

BILL ANALYSIS

C.S.H.B. 2403
By: Goldman
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that residential service contracts, also known as home warranties, provide one-stop-shop coverage to homeowners for the repair or replacement costs of major systems and other components of a home. However, reports indicate that the residential service contract industry has evolved significantly since the Texas Real Estate Commission began regulating residential service companies that provide such services, and there have been calls to update various outdated provisions of state law governing these companies. C.S.H.B. 2403 seeks to update the Residential Service Company Act.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2403 amends the Occupations Code to remove the prohibition against a person selling, offering to sell, arranging or soliciting the sale of, or receiving an application for a residential service contract unless the person meets certain eligibility requirements and the contract is issued by a residential service company licensed under the Residential Service Company Act. The bill exempts a person who administers, issues, makes, provides, sells, markets, or offers to sell a residential service contract from any state licensing requirements with respect to those activities, except for the licensing requirement under the act for persons who issue a residential service contract. The bill repeals the prohibition against a person using the phrase "residential service company" in the course of engaging in business unless the person meets certain requirements. The bill changes the calculation used to determine the amount of funded reserve a residential service company is required to maintain against its liability.

C.S.H.B. 2403 requires the report each residential service company files with the Texas Real Estate Commission (TREC) to include financial statements of the company certified as accurate by at least two of the residential service company's principal officers without regard to whether the residential service company uses a reimbursement insurance policy to insure its outstanding residential service contracts written in Texas. The bill revises provisions relating to the schedule of charges filed by a residential service company for services covered under a residential service contract by authorizing a filing by such a company that maintains a certain required reserve to be implemented beginning on the later of the date the filing is made or the TREC receives any associated filing fee; repealing the requirement for the TREC to approve a filing of a schedule of charges if the TREC determines that the filing is reasonably related to the amount, term, and

conditions of the contract to which the filing applies; and authorizing the TREC, if a filing is disapproved, to order the residential service company to pay a refund. The bill requires a sales contract between a seller and buyer of a residential property to state that the purchase of a residential service contract is optional and that the buyer and seller of a residential property may negotiate the amount paid toward, the coverage provided by, and the provider of a residential service contract.

C.S.H.B. 2403 authorizes the TREC to discipline a residential service company if the company takes any of the following actions:

- fails to pay a fee for filing the report each residential service company files with the TREC;
- provides false or misleading information to the TREC on such a report or on a filing of a schedule of charges; or
- fails to provide, within a reasonable time, information requested by the TREC that relates to a formal or informal complaint to the TREC.

C.S.H.B. 2403 repeals Sections 1303.101(c) and 1303.253(d), Occupations Code.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2403 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the following provisions:

- an authorization for the filing of the schedule of charges by a certain residential service company to be implemented in a certain timeframe;
- a repeal of the requirement for the TREC to approve a filing if the TREC determines that the filing is reasonably related to the amount, term, and conditions of the contract to which the filing applies;
- an authorization for the TREC to order the filing residential service company to pay a refund if a filing is disapproved; and
- a requirement for a sales contract between a seller and buyer of a residential property to include certain statements.

The substitute revises provisions authorizing the TREC to discipline a residential service company under certain conditions by retaining as a disciplinary ground the use of a certain noncompliant schedule of charges and including the following grounds:

- failing to pay a fee for filing the report each residential service company files with the TREC;
- providing false or misleading information to the TREC on such a report or on a filing of a schedule of charges; and
- failing to provide, within a reasonable time, information requested by the TREC that relates to a formal or informal complaint to the TREC.

The substitute does not exempt a person who is contractually obligated to perform services under a residential service contract from certain licensing requirements relating to such a contract.

The substitute does not include as a required component of the report each residential service company files with the TREC a schedule of contract charges filed for informational purposes only which are not required to be subject to approval by the TREC.

The substitute does not include a provision establishing that the seller of a residential property or the buyer's or seller's agent who purchases a residential service contract for the benefit of the buyer has the right to choose the residential service contract provider.

The substitute does not repeal:

- a requirement for the seller or the buyer's or seller's agent to provide to the buyer a certain statement that the purchase of a residential service contract is optional and that the buyer may purchase similar coverage through another residential service company or insurance company authorized to engage in business in Texas; or
- certain provisions relating to a schedule of charges a residential service company must file with TREC.