



## **Sub. H.B. 243**

125th General Assembly

(As Reported by H. Commerce & Labor)

**Reps. Raussen, Buehrer, Hollister, Reidelbach, S. Patton, Barrett, McGregor, Kearns, Willamowski, Gibbs, Fessler**

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### **BILL 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.

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### **CONTENT AND OPERATION**

#### **Sale of a home service contract designated a consumer transaction**

(sec. 3905.422)

A "home service contract" is defined by the bill 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 bill: 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 bill 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. Rather, the bill states, the sale or issuance of a home service contract 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 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. In that connection, 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)

Current law (R.C. Chapter 3957.) defines and regulates a "home warranty company" as any person, other than a property and casualty insurer, issuing or offering a home service contract such as defined above. Property and casualty insurers selling home service contracts are not subject to the Home Warranty Company Law.

Persons establishing or operating a home warranty company currently are required to obtain a certificate of authority from the Superintendent of Insurance. The Home Warranty Company Law regulates the issuance of these certificates, sets a reserve requirement for home warranty companies, limits the types of investments that home warranty companies may make, sets requirements for home warranty contracts, and otherwise regulates home warranty companies as insurance companies. Currently, all provisions of the Insurance Law, Title 39 of the Revised Code, prohibiting persons from engaging in designated acts or practices are applicable to home warranty companies, absent conflict with the Home Warranty Company Law.

The bill repeals the Home Warranty Company Law. Home warranty companies, consequently, are not subject to any other part of the insurance laws of the state.

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

(Section 3)

The bill prohibits home warranty companies operating in Ohio with a certificate of authority on the bill'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 sold or issued by home warranty companies on

or after the bill's effective date are subject to the Consumer Sales Practices Law rather than the Insurance Law.

All home service contracts outstanding on the bill's effective date must be consummated, however, the interpretation and fulfillment of the terms and conditions of those contracts are governed by the Consumer Sales Practices Law on and after the bill's effective date, rather than by Insurance Law. The bill 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 bill'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 bill's effective date, (3) discharge or otherwise affect any liability incurred by a home warranty company prior to the bill'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 bill's effective date is required to 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 bill provides 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.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>	<b>JOURNAL ENTRY</b>
Introduced	07-03-03	p. 1006
Reported, H. Commerce & Labor	12-03-03	p. 1147

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