



Sub. H.B. 243

125th General Assembly
(As Passed by the General Assembly)

Reps. Raussen, Buehrer, Hollister, Reidelbach, S. Patton, Barrett, McGregor, Kearns, Willamowski, Gibbs, Fessler, Allen, Beatty, Carano, Carmichael, Chandler, Clancy, Collier, Daniels, DeBose, DeGeeter, Domenick, Driehaus, C. Evans, Flowers, Gilb, Grendell, Hagan, Harwood, Hoops, Hughes, Jolivette, Key, Kilbane, Niehaus, Otterman, T. Patton, Price, Schlichter, Schmidt, Schneider, Seitz, S. Smith, D. Stewart, J. Stewart, Strahorn, Taylor, Ujvagi, Widener, Wolpert, Woodard, Yates

Sens. Spada, Nein, Prentiss, Roberts, Schuler

Effective date: August 6, 2004

ACT SUMMARY

- Regulates the sale of a home service contract, currently treated as an insurance transaction, instead as a consumer transaction subject to the Consumer Sales Practices Act.
- Provides a two-year extension of the 1.5% interest rate relative to minimum nonforfeiture amounts for annuity contracts.

CONTENT AND OPERATION

Sale of a home service contract designated a consumer transaction

(sec. 3905.422)

A "home service contract" is defined by the act as a contract, however described or denominated by the issuer of the contract, whereby, for a predetermined fee, a person undertakes to repair or replace all or any part of any structural component, appliance, or system of a home necessitated by wear and tear, deterioration, or inherent defect, that occurs on or after the effective date of the contract. Under the act: a home's "structural components" include the roof, foundation, basement, walls, ceiling, and similar structural components; "appliances" include stoves, refrigerators, dishwashers, and similar equipment; and

a home's "systems" include heating, cooling, plumbing, electrical, and similar systems.

The act states that a home service contract is not insurance and its sale or issuance is not governed by the provisions of the Revised Code related to insurance, except that a home service contract issued by a licensed property and casualty insurance company as an insurance policy is to remain governed by the insurance laws of the state. Instead, under the act, the sale or issuance of a home service contract on or after the act's effective date constitutes a consumer transaction for purposes of the Consumer Sales Practices Law, Chapter 1345. of the Revised Code. A person who purchases or is entitled to the benefits of a home service contract is a "consumer" for purposes of that Law.

The Consumer Sales Practices Law, unchanged by the act, identifies and prohibits various types of activities that may be "unfair" or "unconscionable" in connection with a "consumer transaction." The Law vests the Attorney General with rule-making authority and general responsibility for its enforcement. Thus, the Attorney General may conduct investigations and seek various remedies, including injunctive relief, declaratory judgments, and civil penalties. The Attorney General also may institute class actions on behalf of aggrieved consumers.

Repeal of the Home Warranty Company Law from the Insurance Code

(secs. 3901.043, 3901.51, 3905.24, 3957.01 to 3957.19, and 3957.99)

The act repeals the Home Warranty Company Law, Chapter 3957. of the Revised Code. A "home warranty company" was defined as any person issuing or offering a "home service contract" (defined above). However, property and casualty insurers selling home service contracts were not subject to the Home Warranty Company Law.

Persons establishing or operating a home warranty company were required to obtain a certificate of authority from the Superintendent of Insurance. The Home Warranty Company Law regulated the issuance of these certificates, set a reserve requirement for home warranty companies, limited the types of investments that home warranty companies could make, set requirements for home warranty contracts, and otherwise regulated home warranty companies as insurance companies.

Under prior law, all provisions of the Insurance Law, Title 39 of the Revised Code, prohibiting persons from engaging in designated acts or practices, were applicable to home warranty companies, absent conflict with the Home

Warranty Company Law. Under the act, however, home warranty companies are not subject to any part of the insurance laws of the state.

Transition to regulation under the Consumer Sales Practices Law; existing contracts

(Section 3)

The act prohibits home warranty companies operating in Ohio with a certificate of authority on the act's effective date from selling, offering to sell, or soliciting offers for, home service contracts as insurance contracts on or after that date. All home service contracts outstanding on the act's effective date must be consummated. However, the interpretation and fulfillment of the terms and conditions of those outstanding contracts are governed by the Consumer Sales Practices Law on and after the act's effective date, rather than by Insurance Law. The act states that the repeal of the Home Warranty Company Law does not: (1) invalidate any home service contract issued by a home warranty company prior to the act's effective date, (2) discharge any liability based on the acts or conduct of a home warranty company or its agents and employees prior to the act's effective date, (3) discharge or otherwise affect any other liability incurred by a home warranty company prior to the act's effective date, or (4) affect a home warranty company's conduct of business in accordance with other provisions of state and federal law.

A home warranty company with home service contracts outstanding on the act's effective date must maintain a single reserve sufficient to provide for the company's liability under those contracts. The amount of the reserve must be calculated according to sound actuarial principles.

The act specifies that the repeal of the Home Warranty Company Law does not affect the continued authority of licensed property and casualty insurers to issue home service contracts in accordance with the Insurance Law.

Annuity contracts

Former law specified that for an annuity contract issued on or after August 6, 2002, and before September 1, 2004, the interest rate at which net considerations, partial withdrawals, and partial surrenders were accumulated for purposes of determining minimum nonforfeiture amounts was 1.5% per annum. The act extends this sunset provision two years; until September 1, 2006. (Sec. 3915.073(D)(1)(b).)



HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-03-03	p. 1006
Reported, H. Commerce & Labor	12-03-03	p. 1247
Passed House (95-0)	12-09-03	pp. 1263-1264
Reported, S. Insurance, Commerce, & Labor	03-30-04	p. 1676
Passed Senate (33-0)	03-30-04	pp. 1680-1681
House concurred in Senate amendments (92-0)	04-20-04	pp. 1763-1765

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