

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 or located on 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 [1303.052](#)(b), Occupations Code, is
23 amended to read as follows:

24 (b) A residential service company shall pay to the
25 commission a fee for:

26 (1) filing a [~~an annual~~] report under Section
27 [1303.202](#); and

1 (2) any other filing required by this chapter.

2 SECTION 3. Section 1303.053, Occupations Code, is amended
3 by adding Subsection (c) to read as follows:

4 (c) Information prepared or compiled by the commission
5 relating to an examination conducted under this section, including
6 the examination file, is confidential and exempt from disclosure
7 under Chapter 552, Government Code. The commission may withhold
8 the information without the necessity of requesting a decision from
9 the attorney general under Subchapter G, Chapter 552, Government
10 Code.

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

14 (b) Each application for a license must contain or be
15 accompanied by:

16 (1) a copy of the articles of incorporation, articles
17 of association, partnership agreement, trust agreement, or any
18 other basic organizational document of the applicant;

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

21 (3) a copy of any bylaws, rules, or other similar
22 document that regulates the conduct of the applicant's internal
23 affairs;

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

27 (A) each member of the board of directors, board

1 of trustees, executive committee, or other governing body or
2 committee of the applicant;

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

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

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

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

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

13 (A) that are [is]:

14 (i) prepared by an independent certified
15 public accountant; or

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

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

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

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

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

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

10 (d) The commission shall maintain the confidentiality of
11 information submitted to the commission by an applicant under this
12 section that is claimed to be confidential for competitive
13 purposes. The confidential information is exempt from disclosure
14 under Chapter 552, Government Code. The commission may withhold
15 the information without the necessity of requesting a decision from
16 the attorney general under Subchapter G, Chapter 552, Government
17 Code.

18 SECTION 5. Section 1303.151, Occupations Code, is amended
19 to read as follows:

20 Sec. 1303.151. RESERVE OR REIMBURSEMENT INSURANCE POLICY
21 REQUIRED. (a) Except as provided by Subsection (b), a [A]
22 residential service company shall maintain a funded reserve against
23 its liability to provide repair and replacement services under its
24 outstanding residential service contracts written in this state.

25 (b) Except as provided by Section 1303.152(d), a
26 residential service company is not required to maintain a funded
27 reserve if it insures all of its risk under its outstanding

1 residential service contracts written in this state under a
2 reimbursement insurance policy issued by:

3 (1) an admitted insurer; or

4 (2) a surplus lines insurer or a surplus lines bonding
5 company if the insurer or bonding company:

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

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

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

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

22 ~~[(1) a residential service company licensed in this~~
23 ~~state,~~

24 ~~[(2) an admitted insurer; or~~

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

27 ~~[(A) is rated A+ or better by a rating service~~

1 ~~recognized by the commission; and~~

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

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

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

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

19 (b) An insurer may not cancel a reimbursement insurance
20 policy until the insurer mails or delivers a notice of cancellation
21 to the commission. The cancellation of the policy does not affect
22 the issuer's liability for a residential service contract issued by
23 the insured residential service company before the effective date
24 of the cancellation.

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

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

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

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

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

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

21 SECTION 10. Section 1303.202, Occupations Code, is amended
22 to read as follows:

23 Sec. 1303.202. [~~ANNUAL~~] REPORT. (a) The commission may
24 adopt rules requiring [~~Not later than April 1 of each year,~~] each
25 residential service company to [~~shall~~] file with the commission a
26 report that meets the requirements in Subsection (b) [~~covering the~~
27 ~~preceding calendar year~~].

1 (b) The report must:

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

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

5 (3) include:

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

10 (i) an independent public accountant; or

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

16 (B) any material change to the information
17 submitted under Section 1303.103, except an amendment to a
18 residential service contract filed with the commission under
19 Section 1303.251;

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

25 (D) any other information that:

26 (i) relates to the performance and solvency
27 of the residential service company; and

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

3 (c) The commission shall maintain the confidentiality of
4 information [Information] provided to the commission by a
5 residential service company under this section that [Subsection
6 (b)(3)(D)] is claimed to be confidential for competitive purposes.
7 The confidential information is exempt from disclosure under
8 Chapter 552, Government Code. The commission may withhold the
9 information without the necessity of requesting a decision from the
10 attorney general under Subchapter G, Chapter 552, Government Code

11 [+]

12 [~~(1) confidential, and~~

13 [~~(2) for the exclusive use of the commission].~~

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

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

26 (b) A residential service company shall file with the
27 commission for approval [may not issue or deliver evidence of

1 ~~coverage under]~~ a residential service contract, or an amendment to
2 a previously filed residential service contract that changes the
3 residential service contract's coverage or substantially amends a
4 disclosure required by Section 1303.252 [~~evidence, to a person in~~
5 ~~this state until a copy of the evidence or amendment is filed with~~
6 ~~and approved by the commission]~~.

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

11 (d) The commission shall approve a filing made under
12 Subsection (b) [~~residential service company's evidence of~~
13 ~~coverage]~~ if the requirements of this section and Section 1303.252
14 are met.

15 (d-1) For a filing made under Subsection (b) after a
16 residential service company is licensed, the commission shall have
17 30 days to consider the filing from the date of the filing or the
18 date that the commission receives any associated filing fee,
19 whichever is later. On the 31st day after that date, the filing is
20 considered approved unless the commission disapproves the filing or
21 notifies the residential service company in writing that the filing
22 violates this section or Section 1303.252.

23 (d-2) If the commission notifies the residential service
24 company that the filing violates this section or Section 1303.252,
25 the residential service company may submit a written response to
26 that notification. The commission shall have 30 days to reconsider
27 the filing from the date that the commission receives the

1 residential service company's written response. On the 31st day
2 after the commission receives the residential service company's
3 written response, the filing is considered approved unless the
4 commission disapproves the filing. If the residential service
5 company does not respond in writing before the 61st day after being
6 notified by the commission that the filing violates this section or
7 Section 1303.252, the filing is automatically disapproved.

8 (d-3) The commission may not require a residential service
9 company to waive a 30-day consideration period provided by this
10 section or make the approval of a filing contingent on waiving a
11 30-day consideration period provided by this section.

12 (e) If the commission disapproves a filing made under
13 Subsection (b) [~~residential service company's evidence of~~
14 ~~coverage~~], the commission shall notify the company of the
15 disapproval and in the notice shall specify in detail the reason for
16 the disapproval.

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

27 (g) A hearing under Subsection (f) is governed by the

1 contested case procedures under Chapter 2001, Government Code.

2 SECTION 12. Section 1303.252, Occupations Code, is amended
3 to read as follows:

4 Sec. 1303.252. FORM OF CONTRACT AND REQUIRED DISCLOSURES
5 [~~CONTENTS OF EVIDENCE OF COVERAGE~~]. (a) A residential service
6 contract marketed, sold, offered for sale, issued, made, proposed
7 to be made, or administered in this state must be written, printed,
8 or typed in clear, understandable language that is easy to read and
9 must disclose the following [~~Evidence of coverage under a~~
10 ~~residential service contract must contain a clear and complete~~
11 ~~statement, if the evidence is a contract, or a reasonably complete~~
12 ~~facsimile, if the evidence is a certificate, of]:~~

13 (1) the services or benefits to which the contract
14 holder is entitled;

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

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

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

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

25 (6) the company's agreement that, under normal
26 circumstances, the company will initiate the performance of
27 services within 48 hours after the contract holder requests the

1 services; and

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

3 (b) A service fee under Subsection (a)(7) is not required to
4 be preprinted on the residential service contract but must be
5 disclosed in writing to the contract holder before the purchase of
6 the residential service contract.

7 (c) A residential service contract insured under a
8 reimbursement insurance policy in accordance with Section
9 1303.151(b) must contain a statement substantially similar to the
10 following: "The residential service company's obligations under
11 this residential service contract are insured under a reimbursement
12 insurance policy." The residential service contract must also:

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

14 (2) state that the contract holder may apply for
15 reimbursement directly to the insurer if a covered service is not
16 provided to the contract holder by the residential service company
17 before the 61st day after the date the contract holder provides
18 proof of loss.

19 (d) A residential service contract [~~Evidence of coverage~~]
20 may not contain a provision that encourages misrepresentation or
21 that is unjust, unfair, inequitable, misleading, deceptive, or
22 false.

23 SECTION 13. Section 1303.253, Occupations Code, is amended
24 to read as follows:

25 Sec. 1303.253. SCHEDULE OF CHARGES. (a) A residential
26 service company shall file with the commission [~~may not use in~~
27 ~~conjunction with a residential service contract~~] a schedule of

1 charges for services covered under a residential service ~~[the]~~
2 contract and any ~~[or an]~~ amendment to a previously filed ~~[that]~~
3 schedule before implementation of the schedule of charges or
4 amendment ~~[until a copy of the schedule or amendment is filed with~~
5 ~~and approved by the commission]~~.

6 (b) A filing made under Subsection (a) by a residential
7 service company that uses a reimbursement insurance policy to
8 insure its outstanding residential service contracts written in
9 this state in accordance with Section 1303.151(b) is not subject to
10 approval by the commission and is made for informational purposes
11 only.

12 (c) A filing made under Subsection (a) by a residential
13 service company that maintains a reserve required by Section
14 1303.151(a) may not be implemented until approved by the
15 commission.

16 (d) The commission shall approve a filing made under
17 Subsection (a) ~~[schedule of charges]~~ if the commission determines
18 that the filing ~~[schedule]~~ is reasonably related to the amount,
19 term, and conditions of the contract to which the filing applies.

20 (e) ~~[(c)]~~ If the commission determines that a filing made
21 under Subsection (a) ~~[the schedule of charges]~~ is not reasonably
22 related to the contract as described by Subsection (d) ~~[(b)]~~, the
23 commission may disapprove ~~[reject]~~ the filing ~~[schedule]~~. If the
24 commission disapproves ~~[rejects]~~ the filing ~~[schedule]~~, the
25 commission shall notify the company of the disapproval ~~[rejection]~~
26 and shall specify in detail the reason for the disapproval
27 ~~[rejection]~~.

1 (f) For a filing made under Subsection (a) by a residential
2 service company described by Subsection (c) after the residential
3 service company is licensed, the commission shall have 30 days to
4 consider the filing from the date of the filing or the date that the
5 commission receives any associated filing fee, whichever is later.
6 On the 31st day after that date, the filing is considered approved
7 unless the commission disapproves the filing or notifies the
8 residential service company in writing that the filing is not
9 reasonably related to the amount, term, and conditions of the
10 contract to which the filing applies.

11 (g) If the commission notifies the residential service
12 company that the filing is not reasonably related to the amount,
13 term, and conditions of the contract to which the filing applies,
14 the residential service company may submit a written response to
15 that notification. The commission shall have 30 days to reconsider
16 the filing from the date that the commission receives the
17 residential service company's written response. On the 31st day
18 after the commission receives the residential service company's
19 written response, the filing is considered approved unless the
20 commission disapproves the filing. If the residential service
21 company does not respond in writing before the 61st day after being
22 notified by the commission that the filing is not reasonably
23 related to the amount, term, and conditions of the contract to which
24 the filing applies, the filing is automatically disapproved.

25 (h) The commission may not require a residential service
26 company to waive a 30-day consideration period provided by this
27 section or make the approval of a filing contingent on waiving a

1 30-day consideration period provided by this section.

2 (i) [(d)] A residential service company whose filing under
3 Subsection (a) [schedule of charges] is disapproved [rejected] by
4 the commission is entitled to [may request] a hearing conducted by
5 the State Office of Administrative Hearings [on the commission's
6 decision to be held as soon as reasonably possible]. [Not later
7 than the 60th day after the date of the hearing, the commission by
8 written order shall approve or reject the schedule. If the schedule
9 is rejected, the commission shall state in the order the grounds for
10 the rejection.]

11 (j) A hearing under Subsection (i) is governed by the
12 contested case procedures under Chapter 2001, Government Code.

13 SECTION 14. Section 1303.301(a), Occupations Code, is
14 amended to read as follows:

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

17 (1) a false or misleading advertisement or
18 solicitation; or

19 (2) any deceptive residential service contract
20 [evidence of coverage].

21 SECTION 15. Section 1303.352(a), Occupations Code, is
22 amended to read as follows:

23 (a) The commission may discipline a residential service
24 company under Section 1303.351 if the continued operation of the
25 company would be hazardous to its contract holders or if the
26 company:

27 (1) operates in conflict with its basic organizational

1 document or in a manner that is contrary to that described in and
2 reasonably inferred from information submitted under Section
3 1303.103, unless an amendment to the information has been filed
4 with and approved by the commission;

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

7 (3) uses a schedule of charges that does not comply
8 with Section 1303.253;

9 (4) is not financially responsible and may be
10 reasonably expected to be unable to meet the company's obligations
11 to contract holders;

12 (5) did not comply with Subchapter D;

13 (6) advertised or marketed the company's services in a
14 false, misrepresentative, misleading, deceptive, or unfair manner;
15 or

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

18 SECTION 16. The changes in law made by this Act apply only
19 to a residential service contract entered into or renewed on or
20 after the effective date of this Act. A residential service
21 contract entered into or renewed before that date is governed by the
22 law as it existed immediately before the effective date of this Act,
23 and that law is continued in effect for that purpose.

24 SECTION 17. This Act takes effect January 1, 2018.

President of the Senate

Speaker of the House

I certify that H.B. No. 2279 was passed by the House on April 27, 2017, by the following vote: Yeas 144, Nays 0, 3 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2279 on May 25, 2017, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2279 was passed by the Senate, with amendments, on May 22, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor