

2015 Regular Session

SENATE BILL NO. 152

BY SENATOR LONG

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CONTRACTORS. Moves the regulation of home service contract providers from the Department of Insurance to the secretary of state. (8/1/15)

AN ACT

To enact Chapter 57 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:3141 through 3146, and to repeal R.S. 22:821(B)(30) and Part X of Chapter 5 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1806.1 through 1806.9, relative to home service contract providers; to provide for definitions; to provide for requirements of home service contract providers; to provide for fees; to provide for home service contract disclosures; to provide for certain prohibited acts; to provide certain terms, conditions, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 57 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:3141 through 3146, is hereby enacted to read as follows:

CHAPTER 57. HOME SERVICE CONTRACT PROVIDERS

§3141. Scope and purpose

A. The purposes of this Part are the following:

(1) To create a registration and assurance mechanism for home service contract providers in this state.

1 (2) To encourage innovation in the marketing and development of more
2 economical and effective means of providing services under home service
3 contracts while placing the risk of innovation on the providers rather than on
4 consumers.

5 (3) To permit and encourage fair and effective competition among
6 different systems of providing and paying for these services.

7 B. The following shall be exempt from this Chapter:

8 (1) Warranties as defined in this Chapter.

9 (2) Maintenance-only agreements as defined in this Chapter.

10 (3) Service contracts sold or offered for sale to persons other than
11 consumers.

12 (4) Contracts sold or offered for sale on a single new item of property at
13 the time of the sale of the property, or within one year of the date of the sale,
14 which guarantee the performance of the service, repair, replacement, or
15 maintenance of the property or guarantee to indemnify for the service, repair,
16 replacement, or maintenance of a single item of residential property.

17 §3142. Definitions

18 As used in this Chapter, unless the context otherwise requires, the
19 following words and phrases shall be defined as follows:

20 (1) "Administrator" means the person who is responsible for the
21 administration of the home service contract or the home service contract plan
22 or who is responsible for any submission required by this Chapter.

23 (2) "Consumer" means a natural person who buys, other than for
24 purposes of resale, any corporeal movable property that is distributed in
25 commerce and that is normally used for personal, family, or household purposes
26 and not for business or research purposes.

27 (3) "Home service contract" means a contract or agreement for a
28 separately stated consideration for any duration to perform the service, repair,
29 replacement, or maintenance of property or indemnification for service, repair,

1 replacement, or maintenance, for the operational or structural failure of any
2 residential property due to a defect in materials, workmanship, inherent defect,
3 or normal wear and tear, with or without additional provisions for incidental
4 payment or indemnity under limited circumstances. A home service contract
5 may provide for the service, repair, replacement, or maintenance of property
6 for damage resulting from power surges or interruption and accidental damage
7 from handling and may provide for leak or repair coverage to house roofing
8 systems. A home service contract is not insurance in this state or otherwise
9 regulated under any provision of the Louisiana Insurance Code.

10 (4) "Maintenance-only agreement" means a contract of limited duration
11 that provides only for scheduled maintenance and does not include repair or
12 replacement.

13 (5) "Person" means an individual, partnership, corporation,
14 incorporated or unincorporated association, joint stock company, reciprocal,
15 syndicate, or any similar entity or combination of entities acting in concert.

16 (6) "Provider" means a person who is contractually obligated to provide
17 the services or indemnification under a home service contract.

18 (7) "Provider fee" means the consideration paid for a home service
19 contract.

20 (8) "Service contract holder" or "contract holder" means a person who
21 is the purchaser or holder of a home service contract.

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

29 §3143. Requirements for doing business

1 A. Home service contracts shall not be issued, sold, or offered for sale in
2 this state unless the provider has done each of the following:

3 (1) Registered with the secretary of state and remains in good standing.

4 (2) Provided a receipt for, or other written evidence of, the purchase of
5 the home service contract to the contract holder.

6 (3) Provided a copy of the home service contract to the service contract
7 holder within a reasonable period of time from the date of purchase.

8 B. Each provider of a home service contract sold in this state shall file a
9 registration with the secretary of state consisting of his name, address,
10 telephone number, and contact person, designating a person in this state for
11 service of process, and providing a listing of all officers, all directors, and all
12 owners of ten percent or more of the business. Additionally, the provider shall
13 file a copy of its basic organizational documents, including articles of
14 incorporation, articles of organization, articles of association, or a partnership
15 agreement. Each application for registration shall be accompanied by a fee not
16 to exceed six hundred dollars. All fees shall be paid into the secretary of state.

17 C. A registration shall be effective for two years, unless the registration
18 is denied, renewed, suspended, or revoked. Ninety days prior to the expiration
19 of a registration, a provider shall submit a renewal application on a form
20 prescribed by the secretary of state and a renewal fee not to exceed two hundred
21 fifty dollars. All fees shall be paid to the secretary of state.

22 D. Each registrant shall notify the secretary of state of any material
23 change in the registration information within sixty days of the effective date of
24 such change. The notice shall be accompanied by supporting documentation.

25 E. In order to assure the faithful performance of a provider's obligations
26 to its contract holders and to insure its outstanding obligations, each provider
27 shall obtain and file with the secretary of state a surety bond issued by a
28 company licensed to do business in Louisiana in the amount of fifty thousand
29 dollars.

1 F. Except for the registration requirements of this Section, providers,
2 administrators, and persons marketing, selling, or offering to sell home service
3 contracts are exempt from any licensing requirements of this state and shall not
4 be subject to other registration information or security requirements.

5 G. The marketing, sale, offering for sale, issuance, making, proposing to
6 make, and administration of home service contracts by providers and related
7 service contract sellers, administrators, and other persons is not insurance and
8 shall be exempt from all provisions of the Louisiana Insurance Code.

9 §3144. Required disclosures; service contracts

10 A. Each home service contract marketed, sold, offered for sale, issued,
11 made, proposed to be made, or administered in this state shall be written,
12 printed, or typed in clear, understandable language that is easy to read and
13 shall disclose the requirements set forth in this Section, as applicable.

14 B. Every home service contract shall contain all the following
15 information:

16 (1) The name and address of the provider and shall identify any
17 administrator if different from the provider.

18 (2) The name of the service contract seller and name of the service
19 contract holder to the extent that the name of the service contract holder has
20 been furnished to the service contract provider. The identities of parties are not
21 required to be preprinted on the service contract and may be added to the
22 service contract at the time of sale.

23 (3) The total purchase price and the terms under which the service
24 contract is sold. The purchase price is not required to be preprinted on the
25 service contract and may be negotiated at the time of sale with the service
26 contract holder.

27 (4) The existence of any deductible amount, if applicable.

28 (5) The goods and services to be provided and any limitations,
29 exceptions, or exclusions.

1 (6) Any restrictions governing the transferability of the service contract,
2 if applicable.

3 (7) The terms, restrictions, or conditions governing cancellation of the
4 service contract prior to the termination or expiration date of the service
5 contract by either the provider or the service contract holder. The provider of
6 the service contract shall mail a written notice to the contract holder at the last
7 known address of the service contract holder contained in the records of the
8 provider at least fifteen days prior to cancellation by the provider. Prior notice
9 is not required if the reason for cancellation is nonpayment of the provider fee,
10 a material misrepresentation by the service contract holder to the provider, or
11 a substantial breach of duties by the service contract holder relating to the
12 covered product or its use. The notice shall state the effective date of the
13 cancellation and the reason for the cancellation.

14 (8) The obligations and duties of the service contract holder, including
15 but not limited to the duty to protect against any further damage and any
16 requirement to follow an owner's manual.

17 (9) Whether or not the service contract provides for or excludes
18 consequential damages or preexisting conditions, if applicable. Service contracts
19 may, but are not required to, cover damage resulting from rust, corrosion, or
20 damage caused by a noncovered part or system.

21 (10) If prior approval of repair work is required, the procedure for
22 obtaining prior approval and for making a claim, including a toll-free telephone
23 number for claim service and a procedure for obtaining emergency repairs
24 performed outside of normal business hours.

25 §3145. Consumer's right to cancel

26 A home service contract shall require every provider to permit the
27 service contract holder to return the home service contract within twenty days
28 of the date the home service contract was mailed to the service contract holder
29 or within ten days of delivery if the home service contract is delivered to the

1 service contract holder at the time of sale or within a longer time period
2 permitted under the home service contract. Upon return of the home service
3 contract to the provider within the applicable time period, if no claim has been
4 made under the home service contract prior to its return to the provider, the
5 home service contract is void and the provider shall refund to the service
6 contract holder, or credit the account of the service contract holder, with the
7 full purchase price of the home service contract. The right to void the home
8 service contract provided is not transferable and shall apply only to the original
9 service contract holder and only if no claim has been made prior to its return
10 to the provider. A ten percent penalty per month shall be added to a refund that
11 is not paid or credited within forty-five days after return of the home service
12 contract to the provider.

13 §3146. Prohibited acts

14 A. A provider shall not use in its name the words "insurance",
15 "casualty", "surety", "mutual", or any other words descriptive of the
16 insurance, casualty, or surety business or a name deceptively similar to the
17 name or description of any insurance or surety corporation, or to the name of
18 any other provider. The word "guaranty" or similar word may be used by a
19 provider. A provider shall include in its home service contracts a statement in
20 substantially the following form: "This agreement is not an insurance
21 contract."

22 B. A provider or its representative shall not in its home service contracts
23 or literature make, permit, or cause to be made any false or misleading
24 statement, or deliberately omit any material statement that would be considered
25 misleading if omitted.

26 Section 2. R.S. 22:821(B)(30) and Part X of Chapter 5 of Title 22 of the Louisiana

27 Revised Statutes of 1950, comprised of R.S. 22:1806.1 through 1806.9, is hereby repealed.

The original instrument was prepared by Michelle D. Ridge. The following digest, which does not constitute a part of the legislative instrument, was prepared by Tammy Crain-Waldrop.

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.

Proposed law provides that each provider of a home service contract sold in this state shall file a 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, and providing a listing of all officers, all directors, and all owners of 10 percent or more of the business.

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 provides that a registration is effective for two 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.

Effective August 1, 2015.

(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. Moves 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. Changes "tangible personal property" to "corporeal movable property".