
 DIGEST

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	DIGEST	
SB 152 Reengrossed	2015 Regular Session	Long

Present law provides that the Dept. of Insurance regulates home service contract providers ("providers").

Proposed law moves the regulation of providers from the Dept. of Insurance to the secretary of state.

Proposed law provides that warranties, maintenance only agreements, service contracts sold or offered for sale to persons other than consumers, and contracts sold or offered for sale on a single new item of property at the time of the sale of the property or within one year of the date of the sale which guarantees the performance of the service, repair, replacement, or maintenance of the property or guarantees to indemnify for the service, repair, replacement, or maintenance of a single item of residential property are not subject to the regulations in proposed law.

Proposed law defines the following terms:

- (1) "Administrator" means the person who is responsible for the administration of the home service contract or the home service contract plan or who is responsible for any submission required by this proposed law.
- (2) "Consumer" means a natural person who buys other than for purposes of resale any corporeal movable property that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes.
- (3) "Home service contract" means a contract or agreement for a separately stated consideration for any duration to perform the service, repair, replacement, or maintenance of property or indemnification for service, repair, replacement, or maintenance, for the operational or structural failure of any residential property due to a defect in materials, workmanship, inherent defect, or normal wear and tear, with or without additional provisions for incidental payment or indemnity under limited circumstances. A home service contract may provide for the service, repair, replacement, or maintenance of property for damage resulting from power surges or interruption and accidental damage from handling and may provide for leak or repair coverage to house roofing systems. A home service contract is not insurance in this state or otherwise regulated under any provision of the La. Insurance Code.
- (4) "Maintenance only agreement" means a contract of limited duration that provides only for scheduled maintenance and does not include repair or replacement.
- (5) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or combination of entities acting in concert.
- (6) "Provider" means a person who is contractually obligated to provide the services or indemnification under a home service contract.
- (7) "Provider fee" means the consideration paid for a home service contract.
- (8) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a home service contract.

- (9) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services, including builders on new home construction, without consideration, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property, or repetition of services.

Proposed law provides that home service contracts shall not be issued, sold, or offered for sale in this state unless the provider has done each of the following:

- (1) Registered with the secretary of state and remains in good standing.
- (2) Provided a receipt for or other written evidence of the purchase of the home service contract to the contract holder.
- (3) Provided a copy of the home service contract to the service contract holder within a reasonable period of time from the date of purchase.
- (4) Provided a financial statement annually to the secretary of state showing that the provider is solvent.
- (5) Provided to the secretary of state by March 1 of each year a report documenting all of the following for the previous calendar year: (a) The number of home service contracts issued or sold with respect to residential property. (b) The gross consideration received. (c) The number and dollar amount of claims paid categorically by the cost of repair or by the cost of replacement. (d) The number of claims denied for failure of the service contract holder to receive prior approval for such repair or replacement.

Proposed law provides that each provider of a home service contract sold in this state shall file an application for initial registration with the secretary of state consisting of his name, address, telephone number, and contact person, designating a person in this state for service of process.

Proposed law requires the provider shall file a copy of its basic organizational documents, including articles of incorporation, articles of organization, articles of association, or a partnership agreement.

Proposed law provides that each application for registration shall be accompanied by a fee not to exceed \$600.

Proposed law requires home service contract providers to comply with all requirements for initial registration, applicable fee payments, and posting of the \$50,000 2-year bond by Jan. 15, 2016.

Proposed law provides that a registration is effective for 2 years, unless it is denied, renewed, suspended, or revoked.

Proposed law provides that 90 days prior to the expiration of a registration, a provider shall submit a renewal application on a form prescribed by the secretary of state and a renewal fee not to exceed \$250.

Proposed law provides that all fees must be paid to the secretary of state.

Proposed law provides that each registrant shall notify the secretary of state of any material change in the registration information within 60 days of the effective date of such change. The notice shall be accompanied by supporting documentation.

Proposed law provides that each provider shall file with the secretary of state a surety bond in the amount of \$50,000.

Proposed law provides that the marketing, sale, offering for sale, issuance, making, proposing to make, and administration of home service contracts by providers and related service contract sellers, administrators, and other persons is not insurance and shall be exempt from all provisions of the La. Insurance Code.

Proposed law provides that each home service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state shall be written, printed, or typed in clear, understandable language that is easy to read and shall disclose certain information.

Proposed law provides that a home service contract shall require every provider to permit the service contract holder to return the home service contract within 20 days of the date the home service contract was mailed to the service contract holder or within 10 days of delivery if the home service contract is delivered to the service contract holder at the time of sale or within a longer time period permitted under the home service contract. Upon return of the home service contract to the provider within the applicable time period, if no claim has been made under the home service contract prior to its return to the provider, the home service contract is void and the provider shall refund to the service contract holder, or credit the account of the service contract holder, with the full purchase price of the home service contract.

Proposed law provides that the right to void the home service contract is not transferable and shall apply only to the original service contract holder and only if no claim has been made prior to its return to the provider. In addition, a 10 percent penalty per month shall be added to a refund that is not paid or credited within 45 days after return of the home service contract to the provider.

Proposed law provides that a provider shall not use in its name the words "insurance", "casualty", "surety", "mutual", or any other words 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.

Proposed law allows the use of the word "guaranty" or similar word by a provider and provides that the provider shall include in the contract a statement in substantially the following form: "This agreement is not an insurance contract."

Proposed law provides that a provider or its representative shall not in its home service contracts 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.

Proposed law provides for effective dates.

(Adds R.S. 51:3141-3146; repeals R.S. 22:821(B)(30) and 22:1806.1-1806.9)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Move the registration of home service contract providers from the State Licensing Board for Contractors to the secretary of state.

Senate Floor Amendments to engrossed bill

1. Change "tangible personal property" to "corporeal movable property".

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the reengrossed bill:

1. Add to proposed law certain documents required for annual submission to the secretary of state, including documents proving solvency and reports relative to sales of home service contracts, repairs, and replacements.
2. Clarify the application for registration as an "application of initial registration".
3. Change the effective date of proposed law from Aug. 1, 2015 to Jan. 11, 2016. Provide for exceptions to the effective date.
4. Provide deadline applicability of Jan. 15, 2016, for home service contract providers to comply with all requirements for initial registration, including the posting of a 2-year, \$50,000 bond with the secretary of state. Provide same deadline applicability to certain documents required for annual submission to the secretary of state.