BILL ANALYSIS

Senate Research Center	C.S.H.B. 3129
81R31467 BEF-F	By: King, Tracy O. (Wentworth)
	Business & Commerce
	5/13/2009
	Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 63rd Texas Legislature enacted the Texas Home Solicitation Act (Act), now Chapter 39 of the Business & Commerce Code, which provides a consumer the right to cancel a home solicitation transaction that occurs at the consumer's residence. The Act's intent is to protect residents from high-pressure door-to-door salesmen and to allow a period within which a consumer can cancel a transaction and require the merchant to restore any new or altered good to its original state. The Act has been amended several times over the years.

Currently, a licensed plumber, electrician, or heating, ventilation, and air conditioning installer is subject to provisions of the Act, even though these license holders are not going door-to-door engaging in the solicitation of their services, in the manner of a door-to-door salesman, but are instead providing services in response to a consumer's request. Under provisions of the Act, a consumer hypothetically could purchase a new water heater and cancel the transaction within three days, requiring the installer to return with the old water heater, remove the new water heater, and reinstall the old water heater. This application of the Act is not consistent with its legislative intent and some consumers may take advantage of this unintended application of the Act at the expense and through no fault of a license holder.

C.S.H.B. 3129 amends current law relating to the regulation of certain consumer transactions involving plumbing, air conditioning, and electrical services.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 1301, Occupations Code, by adding Section 1301.004, as follows:

> Sec. 1301.004. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. Provides that except as otherwise provided by this section, Chapter 601 (Cancellation of Certain Consumer Transactions), Business & Commerce Code, does not apply to a good or service provided by a license holder under this chapter if the transaction involving the good or service is initiated by the consumer. Provides that Chapter 601, Business & Commerce Code, does apply to a transaction that involves a breach of express warranty or a negligent installation in violation of a building code applicable to the good or service sold to the consumer.

SECTION 2. Amends Subchapter A, Chapter 1302, Occupations Code, by adding Section 1302.003, as follows:

> Sec. 1302.003. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. Provides that except as otherwise provided by this section, Chapter 601, Business & Commerce Code, does not apply to a good or service provided by a license holder under this chapter if the transaction involving the good or service is initiated by the consumer. Provides that Chapter 601, Business & Commerce Code, does apply to a transaction that involves a breach of express warranty or a

negligent installation in violation of a building code applicable to the good or service sold to the consumer.

SECTION 3. Amends Subchapter A, Chapter 1305, Occupations Code, by adding Section 1305.004, as follows:

Sec. 1305.004. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. Provides that except as otherwise provided by this section, Chapter 601, Business & Commerce Code, does not apply to a good or service provided by a license holder under this chapter if the transaction involving the good or service is initiated by the consumer. Provides that Chapter 601, Business & Commerce Code, does apply to a transaction that involves a breach of express warranty or a negligent installation in violation of a building code applicable to the good or service sold to the consumer.

SECTION 4. Effective date: upon passage or September 1, 2009.