

AN ACT

To amend sections 3901.043, 3901.51, 3905.24, and 3915.073, to enact section 3905.422, and to repeal sections 3957.01, 3957.02, 3957.03, 3957.04, 3957.05, 3957.06, 3957.07, 3957.08, 3957.09, 3957.10, 3957.11, 3957.12, 3957.13, 3957.14, 3957.15, 3957.16, 3957.17, 3957.18, 3957.19, and 3957.99 of the Revised Code to regulate the sale of home service contracts as consumer transactions rather than as the sale of insurance.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3901.043, 3901.51, 3905.24, and 3915.073 be amended and section 3905.422 of the Revised Code be enacted to read as follows:

Sec. 3901.043. The superintendent of insurance may adopt rules in accordance with Chapter 119. of the Revised Code to establish reasonable fees for any service or transaction performed by the department of insurance pursuant to section 1751.03, 3901.321, 3901.341, 3907.09, 3907.10, 3907.11, 3907.12, 3911.011, 3913.40, 3915.14, 3917.06, 3918.07, 3923.02, 3935.04, 3937.03, or 3953.28, ~~3957.12, or 3957.13~~ of the Revised Code or any provision in sections 3913.01 to 3913.23 or in Chapter 3905. of the Revised Code, if no fee is otherwise provided under Title XVII or XXXIX of the Revised Code for such service or transaction. Any fee collected pursuant to those rules shall be paid into the state treasury to the credit of the department of insurance operating fund.

Sec. 3901.51. As used in sections 3901.51 to 3901.55 of the Revised Code:

(A) "Clearing corporation" has the same meaning as in section 1308.01 of the Revised Code, except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business in that country, "clearing corporation" includes a corporation that is organized or existing under the

laws of any foreign country and is legally qualified under those laws to effect transactions in securities by computerized book-entry.

(B) "Direct participant" means a bank, trust company, or other entity that maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.

(C) "Federal reserve book-entry system" means the computerized systems sponsored by the United States department of the treasury and agencies and instrumentalities of the United States for holding and transferring securities of the United States government and agencies and instrumentalities in federal reserve banks through banks that are members of the federal reserve system or that otherwise have access to these computerized systems.

(D) "Member bank" means a national or state bank or a trust company that is a member of the federal reserve system and through which an insurance company participates in the federal reserve book-entry system.

(E) "Provisions of the insurance laws of this state" means provisions of Title XXXIX of the Revised Code related to the deposit of securities for the benefit and security of policyholders, and includes, but is not limited to, sections 3901.18, 3901.74, 3901.75, 3901.86, 3903.73, 3907.07, 3909.03, 3909.09, 3909.17, 3913.01, 3913.04, 3919.13, 3919.36, 3919.37, 3919.41, 3925.07, 3927.02, 3927.06, 3929.01, 3929.07, 3929.08, 3929.09, 3929.10, 3929.11, 3941.30, 3941.31, 3941.32, 3941.33, 3941.34, 3941.42, 3953.06, and 3953.11, and 3957.03 of the Revised Code.

(F) "Securities" has the same meaning as in section 1308.01 of the Revised Code.

Sec. 3905.24. (A)(1) All records and other information obtained by the superintendent of insurance or the superintendent's deputies, examiners, assistants, or other employees, or agents relating to an investigation of an applicant for licensure under this chapter, or of an agent, solicitor, broker, or other person licensed or appointed under this chapter or Chapter 3951., ~~3957.~~, or 3959. of the Revised Code, are confidential and are not public records as defined in section 149.43 of the Revised Code until the applicant, licensee, or appointee is provided notice and opportunity for hearing pursuant to Chapter 119. of the Revised Code with respect to such records or information. If no administrative action is initiated with respect to a particular matter about which the superintendent obtained records or other information as part of an investigation, all such records and information relating to that matter shall remain confidential for three years after the file on the matter is closed.

(2) Division (A)(1) of this section applies only to investigations that

could result in administrative action under Title XVII or XXXIX or Chapter 119. of the Revised Code.

(B) The records and other information described in division (A) of this section shall remain confidential for all purposes except when it is appropriate for the superintendent and the superintendent's deputies, examiners, assistants, or other employees, or agents to take official action regarding the affairs of the applicant, licensee, or appointee or in connection with actual or potential criminal proceedings.

(C) Notwithstanding divisions (A) and (B) of this section, the superintendent may do either of the following:

(1) Share records and other information that are the subject of this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential status of the confidential record or other information and has authority to do so;

(2) Disclose records and other information that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

(D) Notwithstanding divisions (A), (B), and (C) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential records and other information received pursuant to division (C)(1) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential status of the confidential record or other information and has authority to do so.

(E) Notwithstanding divisions (A), (B), and (C) of this section, the chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators may disclose records and other information that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the superintendent's official duties in any capacity.

(F) Nothing in this section shall prohibit the superintendent from

receiving records and other information in accordance with section 3901.045 of the Revised Code.

(G)(1) No waiver of any applicable privilege or claim of confidentiality in the records and other information that are the subject of this section shall occur as a result of sharing or receiving records or other information as authorized in divisions (C)(1), (D), and (F) of this section.

(2) The disclosure of records or other information in connection with a regulatory or legal action pursuant to divisions (C)(2) and (E) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the record or other information to persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

(H) Employees or agents of the department of insurance shall not be required by any court in this state to testify in a civil action, if the testimony concerns any matter related to records or other information considered confidential under this section of which they have knowledge.

Sec. 3905.422. (A) As used in this section:

(1) "Home service contract" means 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 home service contract.

(2) "Appliance" includes a stove, refrigerator, dishwasher, and any similar piece of equipment.

(3) "Structural component" includes the roof, foundation, basement, walls, ceiling, and similar components of a home.

(4) "System" includes the heating, cooling, plumbing, electrical system, and similar systems of a home.

(B) A home service contract is not insurance and its sale or issuance is not governed by the laws of this state relating to insurance, except a home service contract issued by a licensed property and casualty insurance company as an insurance policy shall be governed by the laws of this state relating to insurance.

(C) The sale or other issuance of a home service contract constitutes a consumer transaction for purposes of Chapter 1345. of the Revised Code. A person who purchases or is entitled to the benefits of a home service contract is a consumer as defined in division (D) of section 1345.01 of the

Revised Code.

Sec. 3915.073. (A) This section shall be known as the standard nonforfeiture law for individual deferred annuities.

(B) This section does not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code of 1954, 26 U.S.C.A. 408, as amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which is delivered outside this state through an agent or other representative of the company issuing the contract.

(C) In the case of contracts issued on or after the operative date of this section as defined in division (L) of this section, no contract of annuity, except as stated in division (B) of this section shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions that in the opinion of the superintendent are at least as favorable to the contractholder, upon cessation of payment of consideration under the contract:

(1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in divisions (E), (F), (G), (H), and (J) of this section;

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in divisions (E), (F), (H), and (J) of this section. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract.

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits;

(4) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract

is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

(D) The minimum values as specified in divisions (E), (F), (G), (H), and (J) of this section of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of three per cent per annum of percentages of the net considerations, as defined in this section, paid prior to such time, decreased by the sum of:

(a) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three per cent per annum; and

(b) The amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five per cent of the net consideration for the first contract year and eighty-seven and one-half per cent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five per cent of the portion of the total net consideration for

any renewal contract year that exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five per cent.

Notwithstanding any other provision of this section, for any contract issued on or after ~~the effective date of this amendment~~ August 6, 2002, and before September 1, ~~2004~~ 2006, the interest rate at which net considerations, partial withdrawals, and partial surrenders shall be accumulated for purposes of determining minimum nonforfeiture amounts shall be one and one-half per cent per annum.

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(a) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five per cent of the net consideration for the first contract year plus twenty-two and one-half per cent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years;

(b) The annual contract charge shall be the lesser of (i) thirty dollars or (ii) ten per cent of the gross annual consideration.

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety per cent and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars.

(E) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(F) For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit that would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the

basis of an interest rate not more than one per cent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(G) For contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts that do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(H) For the purpose of determining the benefits calculated under divisions (F) and (G) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(I) Any contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

(J) Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the

lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(K) For any contract that provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefit shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of divisions (E), (F), (G), (H), and (J) of this section, additional benefits payable:

- (1) In the event of total and permanent disability;
- (2) As reversionary annuity or deferred reversionary annuity benefits; or
- (3) As other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section.

The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

(L) Any company may file with the superintendent a written notice of its election to comply with the provisions of this section on or before July 1, 1980. The date specified in the notice shall be the operative date of this section for such company. If a company makes no such election, the operative date of this section for the company shall be July 1, 1980.

SECTION 2. That existing sections 3901.043, 3901.51, 3905.24, and 3915.073 and sections 3957.01, 3957.02, 3957.03, 3957.04, 3957.05, 3957.06, 3957.07, 3957.08, 3957.09, 3957.10, 3957.11, 3957.12, 3957.13, 3957.14, 3957.15, 3957.16, 3957.17, 3957.18, 3957.19, and 3957.99 of the Revised Code are hereby repealed.

SECTION 3. No home warranty company established and operating in this state on the effective date of this act pursuant to a certificate of authority issued by the Superintendent of Insurance under Chapter 3957. of the Revised Code shall sell, offer to sell, or solicit offers for, home service

contracts on or after the effective date of this act as contracts regulated by Chapter 3957. of the Revised Code.

All home service contracts issued pursuant to Chapter 3957. of the Revised Code and outstanding on the effective date of this act shall be consummated. The interpretation and fulfillment of the terms and conditions of these outstanding contracts, and of any home service contract sold or issued by a home warranty company on or after the effective date of this act, is subject to Chapter 1345. of the Revised Code on and after the act's effective date, rather than to Ohio's Insurance Law.

A home warranty company with outstanding home service contracts in this state on the effective date of this act shall maintain a single reserve sufficient to provide for its liability to furnish repair and replacement services under those contracts. The amount of this reserve shall be calculated according to sound actuarial principles.

The repeal of Chapter 3957. of the Revised Code pursuant to this act does not: (1) invalidate any home service contract issued by a home warranty company prior to the effective date of this act; (2) discharge any liability based on the acts or conduct of a home warranty company or its agents or employees prior to the effective date of this act; (3) discharge or otherwise affect any other liability incurred by a home warranty company prior to the effective date of this act; or (4) affect a home warranty company's conduct of business in accordance with other provisions of state and federal law.

The repeal of Chapter 3957. of the Revised Code pursuant to this act does not affect the authority of licensed property and casualty insurers to issue home service contracts in accordance with the Ohio Insurance Law.

SECTION 4. Section 3901.043 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 370 and Am. Sub. S.B. 67 of the 122nd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

SECTION 5. Section 3905.492 (3905.24) of the Revised Code is presented in this act as a composite of the section as amended and renumbered by Sub. S.B. 129 and amended by Am. Sub. S.B. 138, both of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 243

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____