INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] *(Division 2 enacted by Stats. 1935, Ch. 145.)*

PART 7. HOME PROTECTION [12740 - 12764] *(Part 7 added by Stats. 1978, Ch. 1203.)*

CHAPTER 1. Definitions and Licensing [12740 - 12745] *(Chapter 1 added by Stats. 1978, Ch. 1203.)*

12740. The definitions used in this section govern the construction and terms used in this part but shall not affect any other provisions of this code:

(a) “Home protection contract” means a contract or agreement whereby a person, other than a builder, seller, or lessor of the home which is the subject of the contract, undertakes for a specified period of time, for a predetermined fee, to repair or replace all or any part of any component, system or appliance of a home necessitated by wear and tear, deterioration or inherent defect, arising during the effective period of the contract, and, in the event of an inspection conducted pursuant to subdivision (b) of Section 12761, by the failure of that inspection to detect the likelihood of any such loss.

Such contract shall provide for a system of service for effectuating such repair or replacement and shall not include protection against consequential damage from the failure of any component, system or appliance.

(b) “Home protection company” means any person licensed pursuant to this part which issues home protection contracts.

(c) “Protection contract fee” means the consideration received, or to be received, by a home protection company for the issuance of any home protection contract.

A home protection contract fee shall be the fee established by a home protection company for coverage extending one year from the effective date of the contract. Where initial coverage is provided for a period in excess of one year, the home protection contract fee shall be the annual fee, plus a separately stated pro rata portion of the annual fee for the period of coverage which exceeds one year.

(d) “Home” or “residential property” as used in this part means any single or multiple unit or units, including mobilehomes, (as defined in Health and Safety Code Section 18211) used primarily for residential purposes.

(Amended (as amended by Stats. 1981, Ch. 820) by Stats. 1987, Ch. 664, Sec. 5.)

12741. This part shall not apply to:

(a) Performance guarantees or service contracts given by either the builder of a home or the manufacturer or seller of an appliance or other system or component, whether or not an identifiable charge is made for such guarantee or service contract.

(b) Any service contract, guarantee, or warranty intending to guarantee or warrant the repairs or service of a home appliance, system or component, provided such service contract, guarantee, or warranty is issued by a person who has sold, serviced, repaired or provided replacement of that appliance, system or component at the time of, or prior to issuance of the contract, guarantee, or warranty; and, provided, further, that the person issuing the service contract, guarantee, or warranty does not engage in the business of a home protection company.

(c) The provider of any pest control service agreement pursuant to Section 8516 of the Business and Professions Code.

(d) This section shall become operative January 1, 2004.

(Repealed (in Sec. 2) and added by Stats. 1997, Ch. 523, Sec. 3. Effective January 1, 1998. Section operative January 1, 2004, by its own provisions.)

12742. Home protection contracts and home protection companies, and all matters incident to or concerned with such contracts and companies, shall be exclusively subject to and regulated by the provisions of this part and, except as provided in Section 12743, shall not be governed by any other provision of this code.

(Added by Stats. 1978, Ch. 1203.)

12743. The following provisions of this code shall be applicable to home protection contracts and home protection companies:

(a) Sections 1 to 46, inclusive.

(b) Chapter 3 (commencing with Section 330) of Part 1, Division 1.

(c) Chapter 12 (commencing with Section 679.70) of Part 1, Division 1.

(d) These provisions of Chapter 1, Part 2, Division 1:

(1) Article 1 (commencing with Section 680).

(2) Article 1.5 (commencing with Section 685).

(3) Article 2 (commencing with Section 690).

(4) Section 699, 699.5, 700, 701, 704, 704.5, 704.7, 705, 705.1, 707, 708, 709, 710, 713, 714, 715, 716, 717, 718, 720, and 725 of Article 3 (commencing with Section 699).

(5) Section 750.

(6) Article 5.5 (commencing with Section 770).

(7) Article 6.5 (commencing with Section 790).

(8) Article 8 (commencing with Section 820).

(9) Article 9 (commencing with Section 880).

(10) Article 11 (commencing with Section 939).

(11) Article 13 (commencing with Section 980).

(12) Article 14 (commencing with Section 1010).

(13) Article 14.5 (commencing with Section 1065.1).

(14) Article 15 (commencing with Section 1070).

(15) Article 16 (commencing with Section 1080).

(16) Article 17 (commencing with Section 1100).

(e) These provisions of Chapter 2, Part 2, Division 1:

(1) Article 1 (commencing with Section 1140).

(2) Article 2 (commencing with Section 1150).

(3) Article 3 (commencing with Section 1170).

(4) Article 4 (commencing with Section 1190).

(5) Article 4.7 (commencing with Section 1215).

(6) Article 7 (commencing with Section 1250).

(7) Article 8 (commencing with Section 1260).

(f) Article 4 (commencing with Section 1610) of Chapter 4 of Part 2 of Division 1.

(g) Article 3 (commencing with Section 1631) of Chapter 5 of Part 2 of Division 1.

(h) Sections 1850, 1850.5, 1852, 1853.5, 1853.7, 1853.8, 1857, 1857.2, 1857.3, 1857.4, 1857.5, 1858, 1858.05, 1858.1, 1858.15, 1858.2, 1858.3, 1858.4, 1858.5, 1858.6, 1858.7, 1859, 1859.1, 1860, 1860.1, 1860.2 of Chapter 9, Part 2, Division 1.

(i) Division 3 (commencing with Section 12900).

(j) In any references in the provisions made applicable to this part by subdivisions (a) to (i) inclusive of this section:

(1) “Insurer” shall mean home protection company.

(2) “Insured” shall mean a home protection contract holder.

(3) “Premium” shall mean protection contract fee.

(4) “Policy” or “insurance” shall mean home protection contract.

(k) When any provision of this code, other than this part, is applied to home protection companies, such provision shall be construed in accordance with the nature of home protection companies and the home protection business. In the event of any conflict between such other provision and this part, this part shall prevail.

(Amended by Stats. 1981, Ch. 820, Sec. 4.)

12744. (a) No person shall issue or offer to issue home protection contracts in this state unless the person holds a home protection company license issued by the department, except as provided in subdivision (b) of this section.

(b) An insurer admitted for the class of insurance defined in Section 120 is authorized, in addition to the underwriting powers granted by the class, to issue home protection contracts, but the provisions of this part shall not be otherwise applicable to those insurers or their contracts.

(c) No license shall be granted to a foreign applicant that has not fulfilled the requirements of Sections 716 and 717. For purposes of this part, the term “class of insurance” as used in said sections shall mean the business of a home protection company. This section shall not prohibit the admission of a foreign home protection company that has actively transacted home protection business in its state of domicile for three years or more.

(d) The commissioner shall by regulation prescribe forms for applications for home protection company licenses consistent with the provisions of this part. Any reference to certificate of authority in Article 3 (commencing with Section 699) of Chapter 1 of Part 2 of Division 1, shall mean home protection company license.

(e) (1) Subject to paragraph (2) and, notwithstanding subdivision (c) or any regulation to the contrary, the following requirements shall not apply to any foreign applicant:

(A) Filing a financial statement certified by the applicant’s home state regulatory official as a true and correct copy of the statement filed with that official. This exemption applies only if the official does not require a home protection company or the applicant to file a financial statement.

(B) Filing an examination report certified by the applicant’s home state regulatory official as a true and correct copy. This exemption applies only if the official does not prepare examination reports of home protection companies or has not prepared an examination report of the applicant.

(C) Holding a certificate of authority as an insurance company.

(2) The exemptions described in paragraph (1) apply only if the applicant’s chief executive officer stipulates that the company will provide financial reports in the same manner required of domestic home protection companies.

(Amended by Stats. 2014, Ch. 324, Sec. 1. (AB 1130) Effective January 1, 2015.)

12745. (a) Any insurance holding company subject to Article 4.7 (commencing with Section 1215) of Chapter 2 of Part 2 of Division 1, one of whose affiliates is a home protection company as defined in this part, may invest in or operate a corporation which provides home service contractor or dispatch services or appliance service or appliance repair services pursuant to a contract issued for that purpose. The corporation shall not be subject to licensing or regulation under this part except as set forth in this section, provided, that the contract shall not be sold in conjunction with, or otherwise attach to, the sale or any proposed sale of the real property to which it relates.

(b) At the time of filing its registration statement under Section 1215.4, and annually thereafter, each affiliate owning or operating such a corporation shall file as a supplement thereto, a statement of the financial condition of the corporation prepared according to generally accepted accounting principles, and a designated list of the name and addresses of all agents, employees, and independent contractors utilized to issue or sell those contracts. Each statement of financial condition and designated list shall be certified as correct by an officer of the corporation. The commissioner may prescribe the form for the statement or list.

(Added by Stats. 1986, Ch. 944, Sec. 2.)