

By: Carona

S.B. No. 1169

A BILL TO BE ENTITLED

AN ACT

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

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

ARTICLE 1. SERVICE CONTRACTS

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

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

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

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

AND COMMISSION

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

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

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 offer to sell or
13 operate as a provider or administrator of service contracts sold or
14 issued in this state unless the person is registered with the
15 department.

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

22 (c) A person who offers to sell or operates as a provider or
23 administrator of a service contract sold or issued in this state may
24 only contract with or use the services of a service contract
25 provider or administrator that is registered with the department.

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

1 (c) The department may refuse to issue or renew a
2 registration, suspend or revoke a registration, or take any other
3 disciplinary action under Subchapter E, if the applicant or a
4 controlling person of the applicant:

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

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

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

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

15 (5) has committed fraud or been deceptive or dishonest
16 in any activity subject to regulation by the department.

17 SECTION 1.06. Sections 1304.1025(a) and (c), Occupations
18 Code, are amended to read as follows:

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

22 (1) the reimbursement insurance policy, if the
23 provider is using a reimbursement insurance policy to meet the
24 requirements of Section 1304.151; ~~and~~

25 (2) the proof necessary to demonstrate the applicant
26 has at least \$100 million net worth, if the applicant is using net
27 worth to meet the financial security requirements of Section

1 1304.151; and

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

5 (c) Not later than the 30th day after the date of a
6 provider's initial registration, the provider must provide to the
7 department a list of any Internet website address through which a
8 consumer may purchase the provider's service contracts and the
9 name, assumed name, street address, and telephone number of:

10 (1) any administrator appointed by the provider under
11 Section 1304.153; and

12 (2) any seller of the provider's service contracts,
13 other than a seller that is[+

14 [~~(A)~~] an employee of the provider [~~, or~~

15 [~~(B) a business with a physical location in this~~
16 ~~state at which a consumer may purchase a service contract]~~.

17 SECTION 1.07. Sections 1304.103(a) and (b), Occupations
18 Code, are amended to read as follows:

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

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

26 SECTION 1.08. Section 1304.104, Occupations Code, is
27 amended to read as follows:

1 Sec. 1304.104. INFORMATION CONCERNING NUMBER OF SERVICE
2 CONTRACTS SOLD OR ISSUED. Information concerning the number of
3 service contracts sold or issued by a provider that is submitted
4 under Section 1304.103[+]

5 ~~[(1)]~~ is a trade secret to which Section 552.110,
6 Government Code, applies[+and

7 ~~[(2) may be used only by the executive director and the~~
8 ~~department in developing the tiered fee schedule under Section~~
9 ~~1304.103].~~

10 SECTION 1.09. The heading to Subchapter D, Chapter 1304,
11 Occupations Code, is amended to read as follows:

12 SUBCHAPTER D. PRACTICE BY SERVICE CONTRACT PROVIDERS,
13 ~~[AND]~~ ADMINISTRATORS, AND SELLERS

14 SECTION 1.10. Sections 1304.151(a) and (c), Occupations
15 Code, are amended to read as follows:

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

18 (1) insure the provider's service contracts under a
19 reimbursement insurance policy issued by an insurer authorized to
20 transact insurance in this state or by a surplus lines insurer
21 eligible to place coverage in this state under Chapter 981,
22 Insurance Code; or

23 (2) ~~[maintain a funded reserve account covering the~~
24 ~~provider's obligations under its service contracts that are issued~~
25 ~~and outstanding in this state and place in trust with the executive~~
26 ~~director a financial security deposit consisting of:~~

27 ~~[(A) a surety bond issued by an authorized~~

1 surety;

2 [~~(B) securities of the type eligible for deposit~~
3 ~~by an authorized insurer in this state;~~

4 [~~(C) a statutory deposit of cash or cash~~
5 ~~equivalents;~~

6 [~~(D) a letter of credit issued by a qualified~~
7 ~~financial institution; or~~

8 [~~(E) another form of security prescribed by rules~~
9 ~~adopted by the commission; or~~

10 [~~(3)~~] maintain, or have a parent company that
11 maintains, a net worth or stockholders' equity of at least \$100
12 million.

13 (c) If the provider ensures its obligations under
14 Subsection (a)(2) [~~(a)(3)~~], the provider must give to the executive
15 director on request:

16 (1) a copy of the provider's or the provider's parent
17 company's most recent Form 10-K or Form 20-F filed with the
18 Securities and Exchange Commission within the preceding calendar
19 year; or

20 (2) if the provider or the provider's parent company
21 does not file with the Securities and Exchange Commission, a copy of
22 the provider's or the provider's parent company's audited financial
23 statements showing a net worth of the provider or its parent company
24 of at least \$100 million.

25 SECTION 1.11. Subchapter D, Chapter 1304, Occupations Code,
26 is amended by adding Sections 1304.1521 and 1304.1531 to read as
27 follows:

1 Sec. 1304.1521. FINANCIAL SECURITY TRANSITION. (a) In
2 this section, "provider that maintained a funded reserve account"
3 means a provider that, in order to ensure the faithful performance
4 of the provider's obligations to service contract holders,
5 maintained a funded reserve account covering the provider's
6 obligations under service contracts that were issued and
7 outstanding in this state and placed in trust with the executive
8 director a financial security deposit consisting of:

9 (1) a surety bond issued by an authorized surety;

10 (2) securities of the type eligible for deposit by an
11 authorized insurer in this state;

12 (3) a statutory deposit of cash or cash equivalents;

13 (4) a letter of credit issued by a qualified financial
14 institution; or

15 (5) another form of security prescribed by commission
16 rules.

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

19 (c) Not later than September 1, 2012, a provider that
20 maintained a funded reserve account shall submit to the executive
21 director documentation that the provider is in compliance with the
22 financial security requirements provided by Section 1304.151 for
23 service contracts sold or issued in this state on or after September
24 1, 2012. A provider that maintained a funded reserve account may
25 not sell or issue a service contract on or after September 1, 2012,
26 unless the provider is in compliance with this subsection.

27 (d) A provider that maintained a funded reserve account

1 shall:

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

6 (2) provide financial security for service contracts
7 sold or issued before September 1, 2012, by obtaining a
8 reimbursement insurance policy or maintaining a net worth of at
9 least \$100 million as provided by Section 1304.151.

10 (e) If a provider provides financial security for service
11 contracts sold or issued before September 1, 2012, under Subsection
12 (d)(2), the provider shall give to the executive director
13 satisfactory documentation that the reimbursement insurance policy
14 or net worth covers all outstanding service contracts issued before
15 September 1, 2012.

16 (f) A service contract that is sold or issued before
17 September 1, 2012, and is covered under a funded reserve account and
18 security deposit may not be extended or renewed at the end of the
19 service contract term.

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

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

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

27 (b) The hiring of or contracting with a seller under this

1 section does not affect a provider's responsibility to comply with
2 this chapter.

3 (c) Unless registered as a provider or administrator, a
4 seller is prohibited from engaging in activities that would require
5 registration as a provider or administrator.

6 (d) A seller shall process a service contract application
7 and a payment from a consumer in accordance with this chapter and
8 with any sales agreement or contract between the provider and the
9 seller.

10 SECTION 1.12. Sections 1304.156(a), (b), and (d),
11 Occupations Code, are amended to read as follows:

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

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

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

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

20 (4) state the terms and restrictions governing
21 cancellation of the contract by the provider or the service
22 contract holder before the expiration date of the contract;

23 (5) identify:

24 (A) any administrator and any registration
25 number issued to the administrator under this chapter;

26 (B) the ~~contract~~ seller; and

27 (C) the service contract holder, if the service

1 contract holder provides the holder's name;

2 (6) state the amount of any deductible;

3 (7) specify the products and services to be provided
4 under the contract and any limitation, exception, or exclusion;

5 (8) specify any restriction governing the
6 transferability of the contract;

7 (9) state the duties of the service contract holder,
8 including any duty to protect against any further damage and any
9 requirement to follow the instructions in the owner's manual; and

10 (10) state whether the contract provides for or
11 excludes consequential damages or preexisting conditions, if
12 applicable.

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

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

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

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

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

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

1 (3) contain a statement substantially similar to the
2 following: "Obligations of the provider under this service
3 contract are insured under a service contract reimbursement
4 insurance policy."

5 SECTION 1.13. Subchapter D, Chapter 1304, Occupations Code,
6 is amended by adding Section 1304.1581 to read as follows:

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

10 (b) If a service contract holder cancels a service contract
11 before the 31st day after the date of purchase and a claim has not
12 been made under the contract, the provider:

13 (1) shall refund to the service contract holder or
14 credit to the account of the service contract holder the full
15 purchase price of the contract; and

16 (2) may not impose a cancellation fee.

17 (c) If a service contract holder cancels a service contract
18 on or after the 31st day after the date of purchase and a claim has
19 not been made under the contract, the provider:

20 (1) shall refund to the service contract holder or
21 credit to the account of the service contract holder the prorated
22 purchase price of the contract reflecting the remaining term of the
23 service contract based on a reasonably applicable measure of the
24 remaining term that must be disclosed in the service contract; and

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

27 (d) A provider may allow a service contract holder to cancel

1 a service contract on other terms included in the contract,
2 provided the terms do not conflict with this section.

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

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

13 SECTION 1.14. The heading to Section 1304.159, Occupations
14 Code, is amended to read as follows:

15 Sec. 1304.159. CANCELLATION BY PROVIDER; REFUND [~~CANCELING~~
16 ~~A SERVICE CONTRACT~~].

17 SECTION 1.15. Section 1304.159, Occupations Code, is
18 amended by amending Subsection (b) and adding Subsection (c) to
19 read as follows:

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

22 (1) nonpayment of the consideration for the contract;
23 (2) fraud or a material misrepresentation by the
24 service contract holder to the provider or the provider's
25 administrator; or

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

1 (c) A service contract holder whose contract is canceled by
2 the provider in accordance with this section is entitled to a
3 prorated refund of the purchase price of the service contract
4 reflecting the remaining term of the service contract based on a
5 reasonably applicable measure of the remaining term that must be
6 disclosed in the service contract. A provider who cancels a
7 contract under this section may not impose a cancellation fee.

8 SECTION 1.16. Section 1304.161, Occupations Code, is
9 amended to read as follows:

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

11 (a) A provider, administrator, seller, or other [or the
12 provider's] representative of the provider may not, in the
13 provider's service contracts or literature or in any oral or
14 written communication:

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

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

19 (b) A provider, administrator, seller, or other
20 representative of the provider may not commit fraud in any activity
21 subject to regulation by the department.

22 (c) A person, including a bank, a savings and loan
23 association, a lending institution, or the manufacturer or seller
24 of a product, may not require the purchase of a service contract as
25 a condition of a loan or the sale of property.

26 SECTION 1.17. Section 1304.201, Occupations Code, is
27 amended to read as follows:

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

7 SECTION 1.18. Subchapter E, Chapter 1304, Occupations Code,
8 is amended by adding Section 1304.205 to read as follows:

9 Sec. 1304.205. RESTITUTION FOR SERVICE CONTRACT HOLDERS.

10 (a) The commission or executive director may order a person who has
11 operated as a provider or administrator in this state without
12 holding the appropriate registration under this chapter to:

13 (1) rescind a service contract sold or issued during
14 the period that the person was not registered under this chapter;
15 and

16 (2) refund to a service contract holder the full
17 purchase price of a service contract sold or issued during the
18 period that the person was not registered under this chapter.

19 (b) If a seller fails to process a service contract
20 application or a payment from a consumer in accordance with this
21 chapter and any sales agreement or contract between the provider
22 and the seller, the commission or executive director may order the
23 seller to refund the full purchase price of the service contract to
24 the consumer.

25 (c) The remedies described in this section are in addition
26 to any administrative penalty, administrative sanction, civil
27 penalty, or other disciplinary or enforcement action sought under

1 this chapter or Chapter 51.

2 SECTION 1.19. The following provisions of the Occupations
3 Code are repealed:

- 4 (1) Section 1304.006;
- 5 (2) Section 1304.102(d);
- 6 (3) Section 1304.151(b);
- 7 (4) Section 1304.157; and
- 8 (5) Section 1304.158.

9 SECTION 1.20. (a) Not later than April 1, 2012, the Texas
10 Commission of Licensing and Regulation shall adopt rules necessary
11 to implement Chapter 1304, Occupations Code, as amended by this
12 Act.

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

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

27 (d) Notwithstanding Subsection (c) of this section, a

1 service contract sold or issued before January 1, 2012, may not be
2 extended or renewed at the end of the service contract term unless
3 the contract complies with Sections 1304.156 and 1304.159,
4 Occupations Code, as amended by this Act, and Section 1304.1581,
5 Occupations Code, as added by this Act.

6 (e) Section 1304.201, Occupations Code, as amended by this
7 Act, applies only to a disciplinary action initiated by the Texas
8 Department of Licensing and Regulation on or after the effective
9 date of this Act. An action initiated before the effective date of
10 this Act is governed by the law in effect on the date the action was
11 initiated, and the former law is continued in effect for that
12 purpose.

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

20 ARTICLE 2. IDENTITY RECOVERY SERVICE CONTRACTS

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

23 (11) "Seller" means a person, other than the provider
24 or administrator of an identity recovery service contract, who
25 markets, sells, offers to sell, negotiates, or issues an identity
26 recovery service contract on behalf of a provider, but who is not
27 contractually obligated to a service contract holder under the

1 terms of an identity recovery service contract.

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

4 SUBCHAPTER A-1. POWERS AND DUTIES OF DEPARTMENT
5 AND COMMISSION

6 Sec. 1306.022. RULES. The commission shall adopt rules
7 necessary to implement and administer this chapter.

8 SECTION 2.03. Section 1306.008, Occupations Code, is
9 transferred to Subchapter A-1, Chapter 1306, Occupations Code, as
10 added by this Act, redesignated as Section 1306.021, Occupations
11 Code, and amended to read as follows:

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

17 (b) On request of the executive director, a provider shall
18 make the records required by Section 1306.105 available to the
19 executive director as necessary to enable the executive director to
20 reasonably determine compliance with this chapter.

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

24 (a) A person may not offer to sell or operate as a provider
25 or administrator of identity recovery service contracts sold or
26 issued in this state unless the person is registered with the
27 department.

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

7 (d) A person who offers to sell or operates as a provider or
8 administrator of an identity recovery service contract sold or
9 issued in this state may only contract with or use the services of
10 an identity recovery service contract provider or administrator
11 that is registered with the department.

12 SECTION 2.05. Section 1306.052(c), Occupations Code, is
13 amended to read as follows:

14 (c) The department may refuse to issue or renew a
15 registration, suspend or revoke a registration, or take any other
16 disciplinary action under Subchapter D, if the applicant or a
17 controlling person of the applicant:

18 (1) has violated this chapter or a rule adopted or
19 order issued by the commission or executive director under this
20 chapter;

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

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

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

1 (5) has committed fraud or been deceptive or dishonest
2 in any activity subject to regulation by the department.

3 SECTION 2.06. Section 1306.053(a), Occupations Code, is
4 amended to read as follows:

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

8 (1) the reimbursement insurance policy required by
9 Section 1306.102, if the provider is using a reimbursement
10 insurance policy; ~~and~~

11 (2) the proof necessary to demonstrate the applicant
12 has at least \$100 million net worth, if the applicant is using net
13 worth to meet the financial security requirements of Section
14 1306.101; and

15 (3) information about each controlling person of the
16 applicant ~~[a biographical affidavit]~~, in a form prescribed by the
17 executive director ~~[, for each controlling person of the provider]~~.

18 SECTION 2.07. Sections 1306.054(b) and (d), Occupations
19 Code, are amended to read as follows:

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

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

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

1 Government Code, applies ~~[, and~~

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

4 SECTION 2.08. The heading to Subchapter C, Chapter 1306,
5 Occupations Code, is amended to read as follows:

6 SUBCHAPTER C. PRACTICE BY IDENTITY RECOVERY SERVICE CONTRACT
7 PROVIDERS, ~~[AND]~~ ADMINISTRATORS, AND SELLERS

8 SECTION 2.09. Sections 1306.101(a) and (c), Occupations
9 Code, are amended to read as follows:

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

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

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

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

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

27 ~~[(C) a statutory deposit of cash or cash~~

1 ~~equivalents;~~

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

4 ~~[(E) another form of security prescribed by rules~~
5 ~~adopted by the commission; or~~

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

9 (c) If the provider ensures its obligations under
10 Subsection (a)(2) ~~[(a)(3)]~~, the provider must give to the executive
11 director on request:

12 (1) a copy of the provider's or the provider's parent
13 company's most recent Form 10-K or Form 20-F filed with the
14 Securities and Exchange Commission within the preceding calendar
15 year; or

16 (2) if the provider or the provider's parent company
17 does not file with the Securities and Exchange Commission, a copy of
18 the provider's or the provider's parent company's audited financial
19 statements showing a net worth of the provider or its parent company
20 of at least \$100 million.

21 SECTION 2.10. Subchapter C, Chapter 1306, Occupations Code,
22 is amended by adding Sections 1306.1021 and 1306.1031 to read as
23 follows:

24 Sec. 1306.1021. FINANCIAL SECURITY TRANSITION. (a) In
25 this section, "provider that maintained a funded reserve account"
26 means a provider that, in order to ensure the faithful performance
27 of the provider's obligations to identity recovery service contract

1 holders, maintained a funded reserve account covering the
2 provider's obligations under identity recovery service contracts
3 that were issued and outstanding in this state and placed in trust
4 with the executive director a financial security deposit consisting
5 of:

6 (1) a surety bond issued by an authorized surety;

7 (2) securities of the type eligible for deposit by an
8 authorized insurer in this state;

9 (3) a statutory deposit of cash or cash equivalents;

10 (4) a letter of credit issued by a qualified financial
11 institution; or

12 (5) another form of security prescribed by commission
13 rules.

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

16 (c) Not later than September 1, 2012, a provider that
17 maintained a funded reserve account shall submit to the executive
18 director documentation that the provider is in compliance with the
19 financial security requirements provided by Section 1306.101 for
20 identity recovery service contracts sold or issued in this state on
21 or after September 1, 2012. A provider that maintained a funded
22 reserve account may not sell or issue an identity recovery service
23 contract on or after September 1, 2012, unless the provider is in
24 compliance with this subsection.

25 (d) A provider that maintained a funded reserve account
26 shall:

27 (1) continue to maintain the funded reserve account

1 and security deposit at appropriate levels for identity recovery
2 service contracts that were sold or issued in this state before
3 September 1, 2012, until the contracts are no longer in effect; or

4 (2) provide financial security for identity recovery
5 service contracts sold or issued before September 1, 2012, by
6 obtaining a reimbursement insurance policy or maintaining a net
7 worth of at least \$100 million as provided by Section 1306.101.

8 (e) If a provider provides financial security for identity
9 recovery service contracts sold or issued before September 1, 2012,
10 under Subsection (d)(2), the provider shall give to the executive
11 director satisfactory documentation that the reimbursement
12 insurance policy or net worth covers all outstanding identity
13 recovery service contracts issued before September 1, 2012.

14 (f) An identity recovery service contract that is sold or
15 issued before September 1, 2012, and is covered under a funded
16 reserve account and security deposit may not be extended or renewed
17 at the end of the identity recovery service contract term.

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

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

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

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

1 (c) Unless registered as a provider or administrator, a
2 seller is prohibited from engaging in activities that would require
3 registration as a provider or administrator.

4 (d) A seller shall process an identity recovery service
5 contract application and a payment from a consumer in accordance
6 with this chapter and with any sales agreement or contract between
7 the provider and the seller.

8 SECTION 2.11. Sections 1306.106(a), (b), and (d),
9 Occupations Code, are amended to read as follows:

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

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

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

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

18 (4) state the terms and restrictions governing
19 cancellation of the contract by the provider or the identity
20 recovery service contract holder before the expiration date of the
21 contract;

22 (5) identify:

23 (A) any administrator and any registration
24 number issued to the administrator under this chapter;

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

26 (C) the identity recovery service contract
27 holder, if the identity recovery service contract holder provides

1 the holder's name;

2 (6) state the amount of any deductible;

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

5 (8) specify any restriction governing the
6 transferability of the contract; and

7 (9) state the duties of the identity recovery service
8 contract holder, including any duty to protect against any further
9 damage and any requirement to follow the instructions in the
10 identity recovery service contract.

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

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

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

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

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

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

27 (3) contain a statement substantially similar to the

1 following: "Obligations of the provider under this identity
2 recovery service contract are insured under an identity recovery
3 service contract reimbursement insurance policy."

4 SECTION 2.12. Subchapter C, Chapter 1306, Occupations Code,
5 is amended by adding Section 1306.1081 to read as follows:

6 Sec. 1306.1081. CANCELLATION BY IDENTITY RECOVERY SERVICE
7 CONTRACT HOLDER; REFUND. (a) An identity recovery service
8 contract must allow the identity recovery service contract holder
9 to cancel the identity recovery service contract at any time.

10 (b) If an identity recovery service contract holder cancels
11 an identity recovery service contract before the 31st day after the
12 date of purchase and a claim has not been made under the contract,
13 the provider:

14 (1) shall refund to the identity recovery service
15 contract holder or credit to the account of the identity recovery
16 service contract holder the full purchase price of the contract;
17 and

18 (2) may not impose a cancellation fee.

19 (c) If an identity recovery service contract holder cancels
20 an identity recovery service contract on or after the 31st day after
21 the date of purchase and a claim has not been made under the
22 contract, the provider:

23 (1) shall refund to the identity recovery service
24 contract holder or credit to the account of the identity recovery
25 service contract holder the prorated purchase price of the contract
26 reflecting the remaining term of the identity recovery service
27 contract based on a reasonably applicable measure of the remaining

1 term that must be disclosed in the identity recovery service
2 contract; and

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

5 (d) A provider may allow an identity recovery service
6 contract holder to cancel an identity recovery service contract on
7 other terms included in the contract, provided the terms do not
8 conflict with this section.

9 (e) A provider who does not pay the refund or credit the
10 identity recovery service contract holder's account before the 46th
11 day after the date notice of cancellation is received by the
12 provider is liable to the identity recovery service contract holder
13 for a penalty for each month an amount remains outstanding equal to
14 10 percent of the amount outstanding. The penalty is in addition to
15 the full or prorated purchase price of the contract that is owed to
16 the identity recovery service contract holder under this section or
17 the terms of the identity recovery service contract.

18 (f) The right to cancel an identity recovery service
19 contract is not transferable to a subsequent holder of the identity
20 recovery service contract.

21 SECTION 2.13. The heading to Section 1306.109, Occupations
22 Code, is amended to read as follows:

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

25 SECTION 2.14. Section 1306.109, Occupations Code, is
26 amended by amending Subsection (b) and adding Subsection (c) to
27 read as follows:

1 (b) The provider is not required to provide prior notice of
2 cancellation if the identity recovery service contract is canceled
3 because of:

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

5 (2) fraud or a material misrepresentation by the
6 identity recovery service contract holder to the provider or the
7 provider's administrator; or

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

10 (c) An identity recovery service contract holder whose
11 contract is canceled by the provider in accordance with this
12 section is entitled to a prorated refund of the purchase price of
13 the identity recovery service contract reflecting the remaining
14 term of the identity recovery service contract based on a
15 reasonably applicable measure of the remaining term that must be
16 disclosed in the identity recovery service contract. A provider
17 who cancels a contract under this section may not impose a
18 cancellation fee.

19 SECTION 2.15. Section 1306.111, Occupations Code, is
20 amended to read as follows:

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

22 (a) A provider, administrator, seller, or other [~~or the~~
23 ~~provider's~~] representative of the provider may not, in the
24 provider's identity recovery service contracts or literature or in
25 any oral or written communication:

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

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

3 (b) A provider, administrator, seller, or other
4 representative of the provider may not commit fraud in any activity
5 subject to regulation by the department.

6 (c) A person regulated by Chapter 2301 may not require the
7 purchase of an identity recovery service contract as a condition of
8 a loan or the sale of a vehicle.

9 SECTION 2.16. Section 1306.151, Occupations Code, is
10 amended to read as follows:

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

17 SECTION 2.17. Subchapter D, Chapter 1306, Occupations Code,
18 is amended by adding Section 1306.155 to read as follows:

19 Sec. 1306.155. RESTITUTION FOR IDENTITY RECOVERY SERVICE
20 CONTRACT HOLDERS. (a) The commission or executive director may
21 order a person who has operated as a provider or administrator in
22 this state without holding the appropriate registration under this
23 chapter to:

24 (1) rescind an identity recovery service contract sold
25 or issued during the period that the person was not registered under
26 this chapter; and

27 (2) refund to an identity recovery service contract

1 holder the full purchase price of an identity recovery service
2 contract sold or issued during the period that the person was not
3 registered under this chapter.

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

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

14 SECTION 2.18. The following provisions of the Occupations
15 Code are repealed:

- 16 (1) Section 1306.007;
- 17 (2) Section 1306.052(d);
- 18 (3) Section 1306.101(b);
- 19 (4) Section 1306.107; and
- 20 (5) Section 1306.108.

21 SECTION 2.19. (a) Not later than April 1, 2012, the Texas
22 Commission of Licensing and Regulation shall adopt rules necessary
23 to implement Chapter 1306, Occupations Code, as amended by this
24 Act.

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

1 Licensing and Regulation on or after the effective date of this Act.
2 An application filed before that date is governed by the law in
3 effect on the date the application was filed, and the former law is
4 continued in effect for that purpose.

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

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

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

25 (f) Section 1306.155, Occupations Code, as added by this
26 Act, applies only to an act or omission of a person operating as a
27 provider, administrator, or seller of an identity recovery service

1 contract that occurs on or after the effective date of this Act. An
2 act or omission that occurs before that date is governed by the law
3 in effect on the date the act or omission occurred, and the former
4 law is continued in effect for that purpose.

5 ARTICLE 3. EFFECTIVE DATE

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