

SENATE BILL NO. 152

BY SENATOR LONG

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

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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; to provide for effectiveness; 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.

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

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

B. The following shall be exempt from this Chapter:

1 **(1) Warranties as defined in this Chapter.**

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

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

5 **(4) Contracts sold or offered for sale on a single new item of property at**
6 **the time of the sale of the property, or within one year of the date of the sale,**
7 **which guarantee the performance of the service, repair, replacement, or**
8 **maintenance of the property or guarantee to indemnify for the service, repair,**
9 **replacement, or maintenance of a single item of residential property.**

10 **§3142. Definitions**

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

13 **(1) "Administrator" means the person who is responsible for the**
14 **administration of the home service contract or the home service contract plan**
15 **or who is responsible for any submission required by this Chapter.**

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

20 **(3) "Home service contract" means a contract or agreement for a**
21 **separately stated consideration for any duration to perform the service, repair,**
22 **replacement, or maintenance of property or indemnification for service, repair,**
23 **replacement, or maintenance, for the operational or structural failure of any**
24 **residential property due to a defect in materials, workmanship, inherent defect,**
25 **or normal wear and tear, with or without additional provisions for incidental**
26 **payment or indemnity under limited circumstances. A home service contract**
27 **may provide for the service, repair, replacement, or maintenance of property**
28 **for damage resulting from power surges or interruption and accidental damage**
29 **from handling and may provide for leak or repair coverage to house roofing**
30 **systems. A home service contract is not insurance in this state or otherwise**

1 regulated under any provision of the Louisiana Insurance Code.

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

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

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

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

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

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

21 §3143. Requirements for doing business

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

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

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

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

29 (4) Provided a financial statement annually to the secretary of state
30 showing that the provider is solvent.

1 **(5) Provided to the secretary of state by March first of each year a**
2 **report documenting all of the following for the previous calendar year:**

3 **(a) The number of home service contracts issued or sold with respect to**
4 **residential property.**

5 **(b) The gross consideration received.**

6 **(c) The number and dollar amount of claims paid categorically by the**
7 **cost of repair or by the cost of replacement.**

8 **(d) The number of claims denied for failure of the service contract**
9 **holder to receive prior approval for such repair or replacement.**

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

20 **C. A registration shall be effective for two years, unless the registration**
21 **is denied, renewed, suspended, or revoked. Ninety days prior to the expiration**
22 **of a registration, a provider shall submit a renewal application on a form**
23 **prescribed by the secretary of state and a renewal fee not to exceed two hundred**
24 **fifty dollars. All fees shall be paid to the secretary of state. The deadline for**
25 **complying with all requirements for initial registration as described in this**
26 **Subsection, and for posting a two-year bond in the amount as described in**
27 **Subsection E of this Section is January fifteenth.**

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

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

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

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

14 §3144. Required disclosures; service contracts

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

19 B. Every home service contract shall contain all the following
20 information:

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

23 (2) The name of the service contract seller and name of the service
24 contract holder to the extent that the name of the service contract holder has
25 been furnished to the service contract provider. The identities of parties are not
26 required to be preprinted on the service contract and may be added to the
27 service contract at the time of sale.

28 (3) The total purchase price and the terms under which the service
29 contract is sold. The purchase price is not required to be preprinted on the
30 service contract and may be negotiated at the time of sale with the service

1 contract holder.

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

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

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

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

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

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

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

29 §3145. Consumer's right to cancel

30 A home service contract shall require every provider to permit the

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

16 §3146. Prohibited acts

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

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

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

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

1 Section 3. (A) This Section, all provisions enacted by Section 1 of this Act except
2 R.S. 51:3143(A)(5) and (B), and the provisions of Section 2 of this Act, shall become
3 effective on January 11, 2016.

4 (B) The provisions of R.S. 51:3143(A)(5) and (B) as enacted by Section 1 of this Act
5 shall become effective on January 15, 2016.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____