts may provide for repair,
6 replacement, or maintenance of property for damage resulting from power
7 surges or interruption. Service contracts also include a contract or agreement
8 sold for a separately stated consideration for a specific duration that provides
9 for any of the following:

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

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

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

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

26 (5) the repair of damage to the interior components of a
27 motor vehicle caused by wear and tear, but which expressly excludes

1 the replacement of any part or component of a motor vehicle's
2 interior.

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

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

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

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

15 **§ 12203. License Required.**

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

26 (a) all basic organizational documents of the service contract
27 provider, including any articles of incorporation, articles of association,

1 partnership agreement, trade name certificate, trust agreement, shareholder
2 agreement, bylaws, and other applicable documents, and all amendments to
3 those documents;

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

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

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

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

18 **§ 12204. Financial Responsibility.**

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

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

27 (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*:

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

13 (2) identify 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 applies.

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 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
25 descriptive of the insurance, casualty, or surety business, or a name
26 deceptively similar to the name or description of any insurance or surety
27 corporation, or to the name of any other service contract provider. This

1 Section *shall not* apply to a service contract provider using any language
2 prohibited by this Section in 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 property on
8 the 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.

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.”