

House Bill 2279
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

(A) [~~The term does not include a service or maintenance agreement sold, offered for sale, or issued by a manufacturer or merchant under which the manufacturer or merchant undertakes to~~] maintain, repair, or replace all or any part of the [~~a product or part of a product, including a~~] structural component, [~~an~~] appliance, or [~~an~~] electrical, plumbing,

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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:

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

(A) [~~The term does not include a service or maintenance agreement sold, offered for sale, or issued by a manufacturer or merchant under which the manufacturer or merchant undertakes to~~] maintain, repair, or replace all or any part of the [~~a product or part of a product, including a~~] structural component, [~~an~~] appliance, or [~~an~~] electrical, plumbing,

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heating, cooling, or air-conditioning system;
(B) provide incidental payment of indemnity under limited circumstances, including food spoilage; or
(C) provide payment instead of repair when a part, structural component, appliance, or service provider or technician is unavailable [of a residential property, that is:
~~[(A) manufactured or sold by the manufacturer or merchant;~~
~~or~~
~~[(B) installed by the merchant in a building or residence].~~

No equivalent provision.

SECTION 2. Section 1303.053, Occupations Code, is amended by adding Subsection (c) to read as follows:
(c) Information prepared or compiled by the commission relating to an examination conducted under this section, including the examination file, is confidential and exempt from disclosure under Chapter 552, Government Code. The commission may withhold the information without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code.

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

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heating, cooling, or air-conditioning system;
(B) provide incidental payment of indemnity under limited circumstances, including food spoilage; or
(C) provide payment instead of repair when a part, structural component, appliance, or service provider or technician is unavailable [of a residential property, that is:
~~[(A) manufactured or sold by the manufacturer or merchant;~~
~~or~~
~~[(B) installed by the merchant in a building or residence].~~

SECTION 2. Section 1303.052(b), Occupations Code, is amended to read as follows:
(b) A residential service company shall pay to the commission a fee for:
(1) filing a [an annual] report under Section 1303.202; and
(2) any other filing required by this chapter.

SECTION 3. Same as House version.

No equivalent provision.

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

(1) the person is:

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

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

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

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

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

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

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

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

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

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

(B) the applicant's principal officer, if the applicant is a

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

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

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

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

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

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

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

(B) the applicant's principal officer, if the applicant is a

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corporation; and
(C) each partner or member of the applicant, if the applicant is a partnership or association;
(5) a copy of the residential service contract made or to be made between the applicant and another person;
(6) a general description of the residential service contract or the contract's coverage or plan;
(7) the most recent [a] financial statements for the applicant [statement that]:
(A) that are [is]:
(i) prepared by an independent certified public accountant; or
(ii) certified as accurate by at least two of the residential service company's principal officers, if the residential service company uses a reimbursement insurance policy to insure its outstanding residential service contracts written in this state in accordance with Section 1303.151(b) [within six months preceding the date the application is submitted]; and
(B) that show [shows] the applicant's assets, liabilities, and sources of financial support;
(8) a description of the applicant's proposed method of marketing a residential service contract;
(9) a statement regarding the applicant's sources of working capital and any other funding sources;
(10) if the applicant is not domiciled in this state, a power of attorney appointing the executive director [administrator] and the executive director's [administrator's] successors in office, or the executive director's [administrator's] authorized deputy, as the applicant's agent for service of process in this state in a legal action arising in this state against the applicant or the applicant's agents; and
(11) any other information the commission requires to make a determination required by this chapter.

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corporation; and
(C) each partner or member of the applicant, if the applicant is a partnership or association;
(5) a copy of the residential service contract made or to be made between the applicant and another person;
(6) a general description of the residential service contract or the contract's coverage or plan;
(7) the most recent [a] financial statements for the applicant [statement that]:
(A) that are [is]:
(i) prepared by an independent certified public accountant; or
(ii) certified as accurate by at least two of the residential service company's principal officers, if the residential service company uses a reimbursement insurance policy to insure its outstanding residential service contracts written in this state in accordance with Section 1303.151(b) [within six months preceding the date the application is submitted]; and
(B) that show [shows] the applicant's assets, liabilities, and sources of financial support;
(8) a description of the applicant's proposed method of marketing a residential service contract;
(9) a statement regarding the applicant's sources of working capital and any other funding sources;
(10) if the applicant is not domiciled in this state, a power of attorney appointing the executive director [administrator] and the executive director's [administrator's] successors in office, or the executive director's [administrator's] authorized deputy, as the applicant's agent for service of process in this state in a legal action arising in this state against the applicant or the applicant's agents; and
(11) any other information the commission requires to make a determination required by this chapter.

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

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

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

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

(1) an admitted insurer; or

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

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

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

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

SECTION 5. Same as House version.

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

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

~~[(1) a residential service company licensed in this state;~~

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

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

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

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

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

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

SECTION 6. Same as House version.

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

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follows:

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

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

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

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

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

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

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follows:

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

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

SECTION 8. Same as House version.

SECTION 9. Same as House version.

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

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

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

(b) The report must:

- (1) be on a form prescribed by the commission;
- (2) be verified by at least two of the residential service company's principal officers; and

(3) include:

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

(i) an independent public accountant; or

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

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

Sec. 1303.202. [ANNUAL] REPORT. (a) The commission may adopt rules requiring [Not later than April 1 of each year,] each residential service company to [shall] file with the commission a report that meets the requirements in Subsection

(b) [covering the preceding calendar year].

(b) The report must:

- (1) be on a form prescribed by the commission;
- (2) be verified by at least two of the residential service company's principal officers; and

(3) include:

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

(i) an independent public accountant; or

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

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

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

(D) any other information that:

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

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

(c) Any information [Information] provided by a residential service company in connection with the report required by this section or any midyear report required by the commission under Subsection (b)(3)(D) is confidential and exempt from disclosure under Chapter 552, Government Code. The commission may withhold the information without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code [:

(1) confidential; and

(2) for the exclusive use of the commission].

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

Sec. 1303.251. CONTRACT DELIVERY AND FILING [EVIDENCE OF COVERAGE]. (a) Each contract holder residing in this state is entitled to receive a copy of the

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

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

(D) any other information that:

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

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

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

(1) confidential; and

(2) for the exclusive use of the commission].

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

Sec. 1303.251. CONTRACT DELIVERY AND FILING [EVIDENCE OF COVERAGE]. (a) Each contract holder residing in this state is entitled to receive a copy of the

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~~[evidence of coverage under a]~~ residential service contract not later than the 15th day after the date the contract holder pays for the residential service contract or the effective date of the residential service contract, whichever is later. The residential service company may provide ~~[that issued]~~ the copy by mail, e-mail, or other means of delivery acceptable to the commission ~~[contract shall issue evidence of coverage under the contract].~~

(b) A residential service company shall file with the commission for approval ~~[may not issue or deliver evidence of coverage under]~~ a residential service contract, or an amendment to a previously filed residential service contract that changes the residential service contract's coverage or substantially amends a disclosure required by Section 1303.252 ~~[evidence, to a person in this state until a copy of the evidence or amendment is filed with and approved by the commission].~~

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

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

(d-1) For a filing made under Subsection (b) after a residential service company is licensed, the commission shall have 30 days to consider the filing from the date of the filing or the date that the commission receives any associated filing fee, whichever is later. On the 31st day after that date, the filing is considered approved unless the commission issues a

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~~[evidence of coverage under a]~~ residential service contract not later than the 15th day after the date the contract holder pays for the residential service contract or the effective date of the residential service contract, whichever is later. The residential service company may provide ~~[that issued]~~ the copy by mail, e-mail, or other means of delivery acceptable to the commission ~~[contract shall issue evidence of coverage under the contract].~~

(b) A residential service company shall file with the commission for approval ~~[may not issue or deliver evidence of coverage under]~~ a residential service contract, or an amendment to a previously filed residential service contract that changes the residential service contract's coverage or substantially amends a disclosure required by Section 1303.252 ~~[evidence, to a person in this state until a copy of the evidence or amendment is filed with and approved by the commission].~~

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

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

(d-1) For a filing made under Subsection (b) after a residential service company is licensed, the commission shall have 30 days to consider the filing from the date of the filing or the date that the commission receives any associated filing fee, whichever is later. On the 31st day after that date, the filing is considered approved unless the commission

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written order disapproving the filing or notifies the residential service company that the filing violates this section or Section 1303.252.

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

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

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

(f) A residential service company whose filing under Subsection (b) [~~evidence of coverage~~] is disapproved by the commission is entitled to a hearing conducted by the State Office of Administrative Hearings [~~may request a hearing on the commission's decision. If a hearing is requested, the commission shall set a hearing on the decision as soon as~~

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disapproves the filing or notifies the residential service company in writing that the filing violates this section or Section 1303.252.

(d-2) If the commission notifies the residential service company that the filing violates this section or Section 1303.252, the residential service company may submit a written response to that notification. The commission shall have 30 days to reconsider the filing from the date that the commission receives the residential service company's written response. On the 31st day after the commission receives the residential service company's written response, the filing is considered approved unless the commission disapproves the filing. If the residential service company does not respond in writing before the 61st day after being notified by the commission that the filing violates this section or Section 1303.252, the filing is automatically disapproved.

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

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

(f) A residential service company whose filing under Subsection (b) [~~evidence of coverage~~] is disapproved by the commission is entitled to a hearing conducted by the State Office of Administrative Hearings [~~may request a hearing on the commission's decision. If a hearing is requested, the commission shall set a hearing on the decision as soon as~~

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~~reasonably possible. Not later than the 60th day after the date of the hearing, the commission by written order shall approve or disapprove the evidence. If the evidence is disapproved, the commission shall state in the order the grounds for the disapproval].~~

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

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

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

- (1) the services or benefits to which the contract holder is entitled;
- (2) any limitation on the services, kinds of services, or benefits to be provided, including a deductible or co-payment provision;
- (3) where and in what manner information is available on how to obtain services;
- (4) the period during which the coverage is in effect;
- (5) the residential service company's agreement to perform services on the contract holder's telephone request to the

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~~reasonably possible. Not later than the 60th day after the date of the hearing, the commission by written order shall approve or disapprove the evidence. If the evidence is disapproved, the commission shall state in the order the grounds for the disapproval].~~

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

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company, without a requirement that a claim form or application be filed before the services are performed;

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

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

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

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

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

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

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

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

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

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

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

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

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Sec. 1303.253. SCHEDULE OF CHARGES. (a) A residential service company shall file with the commission ~~[may not use in conjunction with a residential service contract]~~ a schedule of charges for services covered under a residential service ~~[the]~~ contract and any ~~[or an]~~ amendment to a previously filed ~~[that]~~ schedule before implementation of the schedule of charges or amendment ~~[until a copy of the schedule or amendment is filed with and approved by the commission].~~

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

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

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

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

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

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

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

(i) [(d)] A residential service company whose filing under

[(d) A residential service company whose schedule of charges

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~~is rejected by the commission may request a hearing on the commission's decision to be held as soon as reasonably possible. Not later than the 60th day after the date of the hearing, the commission by written order shall approve or reject the schedule. If the schedule is rejected, the commission shall state in the order the grounds for the rejection.]~~

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

- (a) A residential service company may not cause or permit the use of:
- (1) a false or misleading advertisement or solicitation; or
 - (2) any deceptive residential service contract ~~[evidence of coverage]~~.

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

- (a) The commission may discipline a residential service company under Section 1303.351 if the continued operation of the company would be hazardous to its contract holders or if the company:
- (1) operates in conflict with its basic organizational document or in a manner that is contrary to that described in and reasonably inferred from information submitted under Section

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Subsection (a) [schedule of charges] is disapproved ~~[rejected] by the commission is entitled to [may request] a hearing conducted by the State Office of Administrative Hearings [on the commission's decision to be held as soon as reasonably possible]. [Not later than the 60th day after the date of the hearing, the commission by written order shall approve or reject the schedule. If the schedule is rejected, the commission shall state in the order the grounds for the rejection.]~~

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

SECTION 14. Same as House version.

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

- (a) The commission may discipline a residential service company under Section 1303.351 if the continued operation of the company would be hazardous to its contract holders or if the company:
- (1) operates in conflict with its basic organizational document or in a manner that is contrary to that described in and reasonably inferred from information submitted under Section

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1303.103, unless an amendment to the information has been filed with and approved by the commission;

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

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

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

(5) did not comply with Subchapter D;

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

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

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

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

SENATE VERSION (CS)

1303.103, unless an amendment to the information has been filed with and approved by the commission;

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

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

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

(5) did not comply with Subchapter D;

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

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

SECTION 16. Same as House version.

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

CONFERENCE