

1 AN ACT

2 relating to the regulation of providers, administrators, and
3 sellers of service contracts and identity recovery service
4 contracts; providing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 ARTICLE 1. SERVICE CONTRACTS

7 SECTION 1.01. Section 1304.002, Occupations Code, is
8 amended by adding Subdivision (8-a) to read as follows:

9 (8-a) "Seller" means a person, other than the provider
10 or administrator of a service contract, who markets, sells, offers
11 to sell, negotiates, or issues a service contract to a consumer on
12 behalf of a provider, but who is not contractually obligated to a
13 service contract holder under the terms of a service contract.

14 SECTION 1.02. Chapter 1304, Occupations Code, is amended by
15 adding Subchapter B to read as follows:

16 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

17 AND COMMISSION

18 Sec. 1304.052. RULES. The commission shall adopt rules
19 necessary to implement and administer this chapter.

20 SECTION 1.03. Section 1304.007, Occupations Code, is
21 transferred to Subchapter B, Chapter 1304, Occupations Code, as
22 added by this Act, redesignated as Section 1304.051, Occupations
23 Code, and amended to read as follows:

24 Sec. 1304.051 [~~1304.007~~]. GENERAL INVESTIGATIVE POWER OF

1 EXECUTIVE DIRECTOR. (a) The executive director may investigate a
2 provider, administrator, seller, or other person as necessary to
3 enforce this chapter and protect service contract holders in this
4 state.

5 (b) On request of the executive director, a provider shall
6 make the records required by Section 1304.155 available to the
7 executive director as necessary to enable the executive director to
8 reasonably determine compliance with this chapter.

9 SECTION 1.04. Section 1304.101, Occupations Code, is
10 amended to read as follows:

11 Sec. 1304.101. REGISTRATION REQUIRED; EXEMPTION FROM OTHER
12 LICENSING REQUIREMENTS. (a) A person may not operate as a
13 provider or administrator of service contracts sold or issued in
14 this state unless the person is registered with the department.

15 (b) Except for the registration requirement of this chapter
16 [~~subchapter~~], a provider, [~~service—contract~~] seller,
17 administrator, or other person who markets, sells, issues, or
18 offers to sell service contracts is exempt from any licensing
19 requirement of this state that relates to an activity regulated
20 under this chapter.

21 (c) A provider or administrator may not contract with or use
22 the services of a person to perform an activity that requires
23 registration with the department as a provider or administrator
24 unless that person is appropriately registered.

25 SECTION 1.05. Subsection (c), Section 1304.102,
26 Occupations Code, is amended to read as follows:

27 (c) The department may refuse to issue or renew a

1 registration, suspend or revoke a registration, or take any other
2 disciplinary action under Subchapter E if the applicant or a
3 controlling person of the applicant:

4 (1) has violated this chapter or a rule adopted or
5 order issued by the commission or executive director under this
6 chapter;

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

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

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

14 SECTION 1.06. Subsection (a), Section 1304.1025,
15 Occupations Code, is amended to read as follows:

16 (a) In addition to the requirements of Section 1304.102, an
17 applicant for issuance or renewal of a provider registration must
18 file with the application:

19 (1) the reimbursement insurance policy, if the
20 provider is using a reimbursement insurance policy to meet the
21 financial security requirements of Section 1304.151; [and]

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

27 (3) the proof necessary to demonstrate the applicant

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

4 (4) information about each controlling person of the
5 applicant [~~a biographical affidavit,~~] in a form prescribed by the
6 executive director [~~, for each controlling person of the provider~~].

7 SECTION 1.07. Subsections (a) and (b), Section 1304.103,
8 Occupations Code, are amended to read as follows:

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

13 (b) The commission shall set [~~the amounts of~~] fees to cover
14 the costs of administering this chapter, including registration and
15 renewal fees for administrators.

16 SECTION 1.08. Section 1304.104, Occupations Code, is
17 amended to read as follows:

18 Sec. 1304.104. INFORMATION CONCERNING NUMBER OF SERVICE
19 CONTRACTS SOLD OR ISSUED. Information concerning the number of
20 service contracts sold or issued by a provider that is submitted
21 under Section 1304.103[+

22 [~~1)] is a trade secret to which Section 552.110,~~

23 Government Code, applies[~~, and~~

24 [~~2) may be used only by the executive director and the~~
25 ~~department in developing the tiered fee schedule under Section~~
26 ~~1304.103].~~

27 SECTION 1.09. The heading to Subchapter D, Chapter 1304,

1 Occupations Code, is amended to read as follows:

2 SUBCHAPTER D. PRACTICE BY SERVICE CONTRACT PROVIDERS,

3 [~~AND~~] ADMINISTRATORS, AND SELLERS

4 SECTION 1.10. The heading to Section 1304.151, Occupations
5 Code, is amended to read as follows:

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

8 SECTION 1.11. Section 1304.151, Occupations Code, is
9 amended by amending Subsections (a) and (b) and adding Subsection
10 (f) to read as follows:

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

13 (1) insure the provider's service contracts under a
14 reimbursement insurance policy issued by an insurer authorized to
15 transact insurance in this state or by a surplus lines insurer
16 eligible to place coverage in this state under Chapter 981,
17 Insurance Code;

18 (2) maintain a funded reserve account covering the
19 provider's obligations under its service contracts that are issued
20 and outstanding in this state and place in trust with the executive
21 director a financial security deposit consisting of:

22 (A) [~~a surety bond issued by an authorized~~
23 ~~surety,~~

24 [~~(B) securities of the type eligible for deposit~~
25 ~~by an authorized insurer in this state,~~

26 [~~(C)~~] a statutory deposit of cash [~~or cash~~
27 ~~equivalents~~];

1 (B) [~~(D)~~] a letter of credit issued by a
2 qualified financial institution; or

3 (C) a certificate of deposit issued by a
4 qualified financial institution [~~(E) another form of security~~
5 ~~prescribed by rules adopted by the commission~~]; or

6 (3) maintain, or have a parent company that maintains,
7 a net worth or stockholders' equity of at least \$100 million.

8 (b) If the provider ensures its obligations under
9 Subsection (a)(2), the amount maintained in the reserve account may
10 not be less than an amount equal to 40 percent of the gross
11 consideration the provider received from consumers from the sale of
12 all service contracts issued and outstanding in this state, minus
13 any claims paid. The executive director may review and examine the
14 reserve account. The amount of the security deposit may not be less
15 than \$250,000. The provider must submit to the executive director
16 on request a copy of the provider's financial statements that must
17 be prepared in accordance with generally accepted accounting
18 principles, be without qualification as to the going concern status
19 of the provider, and be audited by an independent certified public
20 accountant. The commission by rule may require the provider to
21 submit additional financial reports [~~the greater of:~~

22 [~~(1) \$25,000, or~~

23 [~~(2) an amount equal to five percent of the gross~~
24 ~~consideration the provider received from consumers from the sale of~~
25 ~~all service contracts issued and outstanding in this state, minus~~
26 ~~any claims paid]~~.

27 (f) In the event of a provider's bankruptcy or a similar

1 event affecting the ability of the provider to faithfully perform
2 its obligations to its service contract holders, the executive
3 director may distribute any funds held in trust as financial
4 security for the provider under this section to eligible service
5 contract holders as payment for claims. The executive director
6 must distribute the funds in an equitable and cost-effective manner
7 as determined by the executive director.

8 SECTION 1.12. Subchapter D, Chapter 1304, Occupations Code,
9 is amended by adding Sections 1304.1521 and 1304.1531 to read as
10 follows:

11 Sec. 1304.1521. FINANCIAL SECURITY TRANSITION. (a) In
12 this section, "provider that maintained a funded reserve account"
13 means a provider that, in order to ensure the faithful performance
14 of the provider's obligations to service contract holders,
15 maintained a funded reserve account covering the provider's
16 obligations under service contracts that were issued and
17 outstanding in this state and placed in trust with the executive
18 director a financial security deposit consisting of:

- 19 (1) a surety bond issued by an authorized surety;
20 (2) securities of the type eligible for deposit by an
21 authorized insurer in this state;
22 (3) a statutory deposit of cash or cash equivalents;
23 (4) a letter of credit issued by a qualified financial
24 institution; or
25 (5) another form of security prescribed by commission
26 rules.

27 (b) This section applies only to a provider that maintained

1 a funded reserve account on August 31, 2011.

2 (c) Not later than September 1, 2012, a provider that
3 maintained a funded reserve account shall submit to the executive
4 director documentation that the provider is in compliance with the
5 financial security requirements provided by Section 1304.151 for
6 service contracts sold or issued in this state on or after September
7 1, 2012. A provider that maintained a funded reserve account may
8 not sell or issue a service contract on or after September 1, 2012,
9 unless the provider is in compliance with this subsection.

10 (d) A provider that maintained a funded reserve account
11 shall:

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

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

19 (e) If a provider provides financial security for service
20 contracts sold or issued before September 1, 2012, by complying
21 with the financial security requirements of Section 1304.151, the
22 provider shall give to the executive director satisfactory
23 documentation that the reimbursement insurance policy, funded
24 reserve account and security deposit, or net worth covers all
25 outstanding service contracts issued before September 1, 2012.

26 (f) A service contract that is sold or issued before
27 September 1, 2012, and is covered under a funded reserve account and

1 security deposit may not be extended or renewed at the end of the
2 service contract term unless the provider provides financial
3 security for those service contracts by complying with the
4 financial security requirements of Section 1304.151 before the
5 extension or renewal.

6 Sec. 1304.1531. SERVICE CONTRACT SELLERS;
7 RESPONSIBILITIES. (a) A provider may employ or contract with a
8 seller to be responsible for:

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

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

13 (b) The hiring of or contracting with a seller under this
14 section does not affect a provider's responsibility to comply with
15 this chapter.

16 (c) Unless registered as a provider or administrator, a
17 seller is prohibited from engaging in activities that would require
18 registration as a provider or administrator.

19 (d) A seller shall process a service contract application
20 and a payment from a consumer in accordance with this chapter and
21 with any sales agreement or contract between the provider and the
22 seller.

23 SECTION 1.13. Subsections (a), (b), and (d), Section
24 1304.156, Occupations Code, are amended to read as follows:

25 (a) A service contract marketed, sold, offered for sale,
26 issued, made, proposed to be made, or administered in this state
27 must:

- 1 (1) be written, printed, or typed in clear,
2 understandable language that is easy to read;
- 3 (2) state the name and address of the provider;
- 4 (3) state the purchase price of the contract and the
5 terms under which the contract is sold;
- 6 (4) state the terms and restrictions governing
7 cancellation of the contract by the provider or the service
8 contract holder before the expiration date of the contract;
- 9 (5) identify:
- 10 (A) any administrator and any registration
11 number issued to the administrator under this chapter;
- 12 (B) the ~~contract~~ seller; and
- 13 (C) the service contract holder, if the service
14 contract holder provides the holder's name;
- 15 (6) state the amount of any deductible;
- 16 (7) specify the products and services to be provided
17 under the contract and any limitation, exception, or exclusion;
- 18 (8) specify any restriction governing the
19 transferability of the contract;
- 20 (9) state the duties of the service contract holder,
21 including any duty to protect against any further damage and any
22 requirement to follow the instructions in the owner's manual; and
- 23 (10) state whether the contract provides for or
24 excludes consequential damages or preexisting conditions, if
25 applicable.
- 26 (b) The identity and, if applicable, registration number
27 issued under this chapter of a person described by Subsection

1 (a)(5) is not required to be preprinted on the service contract and
2 may be added to the contract at the time of sale.

3 (d) A service contract insured under a reimbursement
4 insurance policy under Section 1304.152 [~~1304.151(a)(1)~~] must:

5 (1) state the name and address of the insurer;

6 (2) state that the service contract holder may apply
7 for reimbursement directly to the insurer if:

8 (A) a covered service is not provided to the
9 service contract holder by the provider before the 61st [~~not later~~
10 ~~than the 60th~~] day after the date of proof of loss; or

11 (B) a refund or credit is not paid before the 46th
12 day after the date on which the contract is canceled [~~returned to~~
13 ~~the provider~~] under Section 1304.1581 [~~1304.158~~]; and

14 (3) contain a statement substantially similar to the
15 following: "Obligations of the provider under this service
16 contract are insured under a service contract reimbursement
17 insurance policy."

18 SECTION 1.14. Subchapter D, Chapter 1304, Occupations Code,
19 is amended by adding Section 1304.1581 to read as follows:

20 Sec. 1304.1581. CANCELLATION BY SERVICE CONTRACT HOLDER;
21 REFUND. (a) A service contract must allow the service contract
22 holder to cancel the service contract at any time.

23 (b) If a service contract holder cancels a service contract
24 before the 31st day after the date of purchase, the provider:

25 (1) shall refund to the service contract holder or
26 credit to the account of the service contract holder the full
27 purchase price of the contract, decreased by the amount of any

1 claims paid under the contract; and

2 (2) may not impose a cancellation fee.

3 (c) If a service contract holder cancels a service contract
4 on or after the 31st day after the date of purchase, the provider:

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

12 (2) may impose a reasonable cancellation fee not to
13 exceed \$50.

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

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

25 (f) The right to cancel a service contract is not
26 transferable to a subsequent holder of the contract.

27 SECTION 1.15. The heading to Section 1304.159, Occupations

1 Code, is amended to read as follows:

2 Sec. 1304.159. CANCELLATION BY PROVIDER; REFUND [~~CANCELING~~
3 ~~A SERVICE CONTRACT~~].

4 SECTION 1.16. Section 1304.159, Occupations Code, is
5 amended by amending Subsection (b) and adding Subsection (c) to
6 read as follows:

7 (b) The provider is not required to provide prior notice of
8 cancellation if the service contract is canceled because of:

9 (1) nonpayment of the consideration for the contract;

10 (2) fraud or a material misrepresentation by the
11 service contract holder to the provider or the provider's
12 administrator; or

13 (3) a substantial breach of a duty by the service
14 contract holder relating to the covered product or its use.

15 (c) A service contract holder whose contract is canceled by
16 the provider in accordance with this section is entitled to a
17 prorated refund of the purchase price of the contract reflecting
18 the remaining term of the contract, based on mileage, time, or
19 another reasonably applicable measure of the remaining term that
20 must be disclosed in the contract, decreased by the amount of any
21 claims paid under the contract. A provider who cancels a contract
22 under this section may not impose a cancellation fee.

23 SECTION 1.17. Section 1304.161, Occupations Code, is
24 amended to read as follows:

25 Sec. 1304.161. [~~MISLEADING STATEMENTS~~] PROHIBITED ACTS.

26 (a) A provider, administrator, seller, or other [~~or the~~
27 ~~provider's~~] representative of the provider may not, in the

1 provider's service contracts or literature or in any written
2 communication:

3 (1) make, permit, or cause to be made any false,
4 deceptive, or misleading statement; or

5 (2) deliberately omit a material statement if the
6 omission would be considered misleading.

7 (b) A person, including a bank, a savings and loan
8 association, a lending institution, or the manufacturer or seller
9 of a product, may not require the purchase of a service contract as
10 a condition of a loan or the sale of property.

11 (c) A provider, administrator, seller, or other
12 representative of the provider may not make a telemarketing call to
13 a consumer as provided by Sections 304.002 and 304.003, Business &
14 Commerce Code, unless the provider, administrator, seller, or
15 representative has an established business relationship, as
16 defined by Section 304.002, Business & Commerce Code, with the
17 consumer.

18 SECTION 1.18. Section 1304.201, Occupations Code, is
19 amended to read as follows:

20 Sec. 1304.201. DISCIPLINARY ACTION. [~~(a)~~] On a finding
21 that a ground for disciplinary action exists under this chapter,
22 the commission or executive director may impose an administrative
23 sanction or [~~, including an~~] administrative penalty or seek a civil
24 penalty or any other remedy as provided by this chapter and
25 [~~Subchapter F,~~] Chapter 51.

26 SECTION 1.19. Subchapter E, Chapter 1304, Occupations Code,
27 is amended by adding Section 1304.205 to read as follows:

1 Sec. 1304.205. REMEDY FOR SERVICE CONTRACT HOLDERS.

2 (a) If the commission by order, including an agreed order,
3 determines that a person has operated as a provider or
4 administrator in this state without holding the appropriate
5 registration under this chapter, the person shall offer to a
6 service contract holder who holds a service contract sold or issued
7 by the person during the period that the person was not registered
8 under this chapter the right to:

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

11 (2) retain the contract.

12 (b) If a seller fails to process a service contract
13 application or a payment from a consumer in accordance with this
14 chapter and any sales agreement or contract between the provider
15 and the seller, the commission or executive director may, by
16 commission order, including an agreed order, require the seller to
17 refund the full purchase price of the contract to the consumer.

18 (c) The remedies described in this section are in addition
19 to any administrative penalty, administrative sanction, civil
20 penalty, or other disciplinary or enforcement action sought under
21 this chapter or Chapter 51.

22 SECTION 1.20. (a) On the effective date of this Act, the
23 following provisions of the Occupations Code are repealed:

24 (1) Section 1304.006; and

25 (2) Subsection (d), Section 1304.102.

26 (b) On January 1, 2012, the following provisions of the
27 Occupations Code are repealed:

1 (1) Section 1304.157; and

2 (2) Section 1304.158.

3 SECTION 1.21. (a) Not later than April 1, 2012, the Texas
4 Commission of Licensing and Regulation shall adopt rules necessary
5 to implement Chapter 1304, Occupations Code, as amended by this
6 Act.

7 (b) Sections 1304.102 and 1304.1025, Occupations Code, as
8 amended by this Act, apply only to an application for a registration
9 or renewal of a registration filed with the Texas Department of
10 Licensing and Regulation on or after the effective date of this Act.
11 An application filed before that date is governed by the law in
12 effect on the date the application was filed, and the former law is
13 continued in effect for that purpose.

14 (c) Sections 1304.156 and 1304.159, Occupations Code, as
15 amended by this Act, and Section 1304.1581, Occupations Code, as
16 added by this Act, apply only to a service contract sold or issued
17 on or after January 1, 2012. A service contract sold or issued
18 before that date is governed by the law in effect on the date the
19 contract was sold or issued, and the former law is continued in
20 effect for that purpose.

21 (d) Notwithstanding Subsection (c) of this section, a
22 service contract sold or issued before January 1, 2012, may not be
23 extended or renewed at the end of the service contract term unless
24 the contract complies with Sections 1304.156 and 1304.159,
25 Occupations Code, as amended by this Act, and Section 1304.1581,
26 Occupations Code, as added by this Act.

27 (e) Section 1304.201, Occupations Code, as amended by this

1 Act, applies only to a disciplinary action initiated by the Texas
2 Department of Licensing and Regulation on or after the effective
3 date of this Act. An action initiated before the effective date of
4 this Act is governed by the law in effect on the date the action was
5 initiated, and the former law is continued in effect for that
6 purpose.

7 (f) Section 1304.205, Occupations Code, as added by this
8 Act, applies only to an act or omission of a person operating as a
9 provider, administrator, or seller of a service contract that
10 occurs on or after the effective date of this Act. An act or
11 omission that occurs before that date is governed by the law in
12 effect on the date the act or omission occurred, and the former law
13 is continued in effect for that purpose.

14 ARTICLE 2. IDENTITY RECOVERY SERVICE CONTRACTS

15 SECTION 2.01. Section 1306.002, Occupations Code, is
16 amended by adding Subdivision (11) to read as follows:

17 (11) "Seller" means a person, other than the provider
18 or administrator of an identity recovery service contract, who
19 markets, sells, offers to sell, negotiates, or issues an identity
20 recovery service contract to a consumer on behalf of a provider, but
21 who is not contractually obligated to a service contract holder
22 under the terms of an identity recovery service contract.

23 SECTION 2.02. Chapter 1306, Occupations Code, is amended by
24 adding Subchapter A-1 to read as follows:

25 SUBCHAPTER A-1. POWERS AND DUTIES OF DEPARTMENT
26 AND COMMISSION

27 Sec. 1306.022. RULES. The commission shall adopt rules

1 necessary to implement and administer this chapter.

2 SECTION 2.03. Section 1306.008, Occupations Code, is
3 transferred to Subchapter A-1, Chapter 1306, Occupations Code, as
4 added by this Act, redesignated as Section 1306.021, Occupations
5 Code, and amended to read as follows:

6 Sec. 1306.021 [~~1306.008~~]. GENERAL INVESTIGATIVE POWER OF
7 EXECUTIVE DIRECTOR. (a) The executive director may investigate a
8 provider, administrator, seller, or other person as necessary to
9 enforce this chapter and protect identity recovery service contract
10 holders in this state.

11 (b) On request of the executive director, a provider shall
12 make the records required by Section 1306.105 available to the
13 executive director as necessary to enable the executive director to
14 reasonably determine compliance with this chapter.

15 SECTION 2.04. Section 1306.051, Occupations Code, is
16 amended by amending Subsections (a) and (b) and adding Subsection
17 (d) to read as follows:

18 (a) A person may not operate as a provider or administrator
19 of identity recovery service contracts sold or issued in this state
20 unless the person is registered with the department.

21 (b) Except for the registration requirement of this chapter
22 [~~subchapter~~], a provider, [~~identity recovery service contract~~]
23 seller, administrator, or other person who markets, sells, issues,
24 or offers to sell identity recovery service contracts is exempt
25 from any licensing requirement of this state that relates to an
26 activity regulated under this chapter.

27 (d) A provider or administrator may not contract with or use

1 the services of a person to perform an activity that requires
2 registration with the department as a provider or administrator
3 unless that person is appropriately registered.

4 SECTION 2.05. Subsection (c), Section 1306.052,
5 Occupations Code, is amended to read as follows:

6 (c) The department may refuse to issue or renew a
7 registration, suspend or revoke a registration, or take any other
8 disciplinary action under Subchapter D if the applicant or a
9 controlling person of the applicant:

10 (1) has violated this chapter or a rule adopted or
11 order issued by the commission or executive director under this
12 chapter;

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

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

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

20 SECTION 2.06. Subsection (a), Section 1306.053,
21 Occupations Code, is amended to read as follows:

22 (a) In addition to the requirements of Section 1306.052, an
23 applicant for issuance or renewal of a provider registration must
24 file with the application:

25 (1) the reimbursement insurance policy required by
26 Section 1306.102, if the provider is using a reimbursement
27 insurance policy to meet the financial security requirements of

1 Section 1306.101; ~~and~~

2 (2) the financial security deposit and the
3 documentation required by the department demonstrating adequate
4 funding of the reserve account, if the provider is using a funded
5 reserve account and financial security deposit to meet the
6 financial security requirements of Section 1306.101;

7 (3) the proof necessary to demonstrate the applicant
8 or its parent company maintains at least \$100 million net worth, if
9 the applicant is using net worth to meet the financial security
10 requirements of Section 1306.101; and

11 (4) information about each controlling person of the
12 applicant ~~[a biographical affidavit,~~ in a form prescribed by the
13 executive director ~~[, for each controlling person of the provider].~~

14 SECTION 2.07. Subsections (b) and (d), Section 1306.054,
15 Occupations Code, are amended to read as follows:

16 (b) To register or renew a registration, a provider or
17 administrator must pay the appropriate fee. The commission shall
18 set by rule the ~~[amounts of the registration and renewal]~~ fees
19 required to cover the costs of administering this chapter.

20 (d) The information concerning the number of identity
21 recovery service contracts sold or issued by a provider that is
22 submitted under Subsection (c) ~~[+~~

23 ~~[(1)]~~ is a trade secret to which Section 552.110,
24 Government Code, applies ~~[, and~~

25 ~~[(2) may be used only by the executive director and the~~
26 ~~department for the purposes of this section].~~

27 SECTION 2.08. The heading to Subchapter C, Chapter 1306,

1 Occupations Code, is amended to read as follows:

2 SUBCHAPTER C. PRACTICE BY IDENTITY RECOVERY SERVICE CONTRACT

3 PROVIDERS, ~~[AND]~~ ADMINISTRATORS, AND SELLERS

4 SECTION 2.09. The heading to Section 1306.101, Occupations
5 Code, is amended to read as follows:

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

8 SECTION 2.10. Section 1306.101, Occupations Code, is
9 amended by amending Subsections (a) and (b) and adding Subsection
10 (f) to read as follows:

11 (a) To ensure the faithful performance of a provider's
12 obligations to its identity recovery service contract holders, each
13 provider must:

14 (1) insure the provider's identity recovery service
15 contracts under a reimbursement insurance policy issued by an
16 insurer authorized to transact insurance in this state or by a
17 surplus lines insurer eligible to place coverage in this state
18 under Chapter 981, Insurance Code;

19 (2) maintain a funded reserve account covering the
20 provider's obligations under its identity recovery service
21 contracts that are issued and outstanding in this state and place in
22 trust with the executive director a financial security deposit
23 consisting of:

24 (A) ~~[a surety bond issued by an authorized~~
25 ~~surety,~~

26 ~~[(B) securities of the type eligible for deposit~~
27 ~~by an authorized insurer in this state,~~

1 [~~(C)~~] a statutory deposit of cash [~~or cash~~
2 ~~equivalents~~];

3 (B) [~~(D)~~] a letter of credit issued by a
4 qualified financial institution; or

5 (C) a certificate of deposit issued by a
6 qualified financial institution [~~(E) another form of security~~
7 ~~prescribed by rules adopted by the commission~~]; or

8 (3) maintain, or have a parent company that maintains,
9 a net worth or stockholders' equity of at least \$100 million.

10 (b) If the provider ensures its obligations under
11 Subsection (a)(2), the amount maintained in the reserve account may
12 not be less than an amount equal to 40 percent of the gross
13 consideration the provider received from consumers from the sale of
14 all identity recovery service contracts issued and outstanding in
15 this state, minus any claims paid. The executive director may
16 review and examine the reserve account. The amount of the security
17 deposit may not be less than \$250,000. The provider must submit to
18 the executive director on request a copy of the provider's
19 financial statements that must be prepared in accordance with
20 generally accepted accounting principles, be without qualification
21 as to the going concern status of the provider, and be audited by an
22 independent certified public accountant. The commission by rule
23 may require the provider to submit additional financial reports
24 ~~[the greater of:~~

25 [~~(1) \$25,000, or~~

26 [~~(2) an amount equal to five percent of the gross~~
27 ~~consideration the provider received from consumers from the sale of~~

1 ~~all identity recovery service contracts issued and outstanding in~~
2 ~~this state, minus any claims paid].~~

3 (f) In the event of a provider's bankruptcy or a similar
4 event affecting the ability of the provider to faithfully perform
5 its obligations to its identity recovery service contract holders,
6 the executive director may distribute any funds held in trust as
7 financial security for the provider under this section to eligible
8 identity recovery service contract holders as payment for claims.
9 The executive director must distribute the funds in an equitable
10 and cost-effective manner as determined by the executive director.

11 SECTION 2.11. Subchapter C, Chapter 1306, Occupations Code,
12 is amended by adding Sections 1306.1021 and 1306.1031 to read as
13 follows:

14 Sec. 1306.1021. FINANCIAL SECURITY TRANSITION. (a) In
15 this section, "provider that maintained a funded reserve account"
16 means a provider that, in order to ensure the faithful performance
17 of the provider's obligations to identity recovery service contract
18 holders, maintained a funded reserve account covering the
19 provider's obligations under identity recovery service contracts
20 that were issued and outstanding in this state and placed in trust
21 with the executive director a financial security deposit consisting
22 of:

- 23 (1) a surety bond issued by an authorized surety;
24 (2) securities of the type eligible for deposit by an
25 authorized insurer in this state;
26 (3) a statutory deposit of cash or cash equivalents;
27 (4) a letter of credit issued by a qualified financial

1 institution; or

2 (5) another form of security prescribed by commission
3 rules.

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

6 (c) Not later than September 1, 2012, a provider that
7 maintained a funded reserve account shall submit to the executive
8 director documentation that the provider is in compliance with the
9 financial security requirements provided by Section 1306.101 for
10 identity recovery service contracts sold or issued in this state on
11 or after September 1, 2012. A provider that maintained a funded
12 reserve account may not sell or issue an identity recovery service
13 contract on or after September 1, 2012, unless the provider is in
14 compliance with this subsection.

15 (d) A provider that maintained a funded reserve account
16 shall:

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

21 (2) provide financial security for identity recovery
22 service contracts sold or issued before September 1, 2012, by
23 complying with the financial security requirements of Section
24 1306.101.

25 (e) If a provider provides financial security for identity
26 recovery service contracts sold or issued before September 1, 2012,
27 by complying with the financial security requirements of Section

1 1306.101, the provider shall give to the executive director
2 satisfactory documentation that the reimbursement insurance
3 policy, funded reserve account and security deposit, or net worth
4 covers all outstanding identity recovery service contracts issued
5 before September 1, 2012.

6 (f) An identity recovery service contract that is sold or
7 issued before September 1, 2012, and is covered under a funded
8 reserve account and security deposit may not be extended or renewed
9 at the end of the identity recovery service contract term unless the
10 provider provides financial security for those service contracts by
11 complying with the financial security requirements of Section
12 1306.101 before the extension or renewal.

13 Sec. 1306.1031. IDENTITY RECOVERY SERVICE CONTRACT
14 SELLERS; RESPONSIBILITIES. (a) A provider may employ or contract
15 with a seller to be responsible for:

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

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

20 (b) The hiring of or contracting with a seller under this
21 section does not affect a provider's responsibility to comply with
22 this chapter.

23 (c) Unless registered as a provider or administrator, a
24 seller is prohibited from engaging in activities that would require
25 registration as a provider or administrator.

26 (d) A seller shall process an identity recovery service
27 contract application and a payment from a consumer in accordance

1 with this chapter and with any sales agreement or contract between
2 the provider and the seller.

3 SECTION 2.12. Subsections (a), (b), and (d), Section
4 1306.106, Occupations Code, are amended to read as follows:

5 (a) An identity recovery service contract marketed, sold,
6 offered for sale, issued, made, proposed to be made, or
7 administered in this state must:

8 (1) be written, printed, or typed in clear,
9 understandable language that is easy to read;

10 (2) state the name and address of the provider;

11 (3) state the purchase price of the contract and the
12 terms under which the contract is sold;

13 (4) state the terms and restrictions governing
14 cancellation of the contract by the provider or the identity
15 recovery service contract holder before the expiration date of the
16 contract;

17 (5) identify:

18 (A) any administrator and any registration
19 number issued to the administrator under this chapter;

20 (B) the ~~[contract]~~ seller; and

21 (C) the identity recovery service contract
22 holder, if the identity recovery service contract holder provides
23 the holder's name;

24 (6) state the amount of any deductible;

25 (7) specify the services to be provided under the
26 contract and any limitation, exception, or exclusion;

27 (8) specify any restriction governing the

1 transferability of the contract; and

2 (9) state the duties of the identity recovery service
3 contract holder, including any duty to protect against any further
4 damage and any requirement to follow the instructions in the
5 identity recovery service contract.

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

11 (d) An identity recovery service contract insured under a
12 reimbursement insurance policy under Section 1306.102 must:

13 (1) state the name and address of the insurer;

14 (2) state that the identity recovery service contract
15 holder may apply for reimbursement directly to the insurer if:

16 (A) a covered service is not provided to the
17 identity recovery service contract holder by the provider before
18 the 61st day after the date of proof of loss; or

19 (B) a refund or credit is not paid before the 46th
20 day after the date on which the contract is canceled [~~returned to~~
21 ~~the provider~~] under Section 1306.1081 [~~1306.107~~]; and

22 (3) contain a statement substantially similar to the
23 following: "Obligations of the provider under this identity
24 recovery service contract are insured under an identity recovery
25 service contract reimbursement insurance policy."

26 SECTION 2.13. Subchapter C, Chapter 1306, Occupations Code,
27 is amended by adding Section 1306.1081 to read as follows:

1 Sec. 1306.1081. CANCELLATION BY IDENTITY RECOVERY SERVICE
2 CONTRACT HOLDER; REFUND. (a) An identity recovery service
3 contract must allow the identity recovery service contract holder
4 to cancel the identity recovery service contract at any time.

5 (b) If an identity recovery service contract holder cancels
6 an identity recovery service contract before the 31st day after the
7 date of purchase, the provider:

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

12 (2) may not impose a cancellation fee.

13 (c) If an identity recovery service contract holder cancels
14 an identity recovery service contract on or after the 31st day after
15 the date of purchase, the provider:

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

23 (2) may impose a reasonable cancellation fee not to
24 exceed \$50.

25 (d) A provider may allow an identity recovery service
26 contract holder to cancel an identity recovery service contract on
27 other terms included in the contract, provided the terms do not

1 conflict with this section.

2 (e) A provider who does not pay the refund or credit the
3 identity recovery service contract holder's account before the 46th
4 day after the date notice of cancellation is received by the
5 provider is liable to the identity recovery service contract holder
6 for a penalty for each month an amount remains outstanding equal to
7 10 percent of the amount outstanding. The penalty is in addition to
8 the full or prorated purchase price of the contract that is owed to
9 the identity recovery service contract holder under this section or
10 the terms of the contract.

11 (f) The right to cancel an identity recovery service
12 contract is not transferable to a subsequent holder of the
13 contract.

14 SECTION 2.14. The heading to Section 1306.109, Occupations
15 Code, is amended to read as follows:

16 Sec. 1306.109. CANCELLATION BY A PROVIDER; REFUND
17 [~~CANCELING AN IDENTITY RECOVERY SERVICE CONTRACT~~].

18 SECTION 2.15. Section 1306.109, Occupations Code, is
19 amended by amending Subsection (b) and adding Subsection (c) to
20 read as follows:

21 (b) The provider is not required to provide prior notice of
22 cancellation if the identity recovery service contract is canceled
23 because of:

- 24 (1) nonpayment of the consideration for the contract;
25 (2) fraud or a material misrepresentation by the
26 identity recovery service contract holder to the provider or the
27 provider's administrator; or

1 (3) a substantial breach of a duty by the identity
2 recovery service contract holder.

3 (c) An identity recovery service contract holder whose
4 contract is canceled by the provider in accordance with this
5 section is entitled to a prorated refund of the purchase price of
6 the contract reflecting the remaining term of the contract, based
7 on mileage, time, or another reasonably applicable measure of the
8 remaining term that must be disclosed in the contract, decreased by
9 the amount of any claims paid under the contract. A provider who
10 cancels a contract under this section may not impose a cancellation
11 fee.

12 SECTION 2.16. Section 1306.111, Occupations Code, is
13 amended to read as follows:

14 Sec. 1306.111. [~~MISLEADING STATEMENTS~~] PROHIBITED ACTS.

15 (a) A provider, administrator, seller, or other [or the
16 provider's] representative of the provider may not, in the
17 provider's identity recovery service contracts or literature or in
18 any written communication:

19 (1) make, permit, or cause to be made any false,
20 deceptive, or misleading statement; or

21 (2) deliberately omit a material statement if the
22 omission would be considered misleading.

23 (b) A person regulated by Chapter 2301 may not require the
24 purchase of an identity recovery service contract as a condition of
25 a loan or the sale of a vehicle.

26 (c) A provider, administrator, seller, or other
27 representative of the provider may not make a telemarketing call to

1 a consumer as provided by Sections 304.002 and 304.003, Business &
2 Commerce Code, unless the provider, administrator, seller, or
3 representative has an established business relationship, as
4 defined by Section 304.002, Business & Commerce Code, with the
5 consumer.

6 SECTION 2.17. Section 1306.151, Occupations Code, is
7 amended to read as follows:

8 Sec. 1306.151. DISCIPLINARY ACTION. On a finding that a
9 ground for disciplinary action exists under this chapter, the
10 commission or executive director may impose an administrative
11 sanction or ~~[, including an]~~ administrative penalty or seek a civil
12 penalty or any other remedy as provided by this chapter and
13 ~~[Subchapter F,]~~ Chapter 51.

14 SECTION 2.18. Subchapter D, Chapter 1306, Occupations Code,
15 is amended by adding Section 1306.155 to read as follows:

16 Sec. 1306.155. REMEDY FOR IDENTITY RECOVERY SERVICE
17 CONTRACT HOLDERS. (a) If the commission by order, including an
18 agreed order, determines that a person has operated as a provider or
19 administrator in this state without holding the appropriate
20 registration under this chapter, the person shall offer to an
21 identity recovery service contract holder who holds an identity
22 recovery service contract sold or issued by the person during the
23 period that the person was not registered under this chapter the
24 right to:

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

27 (2) retain the contract.

1 (b) If a seller fails to process an identity recovery
2 service contract application or a payment from a consumer in
3 accordance with this chapter and any sales agreement or contract
4 between the provider and the seller, the commission or executive
5 director may, by commission order, including an agreed order,
6 require the seller to refund the full purchase price of the contract
7 to the consumer.

8 (c) The remedies described in this section are in addition
9 to any administrative penalty, administrative sanction, civil
10 penalty, or other disciplinary or enforcement action sought under
11 this chapter or Chapter 51.

12 SECTION 2.19. (a) On the effective date of this Act, the
13 following provisions of the Occupations Code are repealed:

14 (1) Section 1306.007; and

15 (2) Subsection (d), Section 1306.052.

16 (b) On January 1, 2012, the following provisions of the
17 Occupations Code are repealed:

18 (1) Section 1306.107; and

19 (2) Section 1306.108.

20 SECTION 2.20. (a) Not later than April 1, 2012, the Texas
21 Commission of Licensing and Regulation shall adopt rules necessary
22 to implement Chapter 1306, Occupations Code, as amended by this
23 Act.

24 (b) Sections 1306.052 and 1306.053, Occupations Code, as
25 amended by this Act, apply only to an application for a registration
26 or renewal of a registration filed with the Texas Department of
27 Licensing and Regulation on or after the effective date of this Act.

1 An application filed before that date is governed by the law in
2 effect on the date the application was filed, and the former law is
3 continued in effect for that purpose.

4 (c) Sections 1306.106 and 1306.109, Occupations Code, as
5 amended by this Act, and Section 1306.1081, Occupations Code, as
6 added by this Act, apply only to an identity recovery service
7 contract sold or issued on or after January 1, 2012. An identity
8 recovery service contract sold or issued before that date is
9 governed by the law in effect on the date the contract was sold or
10 issued, and the former law is continued in effect for that purpose.

11 (d) Notwithstanding Subsection (c) of this section, an
12 identity recovery service contract sold or issued before January 1,
13 2012, may not be extended or renewed at the end of the contract term
14 unless the contract complies with Sections 1306.106 and 1306.109,
15 Occupations Code, as amended by this Act, and Section 1306.1081,
16 Occupations Code, as added by this Act.

17 (e) Section 1306.151, Occupations Code, as amended by this
18 Act, applies only to a disciplinary action initiated by the Texas
19 Department of Licensing and Regulation on or after the effective
20 date of this Act. An action initiated before the effective date of
21 this Act is governed by the law in effect on the date the action was
22 initiated, and the former law is continued in effect for that
23 purpose.

24 (f) Section 1306.155, Occupations Code, as added by this
25 Act, applies only to an act or omission of a person operating as a
26 provider, administrator, or seller of an identity recovery service
27 contract that occurs on or after the effective date of this Act. An

1 act or omission that occurs before that date is governed by the law
2 in effect on the date the act or omission occurred, and the former
3 law is continued in effect for that purpose.

4 ARTICLE 3. EFFECTIVE DATE

5 SECTION 3.01. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1169 passed the Senate on April 21, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 25, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1169 passed the House, with amendment, on May 23, 2011, by the following vote: Yeas 142, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor