

BILL ANALYSIS

C.S.S.B. 778
By: Watson
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The rise in identity theft has prompted many companies to sell noninsurance services to help a consumer prevent or minimize the consumer's risk of identity theft, and if identity theft occurs, to recover the consumer's identity. Some of these services are designed to be sold to consumers and financed into an auto loan when a vehicle is purchased.

Currently, these services are not regulated and it is not sufficiently clear that they can be financed as part of certain car loans.

C.S.S.B. 778 places certain identity theft prevention and recovery services under the jurisdiction of the Texas Department of Licensing and Regulation pursuant to its existing authority to regulate motor vehicle service contracts, also known as extended warranties, and vehicle protection products. The bill authorizes the identity theft prevention and recovery services to be financed as part of certain car loans.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 3 and 5 of this bill.

ANALYSIS

C.S.S.B. 778 amends the Occupations Code to add the Identity Recovery Service Contract Regulatory Act. The bill defines "identity recovery service contract" to mean an agreement to provide identity recovery that is entered into for a separately stated consideration and for a specified term and that is financed through a retail installment contract under state law governing motor vehicle installments. The bill prohibits a person from operating as a provider or administrator of identity recovery service contracts sold in Texas unless the person is registered with the Texas Department of Licensing and Regulation (TDLR). The bill exempts a provider, identity recovery service contract seller, administrator, or other person who markets, sells, or offers to sell identity recovery service contracts from any other Texas licensing requirement that relates to an activity regulated under the Identity Recovery Service Contract Regulatory Act. The bill provides that if a person registered as a service contract provider or administrator registers under the Identity Recovery Service Contract Regulatory Act, the financial security requirements of the other registration fulfill the act's requirements. The bill makes these registration requirement and licensing exemption provisions effective January 1, 2010.

C.S.S.B. 778 sets out requirements for applying for a registration or registration renewal and authorizes TDLR to refuse to issue or renew a registration if the applicant or a controlling person of the applicant has violated these provisions or a rule adopted or order issued by the Texas Commission of Licensing and Regulation or the executive director of TDLR. The bill defines "controlling person" to mean an individual who possesses direct or indirect control of at least 25 percent of the voting securities of a corporation, possesses the authority to set policy and direct the management of a business entity, is the president, the secretary, or a director of a corporation,

or is a general partner of a partnership. The bill provides that an individual who is a controlling person of a corporation or other business entity that is the general partner of a limited partnership is a controlling person of the limited partnership. The bill provides that a person who makes a false statement in an application or in any document provided with an application is subject to disciplinary action, including denial of the application or suspension or revocation of a registration.

C.S.S.B. 778 requires an applicant for issuance or renewal of a provider registration to file with the application a reimbursement insurance policy, if the provider is using a reimbursement insurance policy, and a biographical affidavit for each controlling person of the provider in a form prescribed by the executive director. The bill prohibits the executive director of TDLR from issuing or renewing a registration to a provider unless the provider provides evidence that each controlling person of the provider is trustworthy and can competently manage the provider's affairs, and the provider can meet its obligations under identity recovery service contracts. The bill establishes annual registration and renewal fees and quarterly fees based on the number of contracts sold or issued and in force in Texas and requires the commission to set by rule the amounts of the registration and renewal fees required to cover the costs of administering these provisions. The bill requires a provider to report to TDLR the number of contracts sold or issued during each calendar quarter and establishes a fee equal to \$1 for each contract. The bill provides that information concerning the number of contracts sold or issued is a trade secret exempted from public information law and authorizes the information to be used only by the executive director and TDLR for fee provision. The bill requires the commission to adopt rules to implement the fee provisions and for the renewal of a registration.

C.S.S.B. 778 sets out financial security requirements for a provider to ensure the faithful performance of its obligations to its contract holders and requirements relating to the provider's reimbursement insurance policy.

C.S.S.B. 778 authorizes a provider to appoint a registered administrator to be responsible for all or any part of the administration or sale of identity recovery service contracts and for compliance with the Identity Recovery Service Contract Regulatory Act, except for provisions relating to financial security requirements, and specifies that the appointment of an administrator does not affect a provider's responsibility to comply with the bill's provisions. The bill prohibits a provider from selling, offering for sale, or issuing an identity recovery service contract in Texas unless the provider gives the contract holder a receipt for, or other written evidence of, the purchase of the contract and a copy of the contract within a reasonable period after the date of purchase.

C.S.S.B. 778 sets out recordkeeping requirements for transactions regulated under the bill's provisions and sets forth the required form and disclosures of an identity recovery service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in Texas. The bill requires a contract to require the provider to allow the contract holder to return the contract to the provider not later than the 20th day after the date the contract is mailed to the contract holder or, if the contract is delivered to the contract holder at the time of sale, the 10th day after the date of delivery. The bill establishes the conditions under which a contract is void, provides for the refund or credit of the full purchase price of a voided contract and the provider's liability to the contract holder for certain penalties if the refund or credit is not paid, and establishes that the right to void a contract is not transferable.

C.S.S.B. 778 sets out procedures for a provider to cancel an identity recovery service contract, and limits a provider's use of a name that includes certain words descriptive of the insurance, casualty, or surety business, or deceptively similar to the name or description of an insurance or surety corporation or to the name of any other provider. The bill exempts from such limitations a provider that, before September 1, 2009, included a prohibited word in its name, and sets forth language the provider must include to a substantial extent in each contract. The bill prohibits a provider or the provider's representative from making, permitting, or causing to be made any

false or misleading statement, or deliberately omitting a material statement if the omission would be considered misleading, in the provider's contracts or literature. The bill, effective January 1, 2010, authorizes the commission and the executive director of TDLR to take certain disciplinary actions for violations of the bill's provisions and establishes maximum civil penalties for violations.

C.S.S.B. 778 exempts from its provisions an identity recovery service contract sold or offered for sale to a person who is not a consumer or an identity recovery service contract sold by a motor vehicle dealer on a motor vehicle if the dealer meets certain requirements. The bill provides that the marketing, sale, offering for sale, issuance, making, proposing to make, and administration of an identity recovery service contract are exempt from Texas insurance laws and other Texas state laws regulating the business of insurance. The bill prohibits a person regulated under provisions relating to the distribution and sale of motor vehicles from requiring the purchase of an identity recovery service contract as a condition of the loan or sale of a vehicle. The bill authorizes the executive director of TDLR to investigate a provider, administrator, or other person as necessary to enforce these provisions and protect identity recovery service contract holders in Texas. The bill requires a provider to make its records available on the request of the executive director of TDLR as necessary to enable the executive director to reasonably determine compliance with these provisions.

C.S.S.B. 778 defines "administrator," "commission," "consumer," "department," "executive director," "identity recovery," "identity recovery service contract holder," "net written premiums," "person," "provider," and "reimbursement insurance policy."

C.S.S.B. 778 authorizes a vehicle protection service contract to include identity recovery if the contract is financed as a motor vehicle installment sale.

C.S.S.B. 778 amends the Finance Code to include in the authorized separate charges for a retail motor vehicle installment contract an amount for an identity recovery service contract.

C.S.S.B. 778 requires the commission to adopt rules to implement the Identity Recovery Service Contract Regulatory Act not later than November 1, 2009. The bill makes its provisions applicable to an identity recovery service contract entered into on or after January 1, 2010.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 778 differs from the original by amending the Finance Code to include in the authorized separate charges for a retail installment contract an amount for an identity recovery service contract, whereas the original amends the Finance Code to include an identity recovery service contract in the definition of "service contract."

C.S.S.B. 778 differs from the original by defining "consumer" to mean an individual who, for a purpose other than resale, buys a motor vehicle that is distributed in commerce and is normally used for personal, family, or household purposes and not for business or research purposes, whereas the original defines the terms to mean an individual who purchases an identity recovery service contract.