
DIGEST

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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)