

2024 Regular Session

HOUSE BILL NO. 841

BY REPRESENTATIVE MCMAKIN

CONTRACTS: Moves the regulation of home service contract providers from the secretary of state to the Department of Insurance

1 AN ACT

2 To enact R.S. 22:821(B)(28) and Part X of Chapter 5 of Title 22 of the Louisiana Revised  
3 Statutes of 1950, to be comprised of R.S. 22:1806.1 through 1806.9, and to repeal  
4 Chapter 57 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S.  
5 51:3141 through 3146, relative to home service contracts; to provide for scope and  
6 purpose; to provide for definitions; to provide for regulation by the commissioner of  
7 insurance; to provide registration requirements for home service contract providers;  
8 to provide for fees; to provide for expiration and renewal of registration; to provide  
9 for required disclosures in contracts; to provide for cancellation of contracts; to  
10 provide for required recordkeeping; to provide for enforcement and authorized  
11 examination of providers by the commissioner of insurance; to provide relative to  
12 prohibited acts; to provide for suspension or revocation of registration; to provide for  
13 penalties; to repeal relative to registration of home service contract providers under  
14 the secretary of state; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 22:821(B)(28) and Part X of Chapter 5 of Title 22 of the Louisiana  
17 Revised Statutes of 1950, comprised of R.S. 22:1806.1 through 1806.9, are hereby enacted  
18 to read as follows:

19 §821. Fees

20 \* \* \*

1 B. The commissioner shall collect the following fees in advance:

2 \* \* \*

3 (28) For home service contract providers

4 (a) Initial registration fee ..... \$600.00

5 (b) Renewal fee (every two years)..... \$250.00

6 \* \* \*

7 PART X. HOME SERVICE CONTRACT PROVIDERS

8 §1806.1. Scope and purpose

9 A. The purposes of this Part are all of the following:

10 (1) To create a legal framework within which home service contracts may  
11 be sold in this state.

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

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

17 B. The following are exempt from this Part:

18 (1) Warranties as defined in R.S. 22:1806.2.

19 (2) Maintenance-only agreements as defined in R.S. 22:1806.2.

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

22 C. All home service contract providers operating pursuant to a registration  
23 as required by this Part are exempt from the applicability of all other provisions of  
24 the Louisiana Insurance Code, except where such provisions are specifically  
25 incorporated in this Part by reference.

26 §1806.2. Definitions

27 As used in this Part, the following terms have the following meanings:

1           (1) "Administrator" means the person who is responsible for the  
2           administration of home service contracts or the home service contracts plan or who  
3           is responsible for any submission required by this Part.

4           (2) "Consumer" means a natural person who buys other than for purposes of  
5           resale any tangible personal property that is distributed in commerce and that is  
6           normally used for personal, family, or household purposes and not for business or  
7           research purposes.

8           (3)(a) "Home service contract" or "service contract" means a contract or  
9           agreement for a separately stated consideration for a specific duration to perform the  
10          service, repair, replacement, or maintenance of property or indemnification for  
11          service, repair, replacement, or maintenance, for the operational or structural failure  
12          of any residential property due to a defect in materials, workmanship, inherent  
13          defect, or normal wear and tear, with or without additional provisions, for incidental  
14          payment or indemnity under limited circumstances.

15          (b) Home service contracts may provide for the service, repair, replacement,  
16          or maintenance of property for damage resulting from power surges or interruption  
17          and accidental damage from handling and may provide for leak or repair coverage  
18          to house roofing systems.

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

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

24          (6) "Provider" means a person who administers, issues, makes, provides,  
25          sells, or offers to sell a home service contract or who is contractually obligated to  
26          provide service under a home service contract such as a seller, administrator, or other  
27          intermediary.

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

1           (8) "Reimbursement insurance policy" means a policy of insurance issued  
2           to a provider to either provide reimbursement to the provider under the terms of the  
3           insured home service contracts issued or sold by the provider or, in the event of the  
4           provider's nonperformance, to pay on behalf of the provider all covered contractual  
5           obligations incurred by the provider under the terms of the insured home service  
6           contracts issued or sold by the provider.

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

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

15           §1806.3. Regulation; requirements for doing business

16           A. Home service contracts are not insurance in this state or otherwise  
17           regulated under any provision of the Louisiana Insurance Code, except as provided  
18           in this Part.

19           B. A provider shall not issue, sell, or offer for sale in this state any home  
20           service contracts unless the provider has done each of the following:

21           (1) Provided a receipt for or other written evidence of the purchase of the  
22           home service contract to the contract holder.

23           (2) Provided a copy of the home service contract to the service contract  
24           holder within a reasonable period of time from the date of purchase.

25           (3) Complied with the provisions of this Part.

26           C. A provider of home service contracts sold in this state shall file a  
27           registration with the commissioner consisting of its name, full address, telephone  
28           number, and contact person, designating a person in this state for service of process,  
29           and a list of all officers, directors, and owners of ten percent or more of the business.

1 Additionally, the provider shall file a copy of its basic organizational documents,  
2 such as articles of incorporation, articles of organization, articles of association, or  
3 a partnership agreement. A provider shall submit with an application for registration  
4 the fee required in R.S. 22:821.

5 D. A registration for purposes of this Section is effective for two years,  
6 unless the registration is renewed, suspended, or revoked.

7 E. To renew the registration, no later than ninety days before its registration  
8 expires, the provider shall submit a renewal application on the form prescribed by  
9 the commissioner and the renewal fee required in R.S. 22:821. The renewal is  
10 deemed effective unless acted upon adversely by the commissioner.

11 F. Each registrant shall notify the commissioner of any material change in  
12 the registration information within sixty days of the effective date of such change,  
13 and shall submit supporting documentation.

14 G. In order to assure the faithful performance of a provider's obligations to  
15 its contract holders, each provider shall comply with the requirements of one of the  
16 following Paragraphs:

17 (1)(a) Maintain a funded reserve account for its obligations under its  
18 contracts issued and outstanding in this state in an amount not less than forty percent  
19 of gross consideration received, then less claims paid, on the sale of the service  
20 contract for all contracts issued and in force. A reserve account is subject to  
21 examination and review by the commissioner.

22 (b) Place in trust with the commissioner a financial security deposit, having  
23 a value of not less than five percent of the gross consideration received, then less  
24 claims paid, on the sale of the service contract for all service contracts issued and in  
25 force, but not less than twenty-five thousand dollars, consisting of one of the  
26 following:

27 (i) A surety bond issued by an authorized surety.

28 (ii) Securities of the type eligible for deposit by authorized insurers in this  
29 state.

1           (c) If a surety bond is used to comply with the requirements of this  
2           Paragraph, the registrant shall annually provide to the commissioner evidence that  
3           the required bond remains in full force and effect.

4           (2)(a) Maintain, or maintain together with its parent company, a net worth  
5           or stockholders' equity of twenty-five million dollars.

6           (b) Upon request, provide the commissioner with a copy of the provider's or  
7           the provider's parent company's most recent Form 10-K or Form 20-F filed with the  
8           Securities and Exchange Commission within the last calendar year, or if the  
9           company does not file with the Securities and Exchange Commission, a copy of the  
10          company's financial statements, which show a net worth of the provider or its parent  
11          company of at least twenty-five million dollars. If the provider files its parent  
12          company's Form 10-K or Form 20-F, or financial statements to meet the provider's  
13          financial stability requirement, then the parent company shall agree to guarantee the  
14          obligations of the provider relating to service contracts sold by the provider in this  
15          state.

16          (3) Insure all service contracts under a reimbursement insurance policy  
17          issued by an insurer licensed, registered, or otherwise authorized to do business in  
18          this state.

19          H. Except for the registration requirements of this Section, providers and  
20          related home service contract sellers, administrators, and other persons marketing,  
21          selling, or offering to sell home service contracts are exempt from any licensing  
22          requirements of this state and are not subject to other registration information or  
23          security requirements.

24          I. The marketing, sale, offering for sale, issuance, making, proposing to  
25          make, and administration of home service contracts by providers and related service  
26          contract sellers, administrators, and other persons are exempt from all provisions of  
27          the Louisiana Insurance Code other than the provisions of this Part.

1        §1806.4. Required disclosures; reimbursement insurance policy

2            A. A provider shall ensure that its reimbursement insurance policies insuring  
3        home service contracts issued, sold, or offered for sale expressly state that the insurer  
4        issuing the reimbursement insurance policy shall either reimburse or pay on behalf  
5        of the provider any covered sums the provider is legally obligated to pay or, in the  
6        event of the provider's nonperformance, shall provide the service which the provider  
7        is legally obligated to perform according to the provider's contractual obligations  
8        under the service contracts issued or sold by the provider.

9            B. In the event covered service is not provided by the home service contract  
10       provider within sixty days of proof of loss by the service contract holder, the contract  
11       holder may apply directly to the reimbursement insurance company.

12        §1806.5. Required disclosures; service contracts

13            A. A provider shall ensure all of the following:

14            (1) That home service contracts marketed, sold, offered for sale, issued,  
15        made, proposed to be made, or administered in this state are written, printed, or typed  
16        in clear and specific language that is easy to read and shall disclose the requirements  
17        set forth in this Section, as applicable.

18            (2)(a) That home service contracts insured under a reimbursement insurance  
19        policy contain a statement in substantially the following form: "Obligations of the  
20        provider under this service contract are insured under a service contract  
21        reimbursement insurance policy. If the provider fails to pay or provide service on a  
22        claim within sixty days after proof of loss has been filed, the contract holder is  
23        entitled to make a claim directly against the insurance company." The provider shall  
24        also state the name and address of the reimbursement policy insurer within a service  
25        contract.

26            (b) In a claim under a reimbursement insurance policy, a service contract  
27        holder may also include a claim against the provider for return of the unearned  
28        provider fee.

1           (3) That home service contracts not insured under a reimbursement insurance  
2           policy contain a statement in substantially the following form: "Obligations of the  
3           provider under this service contract are backed by the full faith and credit of the  
4           provider."

5           (4) That home service contracts contain the name and address of the provider  
6           and identify any administrator if different from the provider, and the names of the  
7           service contract seller and service contract holder to the extent that the name of the  
8           service contract holder has been furnished to the service contract provider. The  
9           identities of parties are not required to be preprinted on the service contract and may  
10          be added to the service contract at the time of sale.

11          B, A provider shall state within home service contracts all of the following:

12          (1) The total purchase price and the terms under which the service contract  
13          is sold. The purchase price is not required to be preprinted on the service contract  
14          and may be negotiated at the time of sale with the service contract holder.

15          (2) The existence of any deductible amount, if applicable.

16          (3) The specific goods and services to be provided and any limitations,  
17          exceptions, or exclusions.

18          (4) Any restrictions governing the transferability of the service contract, if  
19          applicable.

20          (5)(a) The terms, restrictions, or conditions governing cancellation of the  
21          service contract prior to the termination or expiration date of the service contract by  
22          either the provider or the service contract holder.

23          (b) The provider of the service contract shall mail a written notice to the  
24          contract holder at the last known address of the service contract holder contained in  
25          the records of the provider at least fifteen days prior to cancellation by the provider.  
26          Prior notice is not required if the reason for cancellation is the contract holder's  
27          nonpayment of the provider fee, a material misrepresentation by the contract holder  
28          to the provider, or a substantial breach of duties by the contract holder relating to the



1 covered product or its use. The provider shall also state in the written notice the  
2 effective date of the cancellation and the reason for the cancellation.

3 (6) All of the obligations and duties of the service contract holder, such as  
4 the duty to protect against any further damage and any requirement to follow an  
5 owner's manual.

6 (7) Whether the service contract provides for or excludes consequential  
7 damages or preexisting conditions, if applicable. In a service contract, the provider  
8 may, but is not required to, cover damage resulting from rust, corrosion, or damage  
9 caused by a noncovered part or system.

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

14 §1806.6. Service contract holder; right to cancel

15 In every home service contract, the provider shall include the right of a  
16 service contract holder to cancel the service contract within twenty days of the date  
17 the service contract was mailed to the service contract holder, or within ten days of  
18 delivery, if the service contract is delivered to the service contract holder at the time  
19 of sale, or within a longer time period permitted under the service contract. Upon  
20 return of the service contract to the provider within the applicable time period, if no  
21 claim has been made under the service contract prior to return to the provider, the  
22 service contract is void and the provider shall refund to the service contract holder,  
23 or credit the account of the service contract holder, with the full purchase price of the  
24 contract. The right to cancel the service contract provided in this Section is not  
25 transferable and applies only to the original service contract holder and only if a  
26 claim has not been made prior to its return to the provider. A provider shall pay a  
27 ten percent penalty per month on a refund that is not paid or credited within forty-  
28 five days after return of the service contract to the provider.

1        §1806.7. Prohibited acts

2            A. A provider shall not use in its name the words "insurance", "casualty",  
3            "surety", "mutual", or any other words descriptive of the insurance, casualty, or  
4            surety business or a name deceptively similar to the name or description of any  
5            insurance or surety corporation, or to the name of any other provider. The word  
6            "guaranty" or similar word may be used by a provider. This Section does not apply  
7            to a company that was using any of the prohibited language in its name prior to  
8            January 1, 2025. However, a company using the prohibited language in its name  
9            shall include in its service contracts a statement in substantially the following form:  
10           "This agreement is not an insurance contract."

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

15        §1806.8. Recordkeeping requirements

16           A.(1) The provider shall keep accurate accounts, books, and records  
17           concerning transactions regulated by this Part.

18           (2) The provider shall include in accounts, books, and records all of the  
19           following:

20           (a) Copies of each type of home service contract sold.

21           (b) The name and address of each service contract holder to the extent that  
22           the name and address have been furnished by the holder to the service contract  
23           provider.

24           (c) Files that contain at least the dates and description related to the home  
25           service contracts.

26           (3) Except in the case of a discontinuing business provided for in Subsection  
27           B of this Section, the provider shall retain all records required to be maintained by  
28           this Section for at least three years after the specified period of coverage has expired.

1           (4) A provider may maintain records required in this Section through  
2           electronic means or other recordkeeping technology. If the records are maintained  
3           in a form other than hard copy, a provider shall ensure the records are capable of  
4           being duplicated to legible hard copy at the request of the commissioner.

5           B. A provider discontinuing business in this state shall maintain its records  
6           until it furnishes the commissioner satisfactory proof that it has discharged all  
7           obligations to service contract holders in this state.

8           C. A provider shall make all accounts, books, and records required by this  
9           Part available to the commissioner upon request.

10           §1806.9. Enforcement; civil penalties

11           A. The commissioner may conduct examinations of providers, administrators,  
12           insurers, or other persons to enforce the provisions of this Part and protect home  
13           service contract holders in this state. Upon request of the commissioner, a provider  
14           shall make all accounts, books, and records concerning service contracts sold by the  
15           provider available to the commissioner to enable the commissioner to reasonably  
16           determine compliance or noncompliance with this Part.

17           B. The commissioner may take actions necessary to enforce the provisions  
18           of this Part and the commissioner's orders to protect service contract holders in this  
19           state.

20           (1) The commissioner may order a person to cease and desist from  
21           committing violations of this Part or the commissioner's orders; issue an order  
22           prohibiting a home service contract provider from selling or offering for sale home  
23           service contracts; revoke or suspend the registration of any home service contract  
24           provider; or issue an order imposing a civil penalty, or any combination of these, if  
25           the provider has violated this Part or the commissioner's regulations or orders.

26           (2) The commissioner may assess a person in violation of this Part or orders  
27           of the commissioner a civil penalty not to exceed five hundred dollars per violation  
28           and no more than ten thousand dollars in the aggregate for all violations of a similar  
29           nature.

1 Section 2. Chapter 57 of Title 51 of the Louisiana Revised Statutes of 1950,  
2 comprised of R.S. 51:3141 through 3146, is hereby repealed in its entirety.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 841 Original

2024 Regular Session

McMakin

**Abstract:** Provides for regulation of home service contract providers by the commissioner of insurance, including requirements for registration of providers, disclosures in contracts, recordkeeping, and enforcement.

Proposed law provides for regulation of home service contract providers (providers) by the commissioner of insurance (commissioner).

Proposed law defines "administrator", "consumer", "home service contract", "maintenance-only agreement", "person", "provider", "provider fee", "reimbursement insurance policy", "service contract holder", and "warranty".

Proposed law provides for scope and purpose, including requirements that providers register as prescribed in proposed law. Exempts providers from all other provisions of present law and the La. Insurance Code, except where such provisions are incorporated in proposed law by reference.

Proposed law exempts warranties, maintenance-only agreements, and service contracts sold or offered for sale to persons other than consumers.

Proposed law prohibits providers from issuing, selling, or offering home service contracts (contracts) for sale unless the provider complies with proposed law.

Proposed law requires providers to file a registration with the commissioner, including a copy of its basic organizational documents, along with a fee of \$600. Makes registration effective for 2 years and provides for renewal of registration with a fee of \$250. Requires registrants to notify the commissioner of any material change in registration information within 60 days of the effective date of the change. Further requires providers to comply with one of the following:

- (1) Maintenance of a funded reserve account and placing in trust a financial security deposit consisting of a surety bond, or certain securities.
- (2) Maintenance of, or with its parent company, a net worth or stockholders' equity of \$25 million. Requires providers to furnish to the commissioner, upon his request, certain forms filed with the Securities and Exchange Commission.
- (3) Insuring all service contracts under a reimbursement insurance policy issued by an insurer authorized to do business in this state.

Proposed law requires providers to ensure that reimbursement insurance policies state that the insurer will either reimburse or pay on behalf of the provider any covered sums the provider is legally obligated to pay or, in the event of the provider's nonperformance, provide the service which the provider is legally obligated to perform. Further provides that if the provider does not render the covered service within 60 days of proof of loss by the

service contract holder, the contract holder is entitled to apply directly to the reimbursement insurance company.

Proposed law requires providers to ensure that contracts are in clear, understandable language and requires disclosures regarding obligations of the provider with respect to reimbursement insurance policies.

Proposed law requires providers to ensure that contracts state the name and address of the provider, identify any administrator if different from the provider, the service contract seller, and the contract holder to the extent that the name of the contract holder has been furnished to the provider.

Proposed law requires providers to state all of the following within contracts:

- (1) The total purchase price and the terms under which the contract is sold.
- (2) The existence of any deductible amount.
- (3) The specific goods and services to be provided and any limitations, exceptions, or exclusions, and any restrictions governing the transferability of the contract.
- (4) The terms, restrictions, or conditions governing cancellation of the contract prior to its termination or expiration date. Provides exceptions to the provider's required notice of cancellation, such as a contract holder's nonpayment of the provider fee. Further requires providers to state in the notice the effective date of cancellation and the reason for cancellation.
- (5) The obligations and duties of the contract holder, such as the duty to protect against further damage and any requirement to follow an owner's manual.
- (6) Whether the contract provides for or excludes any consequential damages or preexisting conditions.
- (7) The procedure for obtaining prior approval for work and for making a claim, including a toll-free telephone number for claim service, and a procedure for obtaining emergency repairs outside of normal business hours.

Proposed law requires providers to grant a contract holder the right to return a contract within 20 days of the date the contract was mailed to the contract holder, or within 10 days of delivery if the contract is delivered to the contract holder at the time of sale, or within a longer time period permitted under the contract. Cancels the contract upon return to the provider if no claim has been made, and requires the provider to refund or credit the account of the contract holder with the full purchase price of the contract. Provides that the right to cancel a contract is not transferable, only applies to the original contract holder, and only if a claim has not been made prior to its return to the provider. Further provides for a 10% penalty per month to be added to a refund that is not paid or credited within 45 days after return of the contract.

Proposed law prohibits providers from using in its name the words "insurance", "casualty", and "surety" 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. Authorizes providers to use "guaranty" or similar word. Exempts from this prohibition a company using prohibited language in its name prior to Jan. 1, 2025; however, requires a company using the prohibited language to include in its service contracts: "This agreement is not an insurance contract."

Proposed law prohibits providers from making any false or misleading statements or deliberately omitting material statements that would be considered misleading if omitted in its contracts or literature.

Proposed law requires providers to keep accurate accounts, books, and records, including dates and descriptions related to its contracts. Requires providers to retain all records at least 3 years after coverage has expired. Exempts providers discontinuing business in this state from this requirement; however, requires that such a provider maintain records until it furnishes the commissioner proof that it has discharged all obligations to contract holders. Further requires providers to make records available to the commissioner upon request.

Proposed law authorizes the commissioner to conduct examinations of providers, administrators, insurers, or other persons to enforce the provisions of proposed law. Authorizes the commissioner to take necessary actions to enforce the provisions of proposed law and his orders. Authorizes the commissioner to order a person to cease and desist from committing violations; issue an order prohibiting providers from selling or offering for sale home service contracts; revoke or suspend the registration of any provider; or issue an order imposing a civil penalty, or any combination of penalties, if a provider violates proposed law or orders. Further authorizes the commissioner to assess a civil penalty not to exceed \$500 per violation and no more than \$10,000 in the aggregate for all violations of a similar nature.

Present law (R.S. 51:3141-3146) provides for regulation of home service contract providers under the secretary of state. Proposed law repeals present law.

(Adds R.S. 22:821(B)(28) and 1806.1-1806.9; Repeals R.S. 51:3141-3146)