

By: Goldman

H.B. No. 2279

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of residential service contracts.

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

SECTION 1. Section 1303.002, Occupations Code, is amended by adding Subdivisions (2-a) and (3-a) and amending Subdivision (5) to read as follows:

(2-a) "Executive director" means the executive director of the Texas Real Estate Commission.

(3-a) "Reimbursement insurance policy" means a policy of insurance issued to a residential service company to:

(A) provide reimbursement to the residential service company under the terms of the insured residential service contracts issued or sold by the residential service company; or

(B) pay on behalf of the residential service company, in the event of the residential service company's nonperformance, all covered contractual obligations incurred by the residential service company under the terms of the insured residential service contracts issued or sold by the residential service company.

(5) "Residential service contract" means an agreement that is entered into for a separately stated consideration and for a specified term under which [~~in exchange for a fee,~~] a person agrees to, in the event of the operational or structural failure of or damage caused by a defect in materials or workmanship or by

1 normal wear to [~~undertakes for a specified period to maintain,~~  
2 ~~repair, or replace all or any part of~~] a structural component, an  
3 appliance, or an electrical, plumbing, heating, cooling, or  
4 air-conditioning system of a residential property that is attached  
5 to the residential property:

6 (A) [~~. The term does not include a service or~~  
7 ~~maintenance agreement sold, offered for sale, or issued by a~~  
8 ~~manufacturer or merchant under which the manufacturer or merchant~~  
9 ~~undertakes to~~] maintain, repair, or replace all or any part of the  
10 [a product or part of a product, including a] structural component,  
11 [an] appliance, or [an] electrical, plumbing, heating, cooling, or  
12 air-conditioning system;

13 (B) provide incidental payment of indemnity  
14 under limited circumstances, including food spoilage; or

15 (C) provide payment instead of repair when a  
16 part, structural component, appliance, or service provider or  
17 technician is unavailable [~~of a residential property, that is:~~

18 [~~(A) manufactured or sold by the manufacturer or~~  
19 ~~merchant; or~~

20 [~~(B) installed by the merchant in a building or~~  
21 ~~residence]~~.

22 SECTION 2. Section [1303.053](#), Occupations Code, is amended  
23 by adding Subsection (c) to read as follows:

24 (c) Information prepared or compiled by the commission  
25 relating to an examination conducted under this section, including  
26 the examination file, is confidential and exempt from disclosure  
27 under Chapter [552](#), Government Code. The commission may withhold

1 the information without the necessity of requesting a decision from  
2 the attorney general under Subchapter G, Chapter 552, Government  
3 Code.

4 SECTION 3. Section 1303.101(b), Occupations Code, is  
5 amended to read as follows:

6 (b) A person may not sell, offer to sell, arrange or solicit  
7 the sale of, or receive an application for a residential service  
8 contract unless:

9 (1) the person is:

10 (A) employed by a residential service company  
11 licensed under this chapter; or

12 (B) licensed as or employed by a real estate  
13 sales agent [~~salesperson~~], real estate broker, mobile home dealer,  
14 or insurance agent in this state; and

15 (2) the contract is issued by a residential service  
16 company licensed under this chapter.

17 SECTION 4. Section 1303.103, Occupations Code, is amended  
18 by amending Subsection (b) and adding Subsection (d) to read as  
19 follows:

20 (b) Each application for a license must contain or be  
21 accompanied by:

22 (1) a copy of the articles of incorporation, articles  
23 of association, partnership agreement, trust agreement, or any  
24 other basic organizational document of the applicant;

25 (2) a copy of any amendment to the applicant's basic  
26 organizational document;

27 (3) a copy of any bylaws, rules, or other similar

1 document that regulates the conduct of the applicant's internal  
2 affairs;

3 (4) the name, address, and official position of each  
4 person who will be responsible for the conduct of the applicant's  
5 affairs, including:

6 (A) each member of the board of directors, board  
7 of trustees, executive committee, or other governing body or  
8 committee of the applicant;

9 (B) the applicant's principal officer, if the  
10 applicant is a corporation; and

11 (C) each partner or member of the applicant, if  
12 the applicant is a partnership or association;

13 (5) a copy of the residential service contract made or  
14 to be made between the applicant and another person;

15 (6) a general description of the residential service  
16 contract or the contract's coverage or plan;

17 (7) the most recent [a] financial statements for the  
18 applicant [statement that]:

19 (A) that are [is]:

20 (i) prepared by an independent certified  
21 public accountant; or

22 (ii) certified as accurate by at least two  
23 of the residential service company's principal officers, if the  
24 residential service company uses a reimbursement insurance policy  
25 to insure its outstanding residential service contracts written in  
26 this state in accordance with Section 1303.151(b) [within six  
27 months preceding the date the application is submitted]; and

1 (B) that show [~~shows~~] the applicant's assets,  
2 liabilities, and sources of financial support;

3 (8) a description of the applicant's proposed method  
4 of marketing a residential service contract;

5 (9) a statement regarding the applicant's sources of  
6 working capital and any other funding sources;

7 (10) if the applicant is not domiciled in this state, a  
8 power of attorney appointing the executive director  
9 [~~administrator~~] and the executive director's [~~administrator's~~]  
10 successors in office, or the executive director's [~~administrator's~~]  
11 authorized deputy, as the applicant's agent for service of process  
12 in this state in a legal action arising in this state against the  
13 applicant or the applicant's agents; and

14 (11) any other information the commission requires to  
15 make a determination required by this chapter.

16 (d) Any financial information submitted to the commission  
17 in connection with an application is confidential and exempt from  
18 disclosure under Chapter 552, Government Code. The commission may  
19 withhold the financial information without the necessity of  
20 requesting a decision from the attorney general under Subchapter G,  
21 Chapter 552, Government Code.

22 SECTION 5. Section 1303.151, Occupations Code, is amended  
23 to read as follows:

24 Sec. 1303.151. RESERVE OR REIMBURSEMENT INSURANCE POLICY  
25 REQUIRED. (a) Except as provided by Subsection (b), a [~~A~~]  
26 residential service company shall maintain a funded reserve against  
27 its liability to provide repair and replacement services under its

1 outstanding residential service contracts written in this state.

2 (b) Except as provided by Section 1303.152(d), a  
3 residential service company is not required to maintain a funded  
4 reserve if it insures all of its risk under its outstanding  
5 residential service contracts written in this state under a  
6 reimbursement insurance policy issued by:

7 (1) an admitted insurer; or

8 (2) a surplus lines insurer or a surplus lines bonding  
9 company if the insurer or bonding company:

10 (A) is rated A+ or better by a rating service  
11 recognized by the commission; and

12 (B) submits to the commission for its approval  
13 evidence, in the form of a certified audit and other pertinent  
14 information the commission may require, of the insurer's or bonding  
15 company's ability to meet its contractual obligations.

16 SECTION 6. Section 1303.152, Occupations Code, is amended  
17 by amending Subsection (c) and adding Subsection (d) to read as  
18 follows:

19 (c) For purposes of this chapter, to the extent a  
20 residential service company uses a reimbursement insurance policy  
21 described by Section 1303.151(b) to insure an outstanding  
22 residential service contract written in this state, the company's  
23 reserve is not required to include a contract fee on the [a]  
24 residential service contract [to the extent that provision is made  
25 for reinsurance of the outstanding risk on the contract by:

26 [(1) a residential service company licensed in this  
27 state,

1 ~~[(2) an admitted insurer, or~~

2 ~~[(3) a surplus line insurer or a surplus line bonding~~  
3 ~~company if the insurer or bonding company:~~

4 ~~[(A) is rated A+ or better by a rating service~~  
5 ~~recognized by the commission; and~~

6 ~~[(B) submits to the commission for its approval~~  
7 ~~evidence, in the form of a certified audit and other pertinent~~  
8 ~~information the commission may require, of the insurer's or bonding~~  
9 ~~company's ability to meet its contractual obligations].~~

10 (d) If a residential service company's reimbursement  
11 insurance policy is issued by a captive insurance company as  
12 defined by Section 964.001, Insurance Code, the residential service  
13 company shall maintain a funded reserve of at least 25 percent of  
14 the reserve amount described by Subsection (a).

15 SECTION 7. Subchapter D, Chapter 1303, Occupations Code, is  
16 amended by adding Section 1303.1525 to read as follows:

17 Sec. 1303.1525. REIMBURSEMENT INSURANCE POLICY. (a) An  
18 insurer that issues a reimbursement insurance policy to a  
19 residential service company is considered to have received the  
20 premiums for the policy on the dates contract holders pay for  
21 residential service contracts issued by the residential service  
22 company.

23 (b) An insurer may not cancel a reimbursement insurance  
24 policy until the insurer mails or delivers a notice of cancellation  
25 to the executive director. The cancellation of the policy does not  
26 affect the issuer's liability for a residential service contract  
27 issued by the insured residential service company before the

1 effective date of the cancellation.

2 SECTION 8. Section 1303.153, Occupations Code, is amended  
3 by amending Subsection (a) and adding Subsection (d) to read as  
4 follows:

5 (a) Except as provided by Subsection (d), as [~~As~~] a  
6 guarantee that a residential service company will meet its  
7 obligations to its contract holders, the company shall maintain  
8 with the commission a bond or other security accepted by the  
9 commission.

10 (d) This section does not apply to a residential service  
11 company that uses a reimbursement insurance policy to insure its  
12 outstanding residential service contracts written in this state in  
13 accordance with Section 1303.151(b).

14 SECTION 9. Section 1303.154, Occupations Code, is amended  
15 by amending Subsection (a) and adding Subsection (d) to read as  
16 follows:

17 (a) Except as provided by Subsection (d), an [~~An~~] applicant  
18 for a new license must provide security in the amount of \$25,000.  
19 The amount of the security may not be reduced before the residential  
20 service company files a second report under Section 1303.202.

21 (d) This section does not apply to a residential service  
22 company that uses a reimbursement insurance policy to insure its  
23 outstanding residential service contracts written in this state in  
24 accordance with Section 1303.151(b).

25 SECTION 10. Sections 1303.202(b) and (c), Occupations Code,  
26 are amended to read as follows:

27 (b) The report must:



1 (1) be on a form prescribed by the commission;

2 (2) be verified by at least two of the residential  
3 service company's principal officers; and

4 (3) include:

5 (A) ~~[a]~~ financial statements ~~[statement]~~ of the  
6 residential service company, including its balance sheet and  
7 receipts and disbursements for the preceding year, certified as  
8 accurate by:

9 (i) an independent public accountant; or

10 (ii) at least two of the residential  
11 service company's principal officers, if the residential service  
12 company uses a reimbursement insurance policy to insure its  
13 outstanding residential service contracts written in this state in  
14 accordance with Section 1303.151(b);

15 (B) any material change to the information  
16 submitted under Section 1303.103;

17 (C) if the residential service company maintains  
18 a reserve required by Section 1303.151(a), the number of  
19 residential service contracts entered into during the year, the  
20 number of contract holders as of the end of the year, and the number  
21 of contracts terminating during the year; and

22 (D) any other information that:

23 (i) relates to the performance and solvency  
24 of the residential service company; and

25 (ii) is necessary for the commission to  
26 perform its duties under this chapter.

27 (c) Any information ~~[Information]~~ provided by a residential

1 service company in connection with the report required by this  
2 section or any midyear report required by the commission [~~under~~  
3 ~~Subsection (b)(3)(D)] is confidential and exempt from disclosure  
4 under Chapter 552, Government Code. The commission may withhold  
5 the information without the necessity of requesting a decision from  
6 the attorney general under Subchapter G, Chapter 552, Government  
7 Code [+~~

8 [(1) ~~confidential, and~~  
9 [(2) ~~for the exclusive use of the commission].~~

10 SECTION 11. Section 1303.251, Occupations Code, is amended  
11 to read as follows:

12 Sec. 1303.251. CONTRACT DELIVERY AND FILING [~~EVIDENCE OF~~  
13 ~~COVERAGE~~]. (a) Each contract holder residing in this state is  
14 entitled to receive a copy of the [~~evidence of coverage under a~~  
15 residential service contract not later than the 15th day after the  
16 date the contract holder pays for the residential service contract  
17 or the effective date of the residential service contract,  
18 whichever is later. The residential service company may provide  
19 [~~that issued~~] the copy by mail, e-mail, or other means of delivery  
20 acceptable to the commission [~~contract shall issue evidence of~~  
21 ~~coverage under the contract~~].

22 (b) A residential service company shall file with the  
23 commission for approval [~~may not issue or deliver evidence of~~  
24 ~~coverage under~~] a residential service contract, or an amendment to  
25 a previously filed residential service contract that changes the  
26 residential service contract's coverage or substantially amends a  
27 disclosure required by Section 1303.252 [~~evidence, to a person in~~

1 ~~this state until a copy of the evidence or amendment is filed with~~  
2 ~~and approved by the commission].~~

3 (c) The commission may require a residential service  
4 company to submit relevant information the commission considers  
5 necessary to determine whether to approve or disapprove a filing  
6 made under Subsection (b) ~~[the company's evidence of coverage].~~

7 (d) The commission shall approve a filing made under  
8 Subsection (b) ~~[residential service company's evidence of~~  
9 ~~coverage]~~ if the requirements of this section and Section [1303.252](#)  
10 are met.

11 (d-1) For a filing made under Subsection (b) after a  
12 residential service company is licensed, the commission shall have  
13 30 days to consider the filing from the date of the filing or the  
14 date that the commission receives any associated filing fee,  
15 whichever is later. On the 31st day after that date, the filing is  
16 considered approved unless the commission issues a written order  
17 disapproving the filing or notifies the residential service company  
18 that the filing violates this section or Section [1303.252](#).

19 (d-2) If the commission notifies the residential service  
20 company that the filing violates this section or Section [1303.252](#),  
21 the residential service company may submit a response to that  
22 notification. On receipt of a response from the residential  
23 service company, the commission shall have 30 days to reconsider  
24 the filing. On the 31st day after the commission receives the  
25 residential service company's response, the filing is considered  
26 approved unless the commission issues a written order disapproving  
27 the filing.

1        (d-3) The commission may not require a residential service  
2 company to waive a 30-day consideration period provided by this  
3 section or make the approval of a filing contingent on waiving a  
4 30-day consideration period provided by this section.

5        (e) If the commission disapproves a filing made under  
6 Subsection (b) [~~residential service company's evidence of~~  
7 ~~coverage]~~, the commission shall notify the company of the  
8 disapproval and in the notice shall specify in detail the reason for  
9 the disapproval.

10        (f) A residential service company whose filing under  
11 Subsection (b) [~~evidence of coverage]~~ is disapproved by the  
12 commission is entitled to a hearing conducted by the State Office of  
13 Administrative Hearings [~~may request a hearing on the commission's~~  
14 ~~decision. If a hearing is requested, the commission shall set a~~  
15 ~~hearing on the decision as soon as reasonably possible. Not later~~  
16 ~~than the 60th day after the date of the hearing, the commission by~~  
17 ~~written order shall approve or disapprove the evidence. If the~~  
18 ~~evidence is disapproved, the commission shall state in the order~~  
19 ~~the grounds for the disapproval].~~

20        (g) A hearing under Subsection (f) is governed by the  
21 contested case procedures under Chapter 2001, Government Code.

22        SECTION 12. Section 1303.252, Occupations Code, is amended  
23 to read as follows:

24        Sec. 1303.252. FORM OF CONTRACT AND REQUIRED DISCLOSURES  
25 [~~CONTENTS OF EVIDENCE OF COVERAGE]~~. (a) A residential service  
26 contract marketed, sold, offered for sale, issued, made, proposed  
27 to be made, or administered in this state must be written, printed,

1 or typed in clear, understandable language that is easy to read and  
2 must disclose the following [~~Evidence of coverage under a~~  
3 ~~residential service contract must contain a clear and complete~~  
4 ~~statement, if the evidence is a contract, or a reasonably complete~~  
5 ~~facsimile, if the evidence is a certificate, of]:~~

6 (1) the services or benefits to which the contract  
7 holder is entitled;

8 (2) any limitation on the services, kinds of services,  
9 or benefits to be provided, including a deductible or co-payment  
10 provision;

11 (3) where and in what manner information is available  
12 on how to obtain services;

13 (4) the period during which the coverage is in effect;

14 (5) the residential service company's agreement to  
15 perform services on the contract holder's telephone request to the  
16 company, without a requirement that a claim form or application be  
17 filed before the services are performed;

18 (6) the company's agreement that, under normal  
19 circumstances, the company will initiate the performance of  
20 services within 48 hours after the contract holder requests the  
21 services; and

22 (7) any service fee to be charged for a service call.

23 (b) A service fee under Subsection (a)(7) is not required to  
24 be preprinted on the residential service contract but must be  
25 disclosed in writing to the contract holder before the purchase of  
26 the residential service contract.

27 (c) A residential service contract insured under a

1 reimbursement insurance policy in accordance with Section  
2 1303.151(b) must contain a statement substantially similar to the  
3 following: "The residential service company's obligations under  
4 this residential service contract are insured under a reimbursement  
5 insurance policy." The residential service contract must also:

6 (1) state the name and address of the insurer; and  
7 (2) state that the contract holder may apply for  
8 reimbursement directly to the insurer if a covered service is not  
9 provided to the contract holder by the residential service company  
10 before the 61st day after the date the contract holder provides  
11 proof of loss.

12 (d) A residential service contract [~~Evidence of coverage~~]  
13 may not contain a provision that encourages misrepresentation or  
14 that is unjust, unfair, inequitable, misleading, deceptive, or  
15 false.

16 SECTION 13. Section 1303.253, Occupations Code, is amended  
17 to read as follows:

18 Sec. 1303.253. SCHEDULE OF CHARGES. [~~(a)~~] A residential  
19 service company shall file [~~may not use in conjunction with a~~  
20 ~~residential service contract~~] a schedule of charges for services  
21 covered under a residential service [~~the~~] contract and any [~~or an~~]  
22 amendment to a previously filed [~~that~~] schedule with the commission  
23 before implementation of the schedule of charges or amendment. A  
24 filing made under this section is not subject to prior approval and  
25 is made for informational purposes only [~~until a copy of the~~  
26 ~~schedule or amendment is filed with and approved by the~~  
27 ~~commission~~].

1           ~~[(b) The commission shall approve a schedule of charges if~~  
2 ~~the commission determines that the schedule is reasonably related~~  
3 ~~to the amount, term, and conditions of the contract.~~

4           ~~[(c) If the commission determines that the schedule of~~  
5 ~~charges is not reasonably related to the contract as described by~~  
6 ~~Subsection (b), the commission may reject the schedule. If the~~  
7 ~~commission rejects the schedule, the commission shall notify the~~  
8 ~~company of the rejection and shall specify in detail the reason for~~  
9 ~~the rejection.~~

10           ~~[(d) A residential service company whose schedule of~~  
11 ~~charges is rejected by the commission may request a hearing on the~~  
12 ~~commission's decision to be held as soon as reasonably possible.~~  
13 ~~Not later than the 60th day after the date of the hearing, the~~  
14 ~~commission by written order shall approve or reject the schedule.~~  
15 ~~If the schedule is rejected, the commission shall state in the order~~  
16 ~~the grounds for the rejection.]~~

17           SECTION 14. Section [1303.301\(a\)](#), Occupations Code, is  
18 amended to read as follows:

19           (a) A residential service company may not cause or permit  
20 the use of:

21                 (1) a false or misleading advertisement or  
22 solicitation; or

23                 (2) any deceptive residential service contract  
24 ~~[evidence of coverage]~~.

25           SECTION 15. Section [1303.352\(a\)](#), Occupations Code, is  
26 amended to read as follows:

27           (a) The commission may discipline a residential service

1 company under Section 1303.351 if the continued operation of the  
2 company would be hazardous to its contract holders or if the  
3 company:

4 (1) operates in conflict with its basic organizational  
5 document or in a manner that is contrary to that described in and  
6 reasonably inferred from information submitted under Section  
7 1303.103, unless an amendment to the information has been filed  
8 with and approved by the commission;

9 (2) issues a residential service contract [~~evidence of~~  
10 ~~coverage~~] that does not comply with Sections 1303.251 and 1303.252;

11 (3) uses a schedule of charges that has not been filed  
12 with the commission in accordance [~~does not comply~~] with Section  
13 1303.253;

14 (4) is not financially responsible and may be  
15 reasonably expected to be unable to meet the company's obligations  
16 to contract holders;

17 (5) did not comply with Subchapter D;

18 (6) advertised or marketed the company's services in a  
19 false, misrepresentative, misleading, deceptive, or unfair manner;  
20 or

21 (7) otherwise did not substantially comply with this  
22 chapter or a rule adopted under this chapter.

23 SECTION 16. The changes in law made by this Act apply only  
24 to a residential service contract entered into or renewed on or  
25 after the effective date of this Act. A residential service  
26 contract entered into or renewed before that date is governed by the  
27 law as it existed immediately before the effective date of this Act,



1 and that law is continued in effect for that purpose.

2 SECTION 17. This Act takes effect September 1, 2017.