

Regular Session, 2009
HOUSE BILL NO. 704

ACT No. 101

BY REPRESENTATIVE BALDONE AND SENATOR DUPRE

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

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AN ACT

To enact R.S. 22:821(B)(28) and Part X of Chapter 5 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:1806.1 through 1806.9, relative to home service contracts; to provide for scope and purpose; to provide for definitions; to provide for regulation by the commissioner of insurance, including the requirement for registration by home service contract providers; to provide for the application for registration; to provide for expiration and renewal of registration; to provide for required disclosures in contracts; to provide relative to cancellation by the consumer; to provide for required recordkeeping; to provide for fees; to provide for enforcement, including authorizing examination of providers by the commissioner; to provide relative to prohibited acts; to provide for suspension or revocation of registration; to provide for penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:821(B)(28) 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, are hereby enacted to read as follows:

§821. Fees

The following fees and licenses shall be collected in advance:

* * *

B. By the commissioner of insurance:

* * *

(28) Home service contract providers

(a) Initial registration fee \$600.00

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

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3 PART X. HOME SERVICE CONTRACT PROVIDERS

4 §1806.1. Scope and purpose

5 A. The purposes of this Part are the following:

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

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

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

13 B. The following shall be exempt from this Part:

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

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

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

18 C. All home service contract providers operating pursuant to a registration
19 as required by this Part shall be exempt from the applicability of all other provisions
20 of this Insurance Code, except where such provisions are specifically incorporated
21 in this Part by reference.

22 §1806.2. Definitions

23 As used in this Part:

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

27 (2) "Commissioner" means the commissioner of insurance.

28 (3) "Consumer" means a natural person who buys other than for purposes of
29 resale any tangible personal property that is distributed in commerce and that is

1 normally used for personal, family, or household purposes and not for business or
2 research purposes.

3 (4) "Home service contract" means a contract or agreement for a separately
4 stated consideration for a specific duration to perform the service, repair,
5 replacement, or maintenance of property or indemnification for service, repair,
6 replacement, or maintenance, for the operational or structural failure of any
7 residential property due to a defect in materials, workmanship, inherent defect, or
8 normal wear and tear, with or without additional provisions for incidental payment
9 or indemnity under limited circumstances. Home service contracts may provide for
10 the service, repair, replacement, or maintenance of property for damage resulting
11 from power surges or interruption and accidental damage from handling and may
12 provide for leak or repair coverage to house roofing systems. Home service
13 contracts are not insurance in this state or otherwise regulated under any provision
14 of this Insurance Code, except as provided in this Part.

15 (5) "Maintenance only agreement" means a contract of limited duration that
16 provides for scheduled maintenance only and does not include repair or replacement.

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

20 (7) "Provider" means a person who administers, issues, makes, provides,
21 sells, or offers to sell a home service contract or who is contractually obligated to
22 provide service under a home service contract such as sellers, administrators, and
23 other intermediaries.

24 (8) "Provider fee" means the consideration paid for a home service contract.

25 (9) "Reimbursement insurance policy" means a policy of insurance issued
26 to a provider to either provide reimbursement to the provider under the terms of the
27 insured home service contracts issued or sold by the provider or, in the event of the
28 provider's nonperformance, to pay on behalf of the provider all covered contractual
29 obligations incurred by the provider under the terms of the insured home service
30 contracts issued or sold by the provider.

1 (10) "Service contract holder" or "contract holder" means a person who is
2 the purchaser or holder of a home service contract.

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

9 §1806.3. Requirements for doing business

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

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

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

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

17 B. Each provider of home service contracts sold in this state shall file a
18 registration with the commissioner consisting of its name, full address, telephone
19 number, and contact person, designating a person in this state for service of process,
20 and providing a listing of all officers, all directors, and all owners of ten percent or
21 more of the business. Additionally, the provider shall file a copy of its basic
22 organizational documents, such as articles of incorporation, articles of organization,
23 articles of association, or a partnership agreement. Each application for registration
24 shall be accompanied by the fee required in R.S. 22:821.

25 C. A registration for purposes of this Section shall be effective for two years,
26 unless the registration is renewed, suspended, or revoked.

27 D. To renew the registration, no later than ninety days before its registration
28 expires, the provider shall submit a renewal application on the form that the
29 commissioner requires and the renewal fee required in R.S. 22:821. The renewal
30 shall be deemed effective unless acted upon adversely by the commissioner.

1 E. Each registrant shall notify the commissioner of any material change in
2 the registration information within sixty days of the effective date of such change.
3 The notice shall be accompanied by supporting documentation.

4 F. In order to assure the faithful performance of a provider's obligations to
5 its contract holders, each provider shall be responsible for complying with the
6 requirements of one of the following paragraphs:

7 (1)(a) Maintaining a funded reserve account for its obligations under its
8 contracts issued and outstanding in this state. The reserves shall not be less than
9 forty percent of gross consideration received, then less claims paid, on the sale of the
10 service contract for all in-force contracts. The reserve account shall be subject to
11 examination and review by the commissioner; and

12 (b) Placing in trust with the commissioner a financial security deposit,
13 having a value of not less than five percent of the gross consideration received, then
14 less claims paid, on the sale of the service contract for all service contracts issued
15 and in force, but not less than twenty-five thousand dollars, consisting of one of the
16 following:

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

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

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

23 (2)(a) Maintaining, or together with its parent company maintaining, a net
24 worth or stockholders' equity of twenty-five million dollars.

25 (b) Upon request, provide the commissioner with a copy of the provider's or
26 the provider's parent company's most recent Form 10-K or Form 20-F filed with the
27 Securities and Exchange Commission (SEC) within the last calendar year, or if the
28 company does not file with the SEC, a copy of the company's financial statements,
29 which shows a net worth of the provider or its parent company of at least twenty-

1 five million dollars. If the provider's parent company's Form 10-K or Form 20-F, or
 2 financial statements are filed to meet the provider's financial stability requirement,
 3 then the parent company shall agree to guarantee the obligations of the provider
 4 relating to service contracts sold by the provider in this state.

5 (3) Insuring all service contracts under a reimbursement insurance policy
 6 issued by an insurer licensed, registered, or otherwise authorized to do business in
 7 this state.

8 G. Except for the registration requirements of this Section, providers and
 9 related home service contract sellers, administrators, and other persons marketing,
 10 selling, or offering to sell home service contracts are exempt from any licensing
 11 requirements of this state and shall not be subject to other registration information
 12 or security requirements.

13 H. The marketing, sale, offering for sale, issuance, making, proposing to
 14 make, and administration of home service contracts by providers and related service
 15 contract sellers, administrators, and other persons shall be exempt from all
 16 provisions of this Insurance Code other than the provisions of this Part.

17 §1806.4. Required disclosures; reimbursement insurance policy

18 A. Reimbursement insurance policies insuring home service contracts issued,
 19 sold, or offered for sale in this state shall state that the insurer that issued the
 20 reimbursement insurance policy shall either reimburse or pay on behalf of the
 21 provider any covered sums the provider is legally obligated to pay or, in the event
 22 of the provider's nonperformance, shall provide the service which the provider is
 23 legally obligated to perform according to the provider's contractual obligations under
 24 the service contracts issued or sold by the provider.

25 B. In the event covered service is not provided by the home service contract
 26 provider within sixty days of proof of loss by the service contract holder, the contract
 27 holder is entitled to apply directly to the reimbursement insurance company.

28 §1806.5. Required disclosures; service contracts

29 A. Home service contracts marketed, sold, offered for sale, issued, made,
 30 proposed to be made, or administered in this state shall be written, printed, or typed

1 in clear, understandable language that is easy to read and shall disclose the
2 requirements set forth in this Section, as applicable.

3 B. Home service contracts insured under a reimbursement insurance policy
4 provided for in this Part shall contain a statement in substantially the following form:
5 "Obligations of the provider under this service contract are insured under a service
6 contract reimbursement insurance policy. If the provider fails to pay or provide
7 service on a claim within sixty days after proof of loss has been filed, the contract
8 holder is entitled to make a claim directly against the insurance company.". A claim
9 against the provider shall also include a claim for return of the unearned provider fee.
10 The service contract shall also state the name and address of the insurer.

11 C. Home service contracts not insured under a reimbursement insurance
12 policy shall contain a statement in substantially the following form: "Obligations of
13 the provider under this service contract are backed by the full faith and credit of the
14 provider."

15 D. Home service contracts shall state the name and address of the provider
16 and shall identify any administrator if different from the provider. Home service
17 contracts shall also state the name of the service contract seller and name of the
18 service contract holder to the extent that the name of the service contract holder has
19 been furnished to the service contract provider. The identities of parties are not
20 required to be preprinted on the service contract and may be added to the service
21 contract at the time of sale.

22 E. Home service contracts shall state the total purchase price and the terms
23 under which the service contract is sold. The purchase price is not required to be
24 preprinted on the service contract and may be negotiated at the time of sale with the
25 service contract holder.

26 F. Home service contracts shall state the existence of any deductible amount,
27 if applicable.

28 G. Home service contracts shall specify the goods and services to be
29 provided and any limitations, exceptions, or exclusions.

1 H. Home service contracts shall state any restrictions governing the
2 transferability of the service contract, if applicable.

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

14 J. Home service contracts shall set forth all of the obligations and duties of
15 the service contract holder, such as the duty to protect against any further damage
16 and any requirement to follow an owner's manual.

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

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

25 §1806.6. Consumer's right to cancel

26 Home service contracts shall require every provider to permit the service
27 contract holder to return the service contract within twenty days of the date the
28 service contract was mailed to the service contract holder or within ten days of
29 delivery if the service contract is delivered to the service contract holder at the time
30 of sale or within a longer time period permitted under the service contract. Upon

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

10 §1806.7. Prohibited acts

11 A. A provider shall not use in its name the words "insurance", "casualty",
 12 "surety", "mutual", or any other words descriptive of the insurance, casualty, or
 13 surety business or a name deceptively similar to the name or description of any
 14 insurance or surety corporation, or to the name of any other provider. The word
 15 "guaranty" or similar word may be used by a provider. This Section shall not apply
 16 to a company that was using any of the prohibited language in its name prior to
 17 January 1, 2010. However, a company using the prohibited language in its name
 18 shall include in its service contracts a statement in substantially the following form:
 19 "This agreement is not an insurance contract."

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

24 §1806.8. Recordkeeping requirements

25 A.(1) The provider shall keep accurate accounts, books, and records
 26 concerning transactions regulated under this Part.

27 (2) The provider's accounts, books, and records shall include the following:

28 (a) Copies of each type of home service contracts sold.

1 **(b) The name and address of each service contract holder to the extent that**
2 **the name and address have been furnished by the holder to the service contract**
3 **provider.**

4 **(c) Files which shall contain at least the dates and description related to the**
5 **home service contracts.**

6 **(3) Except in the case of a discontinued business provided for under**
7 **Subsection B of this Section, the provider shall retain all records required to be**
8 **maintained by this Section for at least three years after the specified period of**
9 **coverage has expired.**

10 **(4) The records required under this Part may be, but are not required to be**
11 **maintained on a computer disk or other recordkeeping technology. If the records are**
12 **maintained in other than hard copy, the records shall be capable of duplication to**
13 **legible hard copy at the request of the commissioner.**

14 **B. A provider discontinuing business in this state shall maintain its records**
15 **until it furnishes the commissioner satisfactory proof that it has discharged all**
16 **obligations to contract holders in this state.**

17 **C. A provider shall make all accounts, books, and records required under this**
18 **Part available to the commissioner upon request.**

19 **§1806.9. Enforcement**

20 **A. The commissioner may conduct examinations of providers,**
21 **administrators, insurers, or other persons to enforce the provisions of this Part and**
22 **protect home service contract holders in this state. Upon request of the**
23 **commissioner, a provider shall make all accounts, books, and records concerning**
24 **service contracts sold by the provider available to the commissioner which are**
25 **necessary to enable the commissioner to reasonably determine compliance or**
26 **noncompliance with this Part.**

27 **B. The commissioner may take action which is necessary or appropriate to**
28 **enforce the provisions of this Part and the commissioner's orders to protect service**
29 **contract holders in this state.**

1 (1) The commissioner may order a person to cease and desist from
 2 committing violations of this Part or the commissioner's orders, may issue an order
 3 prohibiting a home service contract provider from selling or offering for sale home
 4 service contracts, revoke or suspend the registration of any home service contract
 5 provider, or may issue an order imposing a civil penalty, or any combination of
 6 these, if the provider has violated this Part or the commissioner's regulations or
 7 orders.

8 (2) A person in violation of this Part or orders of the commissioner may be
 9 assessed a civil penalty not to exceed five hundred dollars per violation and no more
 10 than ten thousand dollars in the aggregate for all violations of a similar nature.

11 Section 2. This Act shall become effective on January 1, 2010.

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 PRESIDENT OF THE SENATE

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____