

## **BILL ANALYSIS**

Senate Research Center

S.B. 1169  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Service Contract Providers provide extended warranties to consumers for a specific period of time and for an additional cost beyond the price of a product. A service contract is an agreement entered into between the service contract provider and consumer for repair, replacement, or maintenance of a product, or for payment to repair, replace, or maintain the product for a specified period of time. The service contract may additionally provide incidental payment or indemnity under limited circumstances, including towing, rental, and emergency road service. Identity service contracts are often sold at car dealerships and offer identity recovery protection. There has been an increase in bankruptcy of service contract companies; thus, leaving the consumer who purchased the extended warranty with no protection.

Chapter 1304 (Service Contract Providers and Administrators), Occupations Code, pertains to service contract providers. Chapter 1306 (Identity Recovery Service Contract Providers and Administrators), Occupations Code, pertains to identity services contracts.

Currently, a service contract provider must submit proof of one of the following three items of financial security: a reimbursement insurance policy, a funded reserve account and a security deposit, or a net worth of at least \$100 million. The funded reserve account and security deposit option do not provide help in a bankruptcy situation. Statute does not provide protection if a seller of a service contract collects money from a consumer, but fails to actually purchase the service contract from the actual provider, leaving the consumer with no warranty. Furthermore, there are no provisions for reimbursing a holder of a service contract if their contract is canceled.

S.B. 1169 amends current law relating to the regulation of providers, administrators, and sellers of service contracts and identity recovery service contracts, and provides penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1.02 (Section 1304.052, Occupations Code), SECTION 1.11 (Section 1304.151, Occupations Code), SECTION 2.02 (Section 1306.022, Occupations Code), and SECTION 2.10 (Section 1306.101, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Commission of Licensing and Regulation is modified in SECTION 2.07 (Section 1306.054, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### **ARTICLE I. SERVICE CONTRACTS**

SECTION 1.01. Amends Section 1304.002, Occupations Code, by adding Subdivision (8-a), to define "seller."

SECTION 1.02. Amends Chapter 1304, Occupations Code, by adding Subchapter B, as follows:

#### **SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION**

Sec. 1304.052. RULES. Requires the Texas Commission of Licensing and Regulation (TCLR) to adopt rules necessary to implement and administer this chapter.

SECTION 1.03. Transfers Section 1304.007, Occupations Code, to Subchapter B, Chapter 1304, Occupations Code, as added by this Act, redesignates it as Section 1304.051, Occupations Code, and amends it as follows:

Sec. 1304.051. GENERAL INVESTIGATIVE POWER OF EXECUTIVE DIRECTOR. Redesignates existing Section 1304.007 as Section 1304.051. (a) Authorizes the executive director of the Texas Department of Licensing and Regulation (executive director; TDLR) to investigate a provider, administrator, seller, or other person as necessary to enforce this chapter and protect service contract holders in this state.

(b) Makes no changes in this subsection.

SECTION 1.04. Amends Section 1304.101, Occupations Code, as follows:

Sec. 1304.101. REGISTRATION REQUIRED; EXEMPTION FROM OTHER LICENSING REQUIREMENTS. (a) Prohibits a person from operating as a provider or administrator of service contracts sold or issued in this state unless the person is registered with TDLR.

(b) Provides that except for the registration requirement of this chapter, rather than subchapter, a provider; seller, rather than service contract seller; administrator; or other person who markets, sells, issues, or offers to sell service contracts is exempt from any licensing requirements of this state that relates to an activity regulated under this chapter.

(c) Prohibits a provider or administrator from contracting with or using the services of a person to perform an activity that requires registration with TDLR as a provider or administrator unless that person is appropriately registered.

SECTION 1.05. Amends Section 1304.102(c), Occupations Code, as follows:

(c) Authorizes TDLR to refuse to issue or renew a registration, suspend or revoke a registration, or take any other disciplinary action under Subchapter E (Public Interest Information and Complaint Procedures), if the applicant or a controlling person of the applicant:

(1) has violated this chapter or a rule adopted or order issued by the Texas Commission of Licensing and Regulation (TCLR) or the executive director under this chapter;

(2) has made a material misrepresentation or false statement in an application or in any document accompanying an application;

(3) has had a license issued under Title 13 (Regulation of Professionals), Insurance code, revoked as provided by that code; or

(4) has had a license or registration as a provider, administrator, or seller revoked in this state or another state.

SECTION 1.06. Amends Section 1304.1025(a), Occupations Code, as follows:

(a) Requires an applicant for issuance or renewal of a provider registration, in addition to the requirements of Section 1304.102, to file with the application:

(1) the reimbursement insurance policy, if the provider is using a reimbursement insurance policy to meet the financial security requirements of Section 1304.151;

(2) the financial security deposit and the documentation required by TDLR demonstrating adequate funding of the reserve account, if the provider is using a funded reserve account and financial security deposit to meet the financial security requirements of Section 1304.151;

(3) the proof necessary to demonstrate the applicant or its parent company maintains at least \$100 million net worth, if the applicant is using net worth to meet the financial security requirements of Section 1304.151; and

(4) information about each controlling person of the applicant in a form prescribed by the executive director, rather than a biographical affidavit in a form prescribed by the executive director for each controlling person of the provider.

Makes a nonsubstantive change.

SECTION 1.07. Amends Sections 1304.103(a) and (b), Occupations Code, as follows:

(a) Requires the executive director to develop a tiered schedule of registration and renewal fees under which a provider's fee is based on the number of service contracts the provider sold or issued in this state during the preceding 12-month period.

(b) Requires TDLR to set fees, rather than the amounts of fees, to cover the costs of administering this chapter, including registration and renewal fees for administrators.

SECTION 1.08. Amends Section 1304.104, Occupations Code, as follows:

Sec. 1304.104. New heading: INFORMATION CONCERNING NUMBER OF SERVICE CONTRACTS SOLD OR ISSUED. Provides that information concerning the number of service contracts sold or issued by a provider that is submitted under Section 1304.103 is a trade secret to which Section 552.110 (Exception: Trade Secrets; Certain Commercial or Financial Information), Government Code, applies. Deletes existing text authorizing certain information to be used only by the executive director and TDLR in developing the tiered fee schedule under Section 1304.103. Makes nonsubstantive changes.

SECTION 1.09. Amends the heading to Subchapter D, Chapter 1304, Occupations Code, to read as follows:

**SUBCHAPTER D. PRACTICE BY SERVICE CONTRACT PROVIDERS,  
ADMINISTRATORS, AND SELLERS**

SECTION 1.10. Amends the heading to Section 1304.151, Occupations Code, to read as follows:

Sec. 1304.151. FINANCIAL SECURITY REQUIREMENTS; DISTRIBUTION OF FUNDS HELD IN TRUST.

SECTION 1.11. Amends Section 1304.151, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (f), as follows:

(a) Requires each provider, to ensure the faithful performance of a provider's obligations to its service contract holders, to:

(1) Makes no changes to this subdivision;

(2) maintain a funded reserve account covering the provider's obligations under its service contracts that are issued and outstanding in this state and place in trust with the executive director a financial security deposit consisting of a statutory deposit of cash, a letter of credit issued by a qualified financial institution, or a certificate of deposit issued by a qualified financial institution; or

(3) Makes no changes to this subdivision.

Deletes existing text requiring each provider, to ensure the faithful performance of a provider's obligations to its service contract holders, to maintain a funded reserve account covering the provider's obligations under its service contracts that are issued and outstanding in this state and place in trust with the executive director a financial security deposit consisting of a surety bond issued by an authorized surety, securities of the type eligible for deposit by an authorized insurer in this state, a statutory deposit of cash or cash equivalents, or another form of security prescribed by rules adopted by TCLR.

(b) Prohibits the amount of the security deposit from being less than \$250,000. Requires the provider to submit to the executive director on request a copy of the provider's financial statements that is required to be prepared in accordance with generally accepted accounting principles, be without qualification as to the going concern status of the provider, and be audited by an independent certified public accountant. Authorizes TCLR by rule to require the provider to submit additional financial reports. Deletes existing text prohibiting the amount of the security deposit from being less than the greater of \$25,000; or an amount equal to five percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid.

(f) Authorizes the executive director, in the event of a provider's bankruptcy or a similar event affecting the ability of the provider to faithfully perform its obligations to its service contract holders, to distribute any funds held in trust as financial security for the provider under this section to eligible service contract holders as payment for claims. Requires the executive director to distribute the funds in an equitable and cost-effective manner as determined by the executive director.

SECTION 1.12. Amends Subchapter D, Chapter 1304, Occupations Code, by adding Sections 1304.1521 and 1304.1531, as follows:

Sec. 1304.1521. FINANCIAL SECURITY TRANSITION. (a) Defines, in this section, "provider that maintained a funded reserve account."

(b) Provides that this section applies only to a provider that maintained a funded reserve account on August 31, 2011.

(c) Requires a provider that maintained a funded reserve account not later than September 1, 2012, to submit to the executive director documentation that the provider is in compliance with the financial security requirements provided by Section 1304.151 for service contracts sold or issued in this state on or after September 1, 2012. Prohibits a provider that maintained a funded reserve account from selling or issuing a service contract on or after September 1, 2012, unless the provider is in compliance with this subsection.

(d) Requires a provider that maintained a funded reserve account to:

(1) continue to maintain the funded reserve account and security deposit at appropriate levels for service contracts that were sold or issued in this state before September 1, 2012, until the contracts are no longer in effect; or

(2) provide financial security for service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1304.151.

(e) Requires a provider, if the provider provides financial security for service contracts sold or issued before September 1, 2012, by complying with the

financial security requirements of Section 1304.151, to give to the executive director satisfactory documentation that the reimbursement insurance policy, funded reserve account and security deposit, or net worth covers all outstanding service contracts issued before September 1, 2012.

(f) Prohibits a service contract that is sold or issued before September 1, 2012, and is covered under a funded reserve account and security deposit from being extended or renewed at the end of the service contract term unless the provider provides financial security for those service contracts by complying with the financial security requirements of Section 1304.151 before the extension or renewal.

Sec. 1304.1531. SERVICE CONTRACT SELLERS; RESPONSIBILITIES. (a) Authorizes a provider to employ or contract with a seller to be responsible for:

(1) all or any part of the sale or marketing of service contracts for the provider; and

(2) compliance with this chapter in connection with the sale or marketing of service contracts.

(b) Provides that the hiring of or contracting with a seller under this section does not affect a provider's responsibility to comply with this chapter.

(c) Prohibits a seller, unless registered as a provider or administrator, from engaging in activities that would require registration as a provider or administrator.

(d) Requires a seller to process a service contract application and a payment from a consumer in accordance with this chapter and with any sales agreement or contract between the provider and the seller.

SECTION 1.13. Amends Sections 1304.156(a), (b), and (d), Occupations Code, as follows:

(a) Requires that a service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state be in a certain form and include certain information, including that the contract identify any administrator and any registration number issued to the administrator under this chapter; the seller; and the service contract holder, if the service contract holder provides the holder's name. Makes a conforming change.

(b) Provides that the identity and, if applicable, registration number issued under this chapter, of a person described by Subsection (a)(5) is not required to be preprinted on the service contract and may be added to the contract at the time of sale.

(d) Requires that a service contract insured under a reimbursement insurance policy under Section 1304.152, rather than Section 1304.151(a)(1), state certain information, including that the service contract holder may apply for reimbursement directly to the insurer if a covered service is not provided to the service contract holder by the provider before the 61st day, rather than not later than the 60th day, after the date of proof of loss; or a refund or credit is not paid before the 46th day after the date on which the contract is canceled, rather than returned to the provider, under Section 1304.1581, rather than Section 1304.158.

SECTION 1.14. Amends Subchapter D, Chapter 1304, Occupations Code, by adding Section 1304.1581, as follows:

Sec. 1304.1581. CANCELLATION BY SERVICE CONTRACT HOLDER; REFUND.

(a) Requires that a service contract allow the service contract holder to cancel the service contract at any time.

(b) Provides that, if a service contract holder cancels a service contract before the 31st day after the date of purchase, the provider:

(1) is required to refund to the service contract holder or credit to the account of the service contract holder the full purchase price of the contract, decreased by the amount of any claims paid under the contract; and

(2) is prohibited from imposing a cancellation fee.

(c) Provides that, if a service contract holder cancels a service contract on or after the 31st day after the date of purchase, the provider:

(1) is required to refund to the service contract holder or credit to the account of the service contract holder the prorated purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract; and

(2) is authorized to impose a reasonable cancellation fee not to exceed \$50.

(d) Authorizes a provider to allow a service contract holder to cancel a service contract on other terms included in the contract, provided the terms do not conflict with this section.

(e) Provides that a provider who does not pay the refund or credit the service contract holder's account before the 46th day after the date notice of cancellation is received by the provider is liable to the service contract holder for a penalty for each month an amount remains outstanding equal to 10 percent of the amount outstanding. Provides that the penalty is in addition to the full or prorated purchase price of the contract that is owed to the service contract holder under this section or the terms of the contract.

(f) Provides that the right to cancel a service contract is not transferable to a subsequent holder of the contract.

SECTION 1.15. Amends the heading to Section 1304.159, Occupations Code, to read as follows:

Sec. 1304.159. CANCELLATION BY PROVIDER; REFUND.

SECTION 1.16. Amends Section 1304.159, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that the provider is not required to provide prior notice of cancellation if the service contract is canceled because of nonpayment of the consideration for the contract; fraud or a material misrepresentation by the service contract holder to the provider or the provider's administrator; or a substantial breach of a duty by the service contract holder relating to the covered product or its use.

(c) Provides that a service contract holder whose contract is canceled by the provider in accordance with this section is entitled to a prorated refund of the purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract. Prohibits a provider who cancels a contract under this section from imposing a cancellation fee.

SECTION 1.17. Amends Section 1304.161, Occupations Code, as follows:

Sec. 1304.161. New heading: PROHIBITED ACTS. (a) Creates this subsection from existing text. Prohibits a provider, administrator, seller, or other representative of the provider from, in the provider's service contracts or literature or in any written communication making, permitting, or causing to be made any false, deceptive, or misleading statement, or deliberately omitting a material statement if the omission would be considered misleading. Makes a nonsubstantive change.

(b) Prohibits a person, including a bank, a savings loan association, a lending institution, or the manufacturer or seller of a product, from requiring the purchase of a service contract as a condition of a loan or the sale of property.

(c) Prohibits a provider, administrator, seller, or other representative of the provider from making a telemarketing call to a consumer as provided by Sections 304.002 (Definitions) and 304.003 (Making Telemarketing Call), Business and Commerce Code, unless the provider, administrator, seller, or representative has an established business relationship, as defined by Section 304.002, Business and Commerce Code, with the consumer.

SECTION 1.18. Amends Section 1304.201, Occupations Code, as follows:

Sec. 1304.201. DISCIPLINARY ACTION. Authorizes TCLR or the executive director, on a finding that a ground for disciplinary action exists under this chapter, to impose an administrative sanction or administrative penalty or seek a civil penalty or any other remedy as provided by this chapter and Chapter 51 (Texas Department of Licensing and Regulation), rather than authorizing TCLR to impose an administrative sanction, including an administrative penalty as provided by Subchapter F (Administrative Penalty), Chapter 51. Deletes existing Subsection (a) designation.

SECTION 1.19. Amends Subchapter E, Chapter 1304, Occupations Code, by adding Section 1304.205, as follows:

Sec. 1304.205. REMEDY FOR SERVICE CONTRACT HOLDERS. (a) Requires a person, if TCLR by order, including an agreed order, determines that the person has operated as a provider or administrator in this state without holding the appropriate registration under this chapter, to offer to a service contract holder who holds a service contract sold or issued by the person during the period that the person was not registered under this chapter the right to:

(1) cancel the contract and obtain a refund of the full purchase price of the contract; or

(2) retain the contract.

(b) Authorizes TCLR or the executive director, by TCLR order, including an agreed order, if a seller fails to process a service contract application or a payment from a consumer in accordance with this chapter and any sales agreement or contract between the provider and the seller, to require the seller to refund the full purchase price of the service contract to the consumer.

(c) Provides that the remedies described in this section are in addition to any administrative penalty, administrative sanction, civil penalty, or other disciplinary or enforcement action sought under this chapter or Chapter 51.

SECTION 1.20. (a) Repealers, effective on the effective date of this Act: Sections 1304.006 (Purchase Requirement Prohibited), 1304.102(d) (relating to false statements in application), and 1304.151(b) (relating to amount prohibited in reserve account), Occupations Code.

(b) Repealers, effective on January 1, 2012: Sections 1304.157 (Returning a Service Contract) and 1304.158 (Voiding A Service Contract), Occupations Code.

SECTION 1.21. (a) Requires TCLR, not later than April 1, 2012, to adopt rules necessary to implement Chapter 1304, Occupations Code, as amended by this Act.

(b) Makes application of Sections 1304.102 and 1304.1025, Occupations Code, as amended by this Act, prospective.

(c) Makes application of Sections 1304.156 and 1304.159, Occupations Code, as amended by this Act, and Section 1304.1581, Occupations Code, as added by this Act, prospective to January 1, 2012.

(d) Prohibits a service contract sold or issued before January 1, 2012, notwithstanding Subsection (c) of this section, from being extended or renewed at the end of the service contract term unless the contract complies with Sections 1304.156 and 1304.159, Occupations Code, as amended by this Act, and Section 1304.1581, Occupations Code, as added by this Act.

(e) Makes application of Section 1304.201, Occupations Code, as amended by this Act, prospective.

(f) Makes application of Section 1304.205, Occupations Code, as added by this Act, prospective.

## ARTICLE 2. IDENTITY RECOVERY SERVICE CONTRACTS

SECTION 2.01. Amends Section 1306.002, Occupations Code, by adding Subdivision (11), to define "seller."

SECTION 2.02. Amends Chapter 1306, Occupations Code, by adding Subchapter A-1, as follows:

### SUBCHAPTER A-1. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

Sec. 1306.022. RULES. Requires TCLR to adopt rules necessary to implement and administer this chapter.

SECTION 2.03. Transfers Section 1306.008, Occupations Code, to Subchapter A-1, Chapter 1306, Occupations Code, as added by this Act, redesignates it as Section 1306.021, Occupations Code, and amends it as follows:

Sec. 1306.021. GENERAL INVESTIGATIVE POWER OF EXECUTIVE DIRECTOR. Redesignates existing Section 1306.008 as Section 1306.021. (a) Authorizes the executive director to investigate a provider, administrator, seller, or other person as necessary to enforce this chapter and protect identity recovery service contract holder in this state.

(b) Makes no changes to this subsection.

SECTION 2.04. Amends Section 1306.051, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (d) as follows:

(a) Prohibits a person from operating as a provider or administrator of identity recovery service contracts sold or issued in this state unless the person is registered with TDLR.

(b) Provides that except for the registration requirement of this chapter, rather than subchapter, a provider; seller, rather than identity recovery service contract seller; administrator, or other person who markets, sells, issues, or offers to sell identity



recovery service contracts is exempt from any licensing requirement of this state that relates to an activity regulated under this chapter.

(d) Prohibits a provider or administrator from contracting with or using the services of a person to perform an activity that requires registration with TDLR as a provider or administrator unless that person is appropriately registered.

SECTION 2.05. Amends Section 1306.052(c), Occupations Code, as follows:

(c) Authorizes TDLR to refuse to issue or renew a registration, suspend or revoke a registration, or take any other disciplinary action under Subchapter D, if the applicant or a controlling person of the applicant:

(1) has violated this chapter or a rule adopted or order issued by TCLR or executive director under this chapter;

(2) has made a material misrepresentation or false statement in an application or in any document accompanying an application;

(3) has had a license issued under Title 13, Insurance Code, revoked as provided by that code; or

(4) has had a license or registration as a provider, administrator, or seller revoked in this state or another state.

SECTION 2.06. Amends Section 1306.053(a), Occupations Code, to require an applicant for issuance or renewal of a provider registration, in addition to the requirements of Section 1306.052, to file with the application the reimbursement insurance policy required by Section 1306.102, if the provider is using a reimbursement insurance policy to meet the financial security requirements of Section 1306.101; the financial security deposit and the documentation required by TDLR demonstrating adequate funding of the reserve account, if the provider is using a funded reserve account and financial security deposit to meet the financial requirements of Section 1306.101; the proof necessary to demonstrate the applicant or its parent company maintains at least \$100 million net worth, if the applicant is using net worth to meet the financial security requirements of Section 1306.101; and information about each controlling person of the applicant in a form prescribed by the executive director, rather than a biographical affidavit, in a form prescribed by the executive director, for each controlling person of the provider. Makes a nonsubstantive change.

SECTION 2.07. Amends Sections 1306.054(b) and (d), Occupations Code, as follows:

(b) Requires TCLR, by rule, to set the fees required, rather than the amounts of the registration and renewal fees required, to cover the costs of administering this chapter.

(d) Provides that the information concerning the number of identity recovery service contracts sold or issued by a provider that is submitted under Subsection (c) is a trade secret to which Section 552.110, Government Code, applies. Deletes existing text authorizing the information to be used only by the executive director and TDLR for the purposes of this section. Makes nonsubstantive changes.

SECTION 2.08. Amends the heading to Subchapter C, Chapter 1306, Occupations Code, to read as follows:

**SUBCHAPTER C. PRACTICE BY IDENTITY RECOVERY SERVICE CONTRACT  
PROVIDERS, ADMINISTRATORS, AND SELLERS**

SECTION 2.09. Amends the heading to Section 1306.101, Occupations Code, to read as follows:

Sec. 1306.101. FINANCIAL SECURITY REQUIREMENTS; DISTRIBUTION OF FUNDS HELD IN TRUST.

SECTION 2.10. Amends Section 1306.101, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (f), as follows:

(a) Requires each provider, to ensure the faithful performance of a provider's obligations to its identity recovery service contract holders to take certain actions, including maintain a funded reserve account covering the provider's obligations under its identity recovery service contracts that are issued and outstanding in this state and place in trust with the executive director a financial security deposit consisting of a statutory deposit of cash; a letter of credit issued by a qualified financial institution, or a certificate of deposit issued by a qualified financial institution.

Deletes existing text requiring each provider, to ensure the faithful performance of a provider's obligations to its identity recovery service contract holders, to maintain a funded reserve account covering the provider's obligations under its identity recovery service contracts that are issued and outstanding in this state and place in trust with the executive director a financial security deposit consisting of a surety bond issued by an authorized surety, securities of the type eligible for deposit by an authorized insurer in this state, a statutory deposit of cash or cash equivalents or another form of security prescribed by rules adopted by TCLR.

(b) Prohibits the amount of the security deposit from being less than \$250,000. Requires the provider to submit to the executive director on request a copy of the provider's financial statements that is required to be prepared in accordance with generally accepted accounting principles, be without qualification as to the going concern status of the provider, and be audited by an independent certified public accountant. Authorizes TCLR by rule to require the provider to submit additional financial reports. Deletes existing text prohibiting the amount of the security deposit from being less than the greater of \$25,000 or an amount equal to five percent of the gross consideration the provider received from consumers from the sale of all identity recovery services contracts issued and outstanding in this state, minus any claims paid.

(f) Authorizes the executive director, in the event of a provider's bankruptcy or a similar event affecting the ability of the provider to faithfully perform its obligations to its identity recovery service contract holders, to distribute any funds held in trust as financial security for the provider under this section to eligible identity recovery service contract holders as payment for claims. Requires the executive director to distribute the funds in an equitable and cost-effective manner as determined by the executive director.

SECTION 2.11. Amends Subchapter C, Chapter 1306, Occupations Code, by adding Sections 1306.1021 and 1306.1031, as follows:

Sec. 1306.1021. FINANCIAL SECURITY TRANSITION. (a) Defines, in this section, "provider that maintained a funded reserve account."

(b) Provides that this section applies only to a provider that maintained a funded reserve account on August 31, 2011.

(c) Requires a provider that maintained a funded reserve account, not later than September 1, 2012, to submit to the executive director documentation that the provider is in compliance with the financial security requirements provided by Section 1306.101 for identity recovery service contracts sold or issued in this state on or after September 1, 2012. Prohibits a provider that maintained a funded reserve account from selling or issuing an identity recovery service contract on or after September 1, 2012, unless the provider is in compliance with this subsection.

(d) Requires a provider that maintained a funded reserve account to:

(1) continue to maintain the funded reserve account and security deposit at appropriate levels for identity recovery service contracts that were sold or issued in this state before September 1, 2012, until the contracts are no longer in effect; or

(2) provide financial security for identity recovery service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1306.101.

(e) Requires a provider, if a provider provides financial security for identity recovery service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1306.101, to give to the executive director satisfactory documentation that the reimbursement insurance policy, funded reserve account and security deposit, or net worth covers all outstanding identity recovery service contracts issued before September 1, 2012.

(f) Prohibits an identity recovery service contract that is sold or issued before September 1, 2012, and is covered under a funded reserve account and security deposit, from being extended or renewed at the end of the identity recovery service contract term unless the provider provides financial security for those service contracts by complying with the financial security requirements of Section 1306.101 before the extension or renewal.

Sec. 1306.1031. IDENTITY RECOVERY SERVICE CONTRACT SELLERS; RESPONSIBILITIES. (a) Authorizes a provider to employ or contract with a seller to be responsible for all or any part of the sale or marketing of identity recovery service contracts for the provider, and compliance with this chapter in connection with the sale or marketing of identity recovery service contracts.

(b) Provides that the hiring of or contracting with a seller under this section does not affect a provider's responsibility to comply with this chapter.

(c) Provides that unless registered as a provider or administrator, a seller is prohibited from engaging in activities that would require registration as a provider or administrator.

(d) Requires a seller to process an identity recovery service contract application and a payment from a consumer in accordance with this chapter and with any sales agreement or contract between the provider and the seller.

SECTION 2.12. Amends Sections 1306.106(a), (b), and (d), Occupations Code, as follows:

(a) Requires that an identity recovery service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state be in a certain format and include certain information, including that the contract identify any administrator and any registration number issued to the administrator under this chapter; the seller; and the identity recovery service contract holder, if the identity recovery service contract holder provides the holder's name. Makes a conforming change.

(b) Provides that the identity and, if applicable, registration number issued under this chapter, of a person described by Subsection (a)(5) (relating to requirements to identify) is not required to be preprinted on the identity recovery service contract and may be added to the contract at the time of sale.

(d) Requires that an identity recovery service contract insured under a reimbursement insurance policy under Section 1306.102 include certain information, including that the contract state that the identity recovery service contract holder may apply for reimbursement directly to the insurer if a refund or credit is not paid before the 46th day after the date on which the contract is canceled under Section 1306.1081, rather than returned to the provider under Section 1306.107.

SECTION 2.13. Amends Subchapter C, Chapter 1306, Occupations Code, by adding Section 1306.1081, as follows:

Sec. 1306.1081. CANCELLATION BY IDENTITY RECOVERY SERVICE CONTRACT HOLDER; REFUND. (a) Requires that an identity recovery service contract allow the identity recovery service contract holder to cancel the identity recovery service contract at any time.

(b) Provides that if an identity recovery service contract holder cancels an identity recovery service contract before the 31st day after the date of purchase, the provider:

(1) is required to refund to the identity recovery service contract holder or credit to the account of the identity recovery service contract holder the full purchase price of the contract, decreased by the amount of any claims paid under the contract; and

(2) is prohibited from imposing a cancellation fee.

(c) Provides that if an identity recovery service contract holder cancels an identity recovery service contract on or after the 31st day after the date of purchase, the provider:

(1) is required to refund to the identity recovery service contract holder or credit to the account of the identity recovery service contract holder the prorated purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract; and

(2) is authorized to impose a reasonable cancellation fee not to exceed \$50.

(d) Authorizes a provider to allow an identity recovery service contract holder to cancel an identity recovery service contract on other terms included in the contract, provided the terms do not conflict with this section.

(e) Provides that a provider who does not pay the refund or credit the identity recovery service contract holder's account before the 46th day after the date notice of cancellation is received by the provider is liable to the identity recovery service contract holder for a penalty for each month an amount remains outstanding equal to 10 percent of the amount outstanding. Provides that the penalty is in addition to the full or prorated purchase price of the contract that is owed to the identity recovery service contract holder under this section or the terms of the contract.

(f) Provides that the right to cancel an identity recovery service contract is not transferable to a subsequent holder of the contract.

SECTION 2.14. Amends the heading to Section 1306.109, Occupations Code, to read as follows:

Sec.1306.109. CANCELLATION BY A PROVIDER; REFUND.

SECTION 2.15. Amends Section 1306.109, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that the provider is not required to provide prior notice of cancellation if the identity recovery service contract is canceled because of nonpayment of the consideration for the contract, fraud or a material misrepresentation by the identity recovery service

contract holder to the provider or the provider's administrator, or a substantial breach of a duty by the identity recovery service contract holder.

(c) Entitles an identity recovery service contract holder whose contract is canceled by the provider in accordance with this section to a prorated refund of the purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract. Prohibits a provider who cancels a contract under this section from imposing a cancellation fee.

SECTION 2.16. Amends Section 1306.111, Occupations Code, as follows:

Sec. 1306.111. New heading: PROHIBITED ACTS. (a) Creates this subsection from existing text. Prohibits a provider, administrator, seller, or other representative of the provider, in the provider's identity recovery service contracts or literature or in any written communication, from making, permitting, or causing to be made any false, deceptive, or misleading statement, or deliberately omitting a material statement if the omission would be considered misleading. Makes a nonsubstantive change.

(b) Prohibits a person regulated by Chapter 2301 (Sale or Lease of Motor Vehicles) from requiring the purchase of an identity recovery service contract as a condition of a loan or the sale of a vehicle.

(c) Prohibits a provider, administrator, seller, or other representative of the provider from making a telemarketing call to a consumer as provided by Sections 304.002 and 304.003, Business & Commerce Code, unless the provider, administrator, seller, or representative has an established business relationship, as defined by Section 304.002, Business & Commerce Code, with the consumer.

SECTION 2.17. Amends Section 1306.151, Occupations Code, to authorize TCLR or the executive director, on a finding that a ground for disciplinary action exists under this chapter, to impose an administrative sanction or administrative penalty or seek a civil penalty or any other remedy as provided by this chapter and Chapter 51, rather than an administrative sanction, including an administrative penalty as provided by Subchapter F, Chapter 51.

SECTION 2.18. Amends Subchapter D, Chapter 1306, Occupations Code, by adding Section 1306.155, as follows:

Sec. 1306.155. REMEDY FOR IDENTITY RECOVERY SERVICE CONTRACT HOLDERS. (a) Requires a person, if TCLR by order, including an agreed order, determines that a person has operated as a provider or administrator in this state without holding the appropriate registration under this chapter, to offer to an identity recovery service contract holder who holds an identity recovery service contract sold or issued by the person during the period that the person was not registered under this chapter the right to:

(1) cancel the contract and obtain a refund of the full purchase price of the contract; or

(2) retain the contract.

(b) Authorizes TCLR or the executive director, by TCLR order, if a seller fails to process an identity recovery service contract application or a payment from a consumer in accordance with this chapter and any sales agreement or contract between the provider and the seller, including an agreed order, to require the seller to refund the full purchase price of the contract to the consumer.

(c) Provides that the remedies described in this section are in addition to any administrative penalty, administrative sanction, civil penalty, or other disciplinary or enforcement action sought under this chapter or Chapter 51.

SECTION 2.19. (a) Repealers, effective on the effective date of this Act: Sections 1306.007 (Purchase Requirement Prohibited) and 1306.052(d) (relating to false statements in applications), Occupations Code.

(b) Repealers, effective January 1, 2012: Sections 1306.107 (Returning an Identity Recovery Service Contract) and 1306.108 (Voiding an Identity Recovery Service Contract), Occupations Code.

SECTION 2.20. (a) Requires TCLR, not later than April 1, 2012, to adopt rules necessary to implement Chapter 1306, Occupations Code, as amended by this Act.

(b) Makes application of Sections 1306.052 and 1603.053, Occupations Code, as amended by this Act, prospective.

(c) Makes application of Sections 1306.106 and 1306.109, Occupations Code, as amended by this Act, and Section 1306.1081, Occupations Code, as added by this Act, prospective to January 1, 2012.

(d) Prohibits an identity recovery service contract sold or issued before January 1, 2012, notwithstanding Subsection (c) of this section, from being extended or renewed at the end of the contract term unless the contract complies with Sections 1306.106 and 1306.109, Occupations Code, as amended by this Act, and Section 1306.1081, Occupations Code, as added by this Act.

(e) Makes application of Section 1306.151, Occupations Code, as amended by this Act, prospective.

(f) Makes application of Section 1306.155, Occupations Code, as added by this Act, prospective.

### ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date: September 1, 2011.