

## RÉSUMÉ DIGEST

ACT 161 (SB 152)

2015 Regular Session

Long

Prior law provided that the Louisiana Department of Insurance regulate home service contract providers ("providers").

New law provides that home service contract providers be regulated by the secretary of state and not the Louisiana Department of Insurance.

New 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 new law.

New 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 new 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.

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

- (1) Register with the secretary of state and remains in good standing.
- (2) Provide a receipt for or other written evidence of the purchase of the home service contract to the contract holder.
- (3) Provide a copy of the home service contract to the service contract holder within a reasonable period of time from the date of purchase.
- (4) Provide an annual financial statement to the secretary of state showing that the provider is solvent.
- (5) Provide by March first of each year a report to the secretary of state documenting all of the following items 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.

New 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. Requires filing a copy of the provider's basic organizational documents, including articles of incorporation, articles of organization, articles of association, or a partnership agreement. Requires that each application for registration shall be accompanied by a fee not to exceed \$600.

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

New law provides that a provider registration is effective for two years, unless it is denied, renewed, suspended, or revoked.

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

New law requires payment of all fees to the secretary of state.

New law requires each registrant to notify the secretary of state of any material change in the registration information within 60 days of the effective date of the change and that this notice be accompanied with supporting documentation.

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

New 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 Louisiana Insurance Code.

New 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.

New 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 ten 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.

New 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 ten 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.

New 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.

New 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."

New 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.

New law takes effect on January 11, 2016, except that provisions requiring initial registration and reporting certain documentation for the previous calendar year to the secretary of state have a January 15, 2016 effective date.

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