

By: Goldman

H.B. No. 2403

Substitute the following for H.B. No. 2403:

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C.S.H.B. No. 2403

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of residential service companies and residential service contracts.

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

SECTION 1. Section 1303.101(b), Occupations Code, is amended to read as follows:

(b) Except for the license requirement in Subsection (a), a person who administers, issues, makes, provides, sells, markets, or offers to sell a residential service contract is exempt from any other licensing requirements of this state with respect to the administration, issuance, making, provision, sale, marketing, or offering for sale of [~~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 a real estate 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 2. Section 1303.152(a), Occupations Code, is amended to read as follows:

1 (a) The amount of the reserve required by Section 1303.151
2 is based on the amount of liability remaining under outstanding
3 residential service contracts written in this state by the
4 residential service company, as determined by multiplying the total
5 number of days [~~months~~] remaining on all of those contracts by the
6 pro rata daily [~~monthly~~] contract charge.

7 SECTION 3. Section 1303.202(b), Occupations Code, is
8 amended to read as follows:

9 (b) The report must:

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

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

13 (3) include:

14 (A) financial statements of the residential
15 service company, including its balance sheet and receipts and
16 disbursements for the preceding year, certified as accurate by:

17 (i) an independent public accountant; or

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

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

27 (C) if the residential service company maintains

1 a reserve required by Section 1303.151(a), the number of
2 residential service contracts entered into during the year, the
3 number of contract holders as of the end of the year, and the number
4 of contracts terminating during the year; and

5 (D) any other information that:

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

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

10 SECTION 4. Section 1303.253, Occupations Code, is amended
11 by amending Subsections (c), (e), and (f) and adding Subsection (k)
12 to read as follows:

13 (c) A filing made under Subsection (a) by a residential
14 service company that maintains a reserve required by Section
15 1303.151(a) may ~~not~~ be implemented beginning on the later of the
16 date:

17 (1) the filing is made; or

18 (2) the commission receives any associated filing fee
19 ~~[until approved by the commission].~~

20 (e) If the commission determines that a filing made under
21 Subsection (a) is not reasonably related to the amount, term, and
22 conditions of the contract to which the filing applies ~~[as~~
23 ~~described by Subsection (d)]~~, the commission may disapprove the
24 filing. If the commission disapproves the filing, the commission
25 shall notify the company of the disapproval and shall specify in
26 detail the reason for the disapproval.

27 (f) For a filing made under Subsection (a) by a residential

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

10 (k) If a filing is disapproved under Subsection (f), the
11 commission may order the residential service company to pay a
12 refund as provided by Section 1101.659.

13 SECTION 5. Section 1303.302(b), Occupations Code, is
14 amended to read as follows:

15 (b) A sales contract must state ~~[A seller of a residential~~
16 ~~property or the buyer's or seller's agent shall provide to the buyer~~
17 ~~a statement that clearly and conspicuously states]~~ that:

18 (1) the purchase of a residential service contract is
19 optional; and

20 (2) the buyer and seller of a residential property may
21 negotiate the amount paid toward, the coverage provided by, and the
22 provider of a ~~[purchase similar coverage through another]~~
23 residential service contract ~~[company or insurance company~~
24 ~~authorized to engage in business in this state]~~.

25 SECTION 6. 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 that does
10 not comply with Sections 1303.251 and 1303.252;

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

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

16 (5) did not comply with Subchapter D;

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

20 (7) fails to pay the fee for filing the report under
21 Section 1303.202;

22 (8) provides false or misleading information to the
23 commission on a report required by Subchapter E or on a filing
24 required by Subchapter F;

25 (9) fails to provide, within a reasonable time,
26 information requested by the commission that relates to a formal or
27 informal complaint to the commission; or

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

3 SECTION 7. Sections 1303.101(c) and 1303.253(d),
4 Occupations Code, are repealed.

5 SECTION 8. The changes in law made by this Act apply only to
6 a residential service contract entered into or renewed on or after
7 the effective date of this Act. A residential service contract
8 entered into or renewed before that date is governed by the law as
9 it existed immediately before the effective date of this Act, and
10 that law is continued in effect for that purpose.

11 SECTION 9. This Act takes effect September 1, 2019.