

1-1 By: Carona S.B. No. 1169
1-2 (In the Senate - Filed March 4, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 11, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 11, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1169 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of providers, administrators, and
1-11 sellers of service contracts and identity recovery service
1-12 contracts; providing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 ARTICLE 1. SERVICE CONTRACTS

1-15 SECTION 1.01. Section 1304.002, Occupations Code, is
1-16 amended by adding Subdivision (8-a) to read as follows:

1-17 (8-a) "Seller" means a person, other than the provider
1-18 or administrator of a service contract, who markets, sells, offers
1-19 to sell, negotiates, or issues a service contract to a consumer on
1-20 behalf of a provider, but who is not contractually obligated to a
1-21 service contract holder under the terms of a service contract.

1-22 SECTION 1.02. Chapter 1304, Occupations Code, is amended by
1-23 adding Subchapter B to read as follows:

1-24 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT
1-25 AND COMMISSION

1-26 Sec. 1304.052. RULES. The commission shall adopt rules
1-27 necessary to implement and administer this chapter.

1-28 SECTION 1.03. Section 1304.007, Occupations Code, is
1-29 transferred to Subchapter B, Chapter 1304, Occupations Code, as
1-30 added by this Act, redesignated as Section 1304.051, Occupations
1-31 Code, and amended to read as follows:

1-32 Sec. 1304.051 [1304.007]. GENERAL INVESTIGATIVE POWER OF
1-33 EXECUTIVE DIRECTOR. (a) The executive director may investigate a
1-34 provider, administrator, seller, or other person as necessary to
1-35 enforce this chapter and protect service contract holders in this
1-36 state.

1-37 (b) On request of the executive director, a provider shall
1-38 make the records required by Section 1304.155 available to the
1-39 executive director as necessary to enable the executive director to
1-40 reasonably determine compliance with this chapter.

1-41 SECTION 1.04. Section 1304.101, Occupations Code, is
1-42 amended to read as follows:

1-43 Sec. 1304.101. REGISTRATION REQUIRED; EXEMPTION FROM OTHER
1-44 LICENSING REQUIREMENTS. (a) A person may not operate as a
1-45 provider or administrator of service contracts sold or issued in
1-46 this state unless the person is registered with the department.

1-47 (b) Except for the registration requirement of this chapter
1-48 [subchapter], a provider, [service—contract] seller,
1-49 administrator, or other person who markets, sells, issues, or
1-50 offers to sell service contracts is exempt from any licensing
1-51 requirement of this state that relates to an activity regulated
1-52 under this chapter.

1-53 (c) A provider or administrator may not contract with or use
1-54 the services of a person to perform an activity that requires
1-55 registration with the department as a provider or administrator
1-56 unless that person is appropriately registered.

1-57 SECTION 1.05. Subsection (c), Section 1304.102,
1-58 Occupations Code, is amended to read as follows:

1-59 (c) The department may refuse to issue or renew a
1-60 registration, suspend or revoke a registration, or take any other
1-61 disciplinary action under Subchapter E if the applicant or a
1-62 controlling person of the applicant:

1-63 (1) has violated this chapter or a rule adopted or

2-1 order issued by the commission or executive director under this
 2-2 chapter;

2-3 (2) has made a material misrepresentation or false
 2-4 statement in an application or in any document accompanying an
 2-5 application;

2-6 (3) has had a license issued under Title 13, Insurance
 2-7 Code, revoked as provided by that code; or

2-8 (4) has had a license or registration as a provider,
 2-9 administrator, or seller revoked in this state or another state.

2-10 SECTION 1.06. Subsection (a), Section 1304.1025,
 2-11 Occupations Code, is amended to read as follows:

2-12 (a) In addition to the requirements of Section 1304.102, an
 2-13 applicant for issuance or renewal of a provider registration must
 2-14 file with the application:

2-15 (1) the reimbursement insurance policy, if the
 2-16 provider is using a reimbursement insurance policy to meet the
 2-17 requirements of Section 1304.151; [and]

2-18 (2) the proof necessary to demonstrate the applicant
 2-19 has at least \$100 million net worth, if the applicant is using net
 2-20 worth to meet the financial security requirements of Section
 2-21 1304.151; and

2-22 (3) information about each controlling person of the
 2-23 applicant [a biographical affidavit,] in a form prescribed by the
 2-24 executive director[, for each controlling person of the provider].

2-25 SECTION 1.07. Subsections (a) and (b), Section 1304.103,
 2-26 Occupations Code, are amended to read as follows:

2-27 (a) The executive director shall develop a tiered schedule
 2-28 of registration and renewal fees under which a provider's fee is
 2-29 based on the number of service contracts the provider sold or issued
 2-30 in this state during the preceding 12-month period.

2-31 (b) The commission shall set ~~[the amounts of]~~ fees to cover
 2-32 the costs of administering this chapter, including registration and
 2-33 renewal fees for administrators.

2-34 SECTION 1.08. Section 1304.104, Occupations Code, is
 2-35 amended to read as follows:

2-36 Sec. 1304.104. INFORMATION CONCERNING NUMBER OF SERVICE
 2-37 CONTRACTS SOLD OR ISSUED. Information concerning the number of
 2-38 service contracts sold or issued by a provider that is submitted
 2-39 under Section 1304.103~~+~~

2-40 ~~[(1)]~~ is a trade secret to which Section 552.110,
 2-41 Government Code, applies~~+, and~~

2-42 ~~[(2) may be used only by the executive director and the~~
 2-43 ~~department in developing the tiered fee schedule under Section~~
 2-44 ~~1304.103].~~

2-45 SECTION 1.09. The heading to Subchapter D, Chapter 1304,
 2-46 Occupations Code, is amended to read as follows:

2-47 SUBCHAPTER D. PRACTICE BY SERVICE CONTRACT PROVIDERS,
 2-48 ~~[AND]~~ ADMINISTRATORS, AND SELLERS

2-49 SECTION 1.10. The heading to Section 1304.151, Occupations
 2-50 Code, is amended to read as follows:

2-51 Sec. 1304.151. FINANCIAL SECURITY REQUIREMENTS;
 2-52 DISTRIBUTION OF FUNDS HELD IN TRUST.

2-53 SECTION 1.11. Section 1304.151, Occupations Code, is
 2-54 amended by amending Subsections (a) and (c) and adding Subsection
 2-55 (f) to read as follows:

2-56 (a) To ensure the faithful performance of a provider's
 2-57 obligations to its service contract holders, each provider must:

2-58 (1) insure the provider's service contracts under a
 2-59 reimbursement insurance policy issued by an insurer authorized to
 2-60 transact insurance in this state or by a surplus lines insurer
 2-61 eligible to place coverage in this state under Chapter 981,
 2-62 Insurance Code; or

2-63 (2) ~~[maintain a funded reserve account covering the~~
 2-64 ~~provider's obligations under its service contracts that are issued~~
 2-65 ~~and outstanding in this state and place in trust with the executive~~
 2-66 ~~director a financial security deposit consisting of:~~

2-67 ~~[(A) a surety bond issued by an authorized~~
 2-68 ~~surety,~~

2-69 ~~[(B) securities of the type eligible for deposit~~

3-1 ~~by an authorized insurer in this state,~~
 3-2 ~~[(C) a statutory deposit of cash or cash~~
 3-3 ~~equivalents,~~
 3-4 ~~[(D) a letter of credit issued by a qualified~~
 3-5 ~~financial institution; or~~
 3-6 ~~[(E) another form of security prescribed by rules~~
 3-7 ~~adopted by the commission; or~~
 3-8 ~~[(3)] maintain, or have a parent company that~~
 3-9 maintains, a net worth or stockholders' equity of at least \$100
 3-10 million.

3-11 (c) If the provider ensures its obligations under
 3-12 Subsection (a)(2) ~~[(a)(3)]~~, the provider must give to the executive
 3-13 director on request:

3-14 (1) a copy of the provider's or the provider's parent
 3-15 company's most recent Form 10-K or Form 20-F filed with the
 3-16 Securities and Exchange Commission within the preceding calendar
 3-17 year; or

3-18 (2) if the provider or the provider's parent company
 3-19 does not file with the Securities and Exchange Commission, a copy of
 3-20 the provider's or the provider's parent company's audited financial
 3-21 statements showing a net worth of the provider or its parent company
 3-22 of at least \$100 million.

3-23 (f) In the event of a provider's bankruptcy or a similar
 3-24 event affecting the ability of the provider to faithfully perform
 3-25 its obligations to its service contract holders, the executive
 3-26 director may distribute any funds held in trust as financial
 3-27 security for the provider under this section to eligible service
 3-28 contract holders as payment for claims. The executive director
 3-29 must distribute the funds in an equitable and cost-effective
 3-30 manner.

3-31 SECTION 1.12. Subchapter D, Chapter 1304, Occupations Code,
 3-32 is amended by adding Sections 1304.1521 and 1304.1531 to read as
 3-33 follows:

3-34 Sec. 1304.1521. FINANCIAL SECURITY TRANSITION. (a) In
 3-35 this section, "provider that maintained a funded reserve account"
 3-36 means a provider that, in order to ensure the faithful performance
 3-37 of the provider's obligations to service contract holders,
 3-38 maintained a funded reserve account covering the provider's
 3-39 obligations under service contracts that were issued and
 3-40 outstanding in this state and placed in trust with the executive
 3-41 director a financial security deposit consisting of:

3-42 (1) a surety bond issued by an authorized surety;
 3-43 (2) securities of the type eligible for deposit by an
 3-44 authorized insurer in this state;
 3-45 (3) a statutory deposit of cash or cash equivalents;
 3-46 (4) a letter of credit issued by a qualified financial
 3-47 institution; or
 3-48 (5) another form of security prescribed by commission
 3-49 rules.

3-50 (b) This section applies only to a provider that maintained
 3-51 a funded reserve account on August 31, 2011.

3-52 (c) Not later than September 1, 2012, a provider that
 3-53 maintained a funded reserve account shall submit to the executive
 3-54 director documentation that the provider is in compliance with the
 3-55 financial security requirements provided by Section 1304.151 for
 3-56 service contracts sold or issued in this state on or after September
 3-57 1, 2012. A provider that maintained a funded reserve account may
 3-58 not sell or issue a service contract on or after September 1, 2012,
 3-59 unless the provider is in compliance with this subsection.

3-60 (d) A provider that maintained a funded reserve account
 3-61 shall:

3-62 (1) continue to maintain the funded reserve account
 3-63 and security deposit at appropriate levels for service contracts
 3-64 that were sold or issued in this state before September 1, 2012,
 3-65 until the contracts are no longer in effect; or

3-66 (2) provide financial security for service contracts
 3-67 sold or issued before September 1, 2012, by obtaining a
 3-68 reimbursement insurance policy or maintaining a net worth of at
 3-69 least \$100 million as provided by Section 1304.151.

4-1 (e) If a provider provides financial security for service
4-2 contracts sold or issued before September 1, 2012, under Subsection
4-3 (d)(2), the provider shall give to the executive director
4-4 satisfactory documentation that the reimbursement insurance policy
4-5 or net worth covers all outstanding service contracts issued before
4-6 September 1, 2012.

4-7 (f) A service contract that is sold or issued before
4-8 September 1, 2012, and is covered under a funded reserve account and
4-9 security deposit may not be extended or renewed at the end of the
4-10 service contract term.

4-11 Sec. 1304.1531. SERVICE CONTRACT SELLERS;
4-12 RESPONSIBILITIES. (a) A provider may employ or contract with a
4-13 seller to be responsible for:

4-14 (1) all or any part of the sale or marketing of service
4-15 contracts for the provider; and

4-16 (2) compliance with this chapter in connection with
4-17 the sale or marketing of service contracts.

4-18 (b) The hiring of or contracting with a seller under this
4-19 section does not affect a provider's responsibility to comply with
4-20 this chapter.

4-21 (c) Unless registered as a provider or administrator, a
4-22 seller is prohibited from engaging in activities that would require
4-23 registration as a provider or administrator.

4-24 (d) A seller shall process a service contract application
4-25 and a payment from a consumer in accordance with this chapter and
4-26 with any sales agreement or contract between the provider and the
4-27 seller.

4-28 SECTION 1.13. Subsections (a), (b), and (d), Section
4-29 1304.156, Occupations Code, are amended to read as follows:

4-30 (a) A service contract marketed, sold, offered for sale,
4-31 issued, made, proposed to be made, or administered in this state
4-32 must:

4-33 (1) be written, printed, or typed in clear,
4-34 understandable language that is easy to read;

4-35 (2) state the name and address of the provider;

4-36 (3) state the purchase price of the contract and the
4-37 terms under which the contract is sold;

4-38 (4) state the terms and restrictions governing
4-39 cancellation of the contract by the provider or the service
4-40 contract holder before the expiration date of the contract;

4-41 (5) identify:

4-42 (A) any administrator and any registration
4-43 number issued to the administrator under this chapter;

4-44 (B) the [contract] seller; and

4-45 (C) the service contract holder, if the service
4-46 contract holder provides the holder's name;

4-47 (6) state the amount of any deductible;

4-48 (7) specify the products and services to be provided
4-49 under the contract and any limitation, exception, or exclusion;

4-50 (8) specify any restriction governing the
4-51 transferability of the contract;

4-52 (9) state the duties of the service contract holder,
4-53 including any duty to protect against any further damage and any
4-54 requirement to follow the instructions in the owner's manual; and

4-55 (10) state whether the contract provides for or
4-56 excludes consequential damages or preexisting conditions, if
4-57 applicable.

4-58 (b) The identity and, if applicable, registration number
4-59 issued under this chapter of a person described by Subsection
4-60 (a)(5) is not required to be preprinted on the service contract and
4-61 may be added to the contract at the time of sale.

4-62 (d) A service contract insured under a reimbursement
4-63 insurance policy under Section 1304.152 [1304.151(a)(1)] must:

4-64 (1) state the name and address of the insurer;

4-65 (2) state that the service contract holder may apply
4-66 for reimbursement directly to the insurer if:

4-67 (A) a covered service is not provided to the
4-68 service contract holder by the provider before the 61st [not later
4-69 than the 60th] day after the date of proof of loss; or

5-1 (B) a refund or credit is not paid before the 46th
 5-2 day after the date on which the contract is canceled [~~returned to~~
 5-3 ~~the provider~~] under Section 1304.1581 [~~1304.158~~]; and

5-4 (3) contain a statement substantially similar to the
 5-5 following: "Obligations of the provider under this service
 5-6 contract are insured under a service contract reimbursement
 5-7 insurance policy."

5-8 SECTION 1.14. Subchapter D, Chapter 1304, Occupations Code,
 5-9 is amended by adding Section 1304.1581 to read as follows:

5-10 Sec. 1304.1581. CANCELLATION BY SERVICE CONTRACT HOLDER;
 5-11 REFUND. (a) A service contract must allow the service contract
 5-12 holder to cancel the service contract at any time.

5-13 (b) If a service contract holder cancels a service contract
 5-14 before the 31st day after the date of purchase, the provider:

5-15 (1) shall refund to the service contract holder or
 5-16 credit to the account of the service contract holder the full
 5-17 purchase price of the contract, decreased by the amount of any
 5-18 claims paid under the contract; and

5-19 (2) may not impose a cancellation fee.

5-20 (c) If a service contract holder cancels a service contract
 5-21 on or after the 31st day after the date of purchase, the provider:

5-22 (1) shall refund to the service contract holder or
 5-23 credit to the account of the service contract holder the prorated
 5-24 purchase price of the contract reflecting the remaining term of the
 5-25 contract, based on mileage, time, or another reasonably applicable
 5-26 measure of the remaining term that must be disclosed in the
 5-27 contract, decreased by the amount of any claims paid under the
 5-28 contract; and

5-29 (2) may impose a reasonable cancellation fee not to
 5-30 exceed \$50.

5-31 (d) A provider may allow a service contract holder to cancel
 5-32 a service contract on other terms included in the contract,
 5-33 provided the terms do not conflict with this section.

5-34 (e) A provider who does not pay the refund or credit the
 5-35 service contract holder's account before the 46th day after the
 5-36 date notice of cancellation is received by the provider is liable to
 5-37 the service contract holder for a penalty for each month an amount
 5-38 remains outstanding equal to 10 percent of the amount outstanding.
 5-39 The penalty is in addition to the full or prorated purchase price of
 5-40 the contract that is owed to the service contract holder under this
 5-41 section or the terms of the contract.

5-42 (f) The right to cancel a service contract is not
 5-43 transferable to a subsequent holder of the contract.

5-44 SECTION 1.15. The heading to Section 1304.159, Occupations
 5-45 Code, is amended to read as follows:

5-46 Sec. 1304.159. CANCELLATION BY PROVIDER; REFUND [~~CANCELING~~
 5-47 ~~A SERVICE CONTRACT~~].

5-48 SECTION 1.16. Section 1304.159, Occupations Code, is
 5-49 amended by amending Subsection (b) and adding Subsection (c) to
 5-50 read as follows:

5-51 (b) The provider is not required to provide prior notice of
 5-52 cancellation if the service contract is canceled because of:

5-53 (1) nonpayment of the consideration for the contract;

5-54 (2) fraud or a material misrepresentation by the
 5-55 service contract holder to the provider or the provider's
 5-56 administrator; or

5-57 (3) a substantial breach of a duty by the service
 5-58 contract holder relating to the covered product or its use.

5-59 (c) A service contract holder whose contract is canceled by
 5-60 the provider in accordance with this section is entitled to a
 5-61 prorated refund of the purchase price of the contract reflecting
 5-62 the remaining term of the contract, based on mileage, time, or
 5-63 another reasonably applicable measure of the remaining term that
 5-64 must be disclosed in the contract, decreased by the amount of any
 5-65 claims paid under the contract. A provider who cancels a contract
 5-66 under this section may not impose a cancellation fee.

5-67 SECTION 1.17. Section 1304.161, Occupations Code, is
 5-68 amended to read as follows:

5-69 Sec. 1304.161. [MISLEADING STATEMENTS] PROHIBITED ACTS.

6-1 (a) A provider, administrator, seller, or other [or the
6-2 provider's] representative of the provider may not, in the
6-3 provider's service contracts or literature or in any written
6-4 communication:

6-5 (1) make, permit, or cause to be made any false,
6-6 deceptive, or misleading statement; or

6-7 (2) deliberately omit a material statement if the
6-8 omission would be considered misleading.

6-9 (b) A person, including a bank, a savings and loan
6-10 association, a lending institution, or the manufacturer or seller
6-11 of a product, may not require the purchase of a service contract as
6-12 a condition of a loan or the sale of property.

6-13 (c) A provider, administrator, seller, or other
6-14 representative of the provider may not make a telemarketing call to
6-15 a consumer as provided by Sections 304.002 and 304.003, Business &
6-16 Commerce Code, unless the provider, administrator, seller, or
6-17 representative has an established business relationship, as
6-18 defined by Section 304.002, Business & Commerce Code, with the
6-19 consumer.

6-20 SECTION 1.18. Section 1304.201, Occupations Code, is
6-21 amended to read as follows:

6-22 Sec. 1304.201. DISCIPLINARY ACTION. [~~(a)~~] On a finding
6-23 that a ground for disciplinary action exists under this chapter,
6-24 the commission or executive director may impose an administrative
6-25 sanction or [~~including an~~] administrative penalty or seek a civil
6-26 penalty or any other remedy as provided by this chapter and
6-27 [~~Subchapter F,~~] Chapter 51.

6-28 SECTION 1.19. Subchapter E, Chapter 1304, Occupations Code,
6-29 is amended by adding Section 1304.205 to read as follows:

6-30 Sec. 1304.205. REMEDY FOR SERVICE CONTRACT HOLDERS.

6-31 (a) If the commission by order, including an agreed order,
6-32 determines that a person has operated as a provider or
6-33 administrator in this state without holding the appropriate
6-34 registration under this chapter, the person shall offer to a
6-35 service contract holder who holds a service contract sold or issued
6-36 by the person during the period that the person was not registered
6-37 under this chapter the right to:

6-38 (1) cancel the contract and obtain a refund of the full
6-39 purchase price of the contract; or

6-40 (2) retain the contract.

6-41 (b) If a seller fails to process a service contract
6-42 application or a payment from a consumer in accordance with this
6-43 chapter and any sales agreement or contract between the provider
6-44 and the seller, the commission or executive director may, by
6-45 commission order, including an agreed order, require the seller to
6-46 refund the full purchase price of the contract to the consumer.

6-47 (c) The remedies described in this section are in addition
6-48 to any administrative penalty, administrative sanction, civil
6-49 penalty, or other disciplinary or enforcement action sought under
6-50 this chapter or Chapter 51.

6-51 SECTION 1.20. (a) On the effective date of this Act, the
6-52 following provisions of the Occupations Code are repealed:

- 6-53 (1) Section 1304.006;
- 6-54 (2) Subsection (d), Section 1304.102; and
- 6-55 (3) Subsection (b), Section 1304.151.

6-56 (b) On January 1, 2012, the following provisions of the
6-57 Occupations Code are repealed:

- 6-58 (1) Section 1304.157; and
- 6-59 (2) Section 1304.158.

6-60 SECTION 1.21. (a) Not later than April 1, 2012, the Texas
6-61 Commission of Licensing and Regulation shall adopt rules necessary
6-62 to implement Chapter 1304, Occupations Code, as amended by this
6-63 Act.

6-64 (b) Sections 1304.102 and 1304.1025, Occupations Code, as
6-65 amended by this Act, apply only to an application for a registration
6-66 or renewal of a registration filed with the Texas Department of
6-67 Licensing and Regulation on or after the effective date of this Act.
6-68 An application filed before that date is governed by the law in
6-69 effect on the date the application was filed, and the former law is

7-1 continued in effect for that purpose.

7-2 (c) Sections 1304.156 and 1304.159, Occupations Code, as
 7-3 amended by this Act, and Section 1304.1581, Occupations Code, as
 7-4 added by this Act, apply only to a service contract sold or issued
 7-5 on or after January 1, 2012. A service contract sold or issued
 7-6 before that date is governed by the law in effect on the date the
 7-7 contract was sold or issued, and the former law is continued in
 7-8 effect for that purpose.

7-9 (d) Notwithstanding Subsection (c) of this section, a
 7-10 service contract sold or issued before January 1, 2012, may not be
 7-11 extended or renewed at the end of the service contract term unless
 7-12 the contract complies with Sections 1304.156 and 1304.159,
 7-13 Occupations Code, as amended by this Act, and Section 1304.1581,
 7-14 Occupations Code, as added by this Act.

7-15 (e) Section 1304.201, Occupations Code, as amended by this
 7-16 Act, applies only to a disciplinary action initiated by the Texas
 7-17 Department of Licensing and Regulation on or after the effective
 7-18 date of this Act. An action initiated before the effective date of
 7-19 this Act is governed by the law in effect on the date the action was
 7-20 initiated, and the former law is continued in effect for that
 7-21 purpose.

7-22 (f) Section 1304.205, Occupations Code, as added by this
 7-23 Act, applies only to an act or omission of a person operating as a
 7-24 provider, administrator, or seller of a service contract that
 7-25 occurs on or after the effective date of this Act. An act or
 7-26 omission that occurs before that date is governed by the law in
 7-27 effect on the date the act or omission occurred, and the former law
 7-28 is continued in effect for that purpose.

7-29 ARTICLE 2. IDENTITY RECOVERY SERVICE CONTRACTS

7-30 SECTION 2.01. Section 1306.002, Occupations Code, is
 7-31 amended by adding Subdivision (11) to read as follows:

7-32 (11) "Seller" means a person, other than the provider
 7-33 or administrator of an identity recovery service contract, who
 7-34 markets, sells, offers to sell, negotiates, or issues an identity
 7-35 recovery service contract to a consumer on behalf of a provider, but
 7-36 who is not contractually obligated to a service contract holder
 7-37 under the terms of an identity recovery service contract.

7-38 SECTION 2.02. Chapter 1306, Occupations Code, is amended by
 7-39 adding Subchapter A-1 to read as follows:

7-40 SUBCHAPTER A-1. POWERS AND DUTIES OF DEPARTMENT 7-41 AND COMMISSION

7-42 Sec. 1306.022. RULES. The commission shall adopt rules
 7-43 necessary to implement and administer this chapter.

7-44 SECTION 2.03. Section 1306.008, Occupations Code, is
 7-45 transferred to Subchapter A-1, Chapter 1306, Occupations Code, as
 7-46 added by this Act, redesignated as Section 1306.021, Occupations
 7-47 Code, and amended to read as follows:

7-48 Sec. 1306.021 [1306.008]. GENERAL INVESTIGATIVE POWER OF
 7-49 EXECUTIVE DIRECTOR. (a) The executive director may investigate a
 7-50 provider, administrator, seller, or other person as necessary to
 7-51 enforce this chapter and protect identity recovery service contract
 7-52 holders in this state.

7-53 (b) On request of the executive director, a provider shall
 7-54 make the records required by Section 1306.105 available to the
 7-55 executive director as necessary to enable the executive director to
 7-56 reasonably determine compliance with this chapter.

7-57 SECTION 2.04. Section 1306.051, Occupations Code, is
 7-58 amended by amending Subsections (a) and (b) and adding Subsection
 7-59 (d) to read as follows:

7-60 (a) A person may not operate as a provider or administrator
 7-61 of identity recovery service contracts sold or issued in this state
 7-62 unless the person is registered with the department.

7-63 (b) Except for the registration requirement of this chapter
 7-64 [subchapter], a provider, [~~identity recovery service contract~~]
 7-65 seller, administrator, or other person who markets, sells, issues,
 7-66 or offers to sell identity recovery service contracts is exempt
 7-67 from any licensing requirement of this state that relates to an
 7-68 activity regulated under this chapter.

7-69 (d) A provider or administrator may not contract with or use

8-1 the services of a person to perform an activity that requires
8-2 registration with the department as a provider or administrator
8-3 unless that person is appropriately registered.

8-4 SECTION 2.05. Subsection (c), Section 1306.052,
8-5 Occupations Code, is amended to read as follows:

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

8-10 (1) has violated this chapter or a rule adopted or
8-11 order issued by the commission or executive director under this
8-12 chapter;

8-13 (2) has made a material misrepresentation or false
8-14 statement in an application or in any document accompanying an
8-15 application;

8-16 (3) has had a license issued under Title 13, Insurance
8-17 Code, revoked as provided by that code; or

8-18 (4) has had a license or registration as a provider,
8-19 administrator, or seller revoked in this state or another state.

8-20 SECTION 2.06. Subsection (a), Section 1306.053,
8-21 Occupations Code, is amended to read as follows:

8-22 (a) In addition to the requirements of Section 1306.052, an
8-23 applicant for issuance or renewal of a provider registration must
8-24 file with the application:

8-25 (1) the reimbursement insurance policy required by
8-26 Section 1306.102, if the provider is using a reimbursement
8-27 insurance policy; ~~and~~

8-28 (2) the proof necessary to demonstrate the applicant
8-29 has at least \$100 million net worth, if the applicant is using net
8-30 worth to meet the financial security requirements of Section
8-31 1306.101; and

8-32 (3) information about each controlling person of the
8-33 applicant ~~[a biographical affidavit], in a form prescribed by the~~
8-34 ~~executive director[, for each controlling person of the provider].~~

8-35 SECTION 2.07. Subsections (b) and (d), Section 1306.054,
8-36 Occupations Code, are amended to read as follows:

8-37 (b) To register or renew a registration, a provider or
8-38 administrator must pay the appropriate fee. The commission shall
8-39 set by rule the ~~[amounts of the registration and renewal]~~ fees
8-40 required to cover the costs of administering this chapter.

8-41 (d) The information concerning the number of identity
8-42 recovery service contracts sold or issued by a provider that is
8-43 submitted under Subsection (c) ~~[+~~

8-44 ~~[(1)]~~ is a trade secret to which Section 552.110,
8-45 Government Code, applies ~~[, and~~

8-46 ~~[(2) may be used only by the executive director and the~~
8-47 ~~department for the purposes of this section].~~

8-48 SECTION 2.08. The heading to Subchapter C, Chapter 1306,
8-49 Occupations Code, is amended to read as follows:

8-50 SUBCHAPTER C. PRACTICE BY IDENTITY RECOVERY SERVICE CONTRACT
8-51 PROVIDERS, ~~[AND]~~ ADMINISTRATORS, AND SELLERS

8-52 SECTION 2.09. The heading to Section 1306.101, Occupations
8-53 Code, is amended to read as follows:

8-54 Sec. 1306.101. FINANCIAL SECURITY REQUIREMENTS;
8-55 DISTRIBUTION OF FUNDS HELD IN TRUST.

8-56 SECTION 2.10. Section 1306.101, Occupations Code, is
8-57 amended by amending Subsections (a) and (c) and adding Subsection
8-58 (f) to read as follows:

8-59 (a) To ensure the faithful performance of a provider's
8-60 obligations to its identity recovery service contract holders, each
8-61 provider must:

8-62 (1) insure the provider's identity recovery service
8-63 contracts under a reimbursement insurance policy issued by an
8-64 insurer authorized to transact insurance in this state or by a
8-65 surplus lines insurer eligible to place coverage in this state
8-66 under Chapter 981, Insurance Code; or

8-67 (2) ~~[maintain a funded reserve account covering the~~
8-68 ~~provider's obligations under its identity recovery service~~
8-69 ~~contracts that are issued and outstanding in this state and place in~~

9-1 ~~trust with the executive director a financial security deposit~~
 9-2 ~~consisting of:~~
 9-3 ~~[(A) a surety bond issued by an authorized~~
 9-4 ~~surety,~~
 9-5 ~~[(B) securities of the type eligible for deposit~~
 9-6 ~~by an authorized insurer in this state,~~
 9-7 ~~[(C) a statutory deposit of cash or cash~~
 9-8 ~~equivalents,~~
 9-9 ~~[(D) a letter of credit issued by a qualified~~
 9-10 ~~financial institution; or~~
 9-11 ~~[(E) another form of security prescribed by rules~~
 9-12 ~~adopted by the commission; or~~
 9-13 ~~[(3)] maintain, or have a parent company that~~
 9-14 ~~maintains, a net worth or stockholders' equity of at least \$100~~
 9-15 ~~million.~~

9-16 (c) If the provider ensures its obligations under
 9-17 Subsection (a)(2) ~~[(a)(3)]~~, the provider must give to the executive
 9-18 director on request:

9-19 (1) a copy of the provider's or the provider's parent
 9-20 company's most recent Form 10-K or Form 20-F filed with the
 9-21 Securities and Exchange Commission within the preceding calendar
 9-22 year; or

9-23 (2) if the provider or the provider's parent company
 9-24 does not file with the Securities and Exchange Commission, a copy of
 9-25 the provider's or the provider's parent company's audited financial
 9-26 statements showing a net worth of the provider or its parent company
 9-27 of at least \$100 million.

9-28 (f) In the event of a provider's bankruptcy or a similar
 9-29 event affecting the ability of the provider to faithfully perform
 9-30 its obligations to its identity recovery service contract holders,
 9-31 the executive director may distribute any funds held in trust as
 9-32 financial security for the provider under this section to eligible
 9-33 identity recovery service contract holders as payment for claims.
 9-34 The executive director must distribute the funds in an equitable
 9-35 and cost-effective manner.

9-36 SECTION 2.11. Subchapter C, Chapter 1306, Occupations Code,
 9-37 is amended by adding Sections 1306.1021 and 1306.1031 to read as
 9-38 follows:

9-39 Sec. 1306.1021. FINANCIAL SECURITY TRANSITION. (a) In
 9-40 this section, "provider that maintained a funded reserve account"
 9-41 means a provider that, in order to ensure the faithful performance
 9-42 of the provider's obligations to identity recovery service contract
 9-43 holders, maintained a funded reserve account covering the
 9-44 provider's obligations under identity recovery service contracts
 9-45 that were issued and outstanding in this state and placed in trust
 9-46 with the executive director a financial security deposit consisting
 9-47 of:

- 9-48 (1) a surety bond issued by an authorized surety;
- 9-49 (2) securities of the type eligible for deposit by an
 9-50 authorized insurer in this state;
- 9-51 (3) a statutory deposit of cash or cash equivalents;
- 9-52 (4) a letter of credit issued by a qualified financial
 9-53 institution; or
- 9-54 (5) another form of security prescribed by commission
 9-55 rules.

9-56 (b) This section applies only to a provider that maintained
 9-57 a funded reserve account on August 31, 2011.

9-58 (c) Not later than September 1, 2012, a provider that
 9-59 maintained a funded reserve account shall submit to the executive
 9-60 director documentation that the provider is in compliance with the
 9-61 financial security requirements provided by Section 1306.101 for
 9-62 identity recovery service contracts sold or issued in this state on
 9-63 or after September 1, 2012. A provider that maintained a funded
 9-64 reserve account may not sell or issue an identity recovery service
 9-65 contract on or after September 1, 2012, unless the provider is in
 9-66 compliance with this subsection.

9-67 (d) A provider that maintained a funded reserve account
 9-68 shall:

- 9-69 (1) continue to maintain the funded reserve account

10-1 and security deposit at appropriate levels for identity recovery
 10-2 service contracts that were sold or issued in this state before
 10-3 September 1, 2012, until the contracts are no longer in effect; or
 10-4 (2) provide financial security for identity recovery
 10-5 service contracts sold or issued before September 1, 2012, by
 10-6 obtaining a reimbursement insurance policy or maintaining a net
 10-7 worth of at least \$100 million as provided by Section 1306.101.
 10-8 (e) If a provider provides financial security for identity
 10-9 recovery service contracts sold or issued before September 1, 2012,
 10-10 under Subsection (d)(2), the provider shall give to the executive
 10-11 director satisfactory documentation that the reimbursement
 10-12 insurance policy or net worth covers all outstanding identity
 10-13 recovery service contracts issued before September 1, 2012.
 10-14 (f) An identity recovery service contract that is sold or
 10-15 issued before September 1, 2012, and is covered under a funded
 10-16 reserve account and security deposit may not be extended or renewed
 10-17 at the end of the identity recovery service contract term.
 10-18 Sec. 1306.1031. IDENTITY RECOVERY SERVICE CONTRACT
 10-19 SELLERS; RESPONSIBILITIES. (a) A provider may employ or contract
 10-20 with a seller to be responsible for:
 10-21 (1) all or any part of the sale or marketing of
 10-22 identity recovery service contracts for the provider; and
 10-23 (2) compliance with this chapter in connection with
 10-24 the sale or marketing of identity recovery service contracts.
 10-25 (b) The hiring of or contracting with a seller under this
 10-26 section does not affect a provider's responsibility to comply with
 10-27 this chapter.
 10-28 (c) Unless registered as a provider or administrator, a
 10-29 seller is prohibited from engaging in activities that would require
 10-30 registration as a provider or administrator.
 10-31 (d) A seller shall process an identity recovery service
 10-32 contract application and a payment from a consumer in accordance
 10-33 with this chapter and with any sales agreement or contract between
 10-34 the provider and the seller.
 10-35 SECTION 2.12. Subsections (a), (b), and (d), Section
 10-36 1306.106, Occupations Code, are amended to read as follows:
 10-37 (a) An identity recovery service contract marketed, sold,
 10-38 offered for sale, issued, made, proposed to be made, or
 10-39 administered in this state must:
 10-40 (1) be written, printed, or typed in clear,
 10-41 understandable language that is easy to read;
 10-42 (2) state the name and address of the provider;
 10-43 (3) state the purchase price of the contract and the
 10-44 terms under which the contract is sold;
 10-45 (4) state the terms and restrictions governing
 10-46 cancellation of the contract by the provider or the identity
 10-47 recovery service contract holder before the expiration date of the
 10-48 contract;
 10-49 (5) identify:
 10-50 (A) any administrator and any registration
 10-51 number issued to the administrator under this chapter;
 10-52 (B) the ~~contract~~ seller; and
 10-53 (C) the identity recovery service contract
 10-54 holder, if the identity recovery service contract holder provides
 10-55 the holder's name;
 10-56 (6) state the amount of any deductible;
 10-57 (7) specify the services to be provided under the
 10-58 contract and any limitation, exception, or exclusion;
 10-59 (8) specify any restriction governing the
 10-60 transferability of the contract; and
 10-61 (9) state the duties of the identity recovery service
 10-62 contract holder, including any duty to protect against any further
 10-63 damage and any requirement to follow the instructions in the
 10-64 identity recovery service contract.
 10-65 (b) The identity and, if applicable, registration number
 10-66 issued under this chapter of a person described by Subsection
 10-67 (a)(5) is not required to be preprinted on the identity recovery
 10-68 service contract and may be added to the contract at the time of
 10-69 sale.

11-1 (d) An identity recovery service contract insured under a
11-2 reimbursement insurance policy under Section 1306.102 must:

- 11-3 (1) state the name and address of the insurer;
- 11-4 (2) state that the identity recovery service contract

11-5 holder may apply for reimbursement directly to the insurer if:
11-6 (A) a covered service is not provided to the
11-7 identity recovery service contract holder by the provider before
11-8 the 61st day after the date of proof of loss; or

11-9 (B) a refund or credit is not paid before the 46th
11-10 day after the date on which the contract is canceled [~~returned to~~
11-11 ~~the provider~~] under Section 1306.1081 [~~1306.107~~]; and

11-12 (3) contain a statement substantially similar to the
11-13 following: "Obligations of the provider under this identity
11-14 recovery service contract are insured under an identity recovery
11-15 service contract reimbursement insurance policy."

11-16 SECTION 2.13. Subchapter C, Chapter 1306, Occupations Code,
11-17 is amended by adding Section 1306.1081 to read as follows:

11-18 Sec. 1306.1081. CANCELLATION BY IDENTITY RECOVERY SERVICE
11-19 CONTRACT HOLDER; REFUND. (a) An identity recovery service
11-20 contract must allow the identity recovery service contract holder
11-21 to cancel the identity recovery service contract at any time.

11-22 (b) If an identity recovery service contract holder cancels
11-23 an identity recovery service contract before the 31st day after the
11-24 date of purchase, the provider:

11-25 (1) shall refund to the identity recovery service
11-26 contract holder or credit to the account of the identity recovery
11-27 service contract holder the full purchase price of the contract,
11-28 decreased by the amount of any claims paid under the contract; and

11-29 (2) may not impose a cancellation fee.

11-30 (c) If an identity recovery service contract holder cancels
11-31 an identity recovery service contract on or after the 31st day after
11-32 the date of purchase, the provider:

11-33 (1) shall refund to the identity recovery service
11-34 contract holder or credit to the account of the identity recovery
11-35 service contract holder the prorated purchase price of the contract
11-36 reflecting the remaining term of the contract, based on mileage,
11-37 time, or another reasonably applicable measure of the remaining
11-38 term that must be disclosed in the contract, decreased by the amount
11-39 of any claims paid under the contract; and

11-40 (2) may impose a reasonable cancellation fee not to
11-41 exceed \$50.

11-42 (d) A provider may allow an identity recovery service
11-43 contract holder to cancel an identity recovery service contract on
11-44 other terms included in the contract, provided the terms do not
11-45 conflict with this section.

11-46 (e) A provider who does not pay the refund or credit the
11-47 identity recovery service contract holder's account before the 46th
11-48 day after the date notice of cancellation is received by the
11-49 provider is liable to the identity recovery service contract holder
11-50 for a penalty for each month an amount remains outstanding equal to
11-51 10 percent of the amount outstanding. The penalty is in addition to
11-52 the full or prorated purchase price of the contract that is owed to
11-53 the identity recovery service contract holder under this section or
11-54 the terms of the contract.

11-55 (f) The right to cancel an identity recovery service
11-56 contract is not transferable to a subsequent holder of the
11-57 contract.

11-58 SECTION 2.14. The heading to Section 1306.109, Occupations
11-59 Code, is amended to read as follows:

11-60 Sec. 1306.109. CANCELLATION BY A PROVIDER; REFUND
11-61 [~~CANCELING AN IDENTITY RECOVERY SERVICE CONTRACT~~].

11-62 SECTION 2.15. Section 1306.109, Occupations Code, is
11-63 amended by amending Subsection (b) and adding Subsection (c) to
11-64 read as follows:

11-65 (b) The provider is not required to provide prior notice of
11-66 cancellation if the identity recovery service contract is canceled
11-67 because of:

- 11-68 (1) nonpayment of the consideration for the contract;
- 11-69 (2) fraud or a material misrepresentation by the

12-1 identity recovery service contract holder to the provider or the
12-2 provider's administrator; or

12-3 (3) a substantial breach of a duty by the identity
12-4 recovery service contract holder.

12-5 (c) An identity recovery service contract holder whose
12-6 contract is canceled by the provider in accordance with this
12-7 section is entitled to a prorated refund of the purchase price of
12-8 the contract reflecting the remaining term of the contract, based
12-9 on mileage, time, or another reasonably applicable measure of the
12-10 remaining term that must be disclosed in the contract, decreased by
12-11 the amount of any claims paid under the contract. A provider who
12-12 cancels a contract under this section may not impose a cancellation
12-13 fee.

12-14 SECTION 2.16. Section 1306.111, Occupations Code, is
12-15 amended to read as follows:

12-16 Sec. 1306.111. ~~[MISLEADING STATEMENTS]~~ PROHIBITED ACTS.

12-17 (a) A provider, administrator, seller, or other [or the
12-18 provider's] representative of the provider may not, in the
12-19 provider's identity recovery service contracts or literature or in
12-20 any written communication:

12-21 (1) make, permit, or cause to be made any false,
12-22 deceptive, or misleading statement; or

12-23 (2) deliberately omit a material statement if the
12-24 omission would be considered misleading.

12-25 (b) A person regulated by Chapter 2301 may not require the
12-26 purchase of an identity recovery service contract as a condition of
12-27 a loan or the sale of a vehicle.

12-28 (c) A provider, administrator, seller, or other
12-29 representative of the provider may not make a telemarketing call to
12-30 a consumer as provided by Sections 304.002 and 304.003, Business &
12-31 Commerce Code, unless the provider, administrator, seller, or
12-32 representative has an established business relationship, as
12-33 defined by Section 304.002, Business & Commerce Code, with the
12-34 consumer.

12-35 SECTION 2.17. Section 1306.151, Occupations Code, is
12-36 amended to read as follows:

12-37 Sec. 1306.151. DISCIPLINARY ACTION. On a finding that a
12-38 ground for disciplinary action exists under this chapter, the
12-39 commission or executive director may impose an administrative
12-40 sanction or ~~[, including an]~~ administrative penalty or seek a civil
12-41 penalty or any other remedy as provided by this chapter and
12-42 ~~[Subchapter F,]~~ Chapter 51.

12-43 SECTION 2.18. Subchapter D, Chapter 1306, Occupations Code,
12-44 is amended by adding Section 1306.155 to read as follows:

12-45 Sec. 1306.155. REMEDY FOR IDENTITY RECOVERY SERVICE
12-46 CONTRACT HOLDERS. (a) If the commission by order, including an
12-47 agreed order, determines that a person has operated as a provider or
12-48 administrator in this state without holding the appropriate
12-49 registration under this chapter, the person shall offer to an
12-50 identity recovery service contract holder who holds an identity
12-51 recovery service contract sold or issued by the person during the
12-52 period that the person was not registered under this chapter the
12-53 right to:

12-54 (1) cancel the contract and obtain a refund of the full
12-55 purchase price of the contract; or

12-56 (2) retain the contract.

12-57 (b) If a seller fails to process an identity recovery
12-58 service contract application or a payment from a consumer in
12-59 accordance with this chapter and any sales agreement or contract
12-60 between the provider and the seller, the commission or executive
12-61 director may, by commission order, including an agreed order,
12-62 require the seller to refund the full purchase price of the contract
12-63 to the consumer.

12-64 (c) The remedies described in this section are in addition
12-65 to any administrative penalty, administrative sanction, civil
12-66 penalty, or other disciplinary or enforcement action sought under
12-67 this chapter or Chapter 51.

12-68 SECTION 2.19. (a) On the effective date of this Act, the
12-69 following provisions of the Occupations Code are repealed:

- 13-1 (1) Section 1306.007;
- 13-2 (2) Subsection (d), Section 1306.052; and
- 13-3 (3) Subsection (b), Section 1306.101.

13-4 (b) On January 1, 2012, the following provisions of the
13-5 Occupations Code are repealed:

- 13-6 (1) Section 1306.107; and
- 13-7 (2) Section 1306.108.

13-8 SECTION 2.20. (a) Not later than April 1, 2012, the Texas
13-9 Commission of Licensing and Regulation shall adopt rules necessary
13-10 to implement Chapter 1306, Occupations Code, as amended by this
13-11 Act.

13-12 (b) Sections 1306.052 and 1306.053, Occupations Code, as
13-13 amended by this Act, apply only to an application for a registration
13-14 or renewal of a registration filed with the Texas Department of
13-15 Licensing and Regulation on or after the effective date of this Act.
13-16 An application filed before that date is governed by the law in
13-17 effect on the date the application was filed, and the former law is
13-18 continued in effect for that purpose.

13-19 (c) Sections 1306.106 and 1306.109, Occupations Code, as
13-20 amended by this Act, and Section 1306.1081, Occupations Code, as
13-21 added by this Act, apply only to an identity recovery service
13-22 contract sold or issued on or after January 1, 2012. An identity
13-23 recovery service contract sold or issued before that date is
13-24 governed by the law in effect on the date the contract was sold or
13-25 issued, and the former law is continued in effect for that purpose.

13-26 (d) Notwithstanding Subsection (c) of this section, an
13-27 identity recovery service contract sold or issued before January 1,
13-28 2012, may not be extended or renewed at the end of the contract term
13-29 unless the contract complies with Sections 1306.106 and 1306.109,
13-30 Occupations Code, as amended by this Act, and Section 1306.1081,
13-31 Occupations Code, as added by this Act.

13-32 (e) Section 1306.151, Occupations Code, as amended by this
13-33 Act, applies only to a disciplinary action initiated by the Texas
13-34 Department of Licensing and Regulation on or after the effective
13-35 date of this Act. An action initiated before the effective date of
13-36 this Act is governed by the law in effect on the date the action was
13-37 initiated, and the former law is continued in effect for that
13-38 purpose.

13-39 (f) Section 1306.155, Occupations Code, as added by this
13-40 Act, applies only to an act or omission of a person operating as a
13-41 provider, administrator, or seller of an identity recovery service
13-42 contract that occurs on or after the effective date of this Act. An
13-43 act or omission that occurs before that date is governed by the law
13-44 in effect on the date the act or omission occurred, and the former
13-45 law is continued in effect for that purpose.

13-46 ARTICLE 3. EFFECTIVE DATE

13-47 SECTION 3.01. This Act takes effect September 1, 2011.

13-48 * * * * *