

By: Phelan

H.B. No. 4830

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of service contracts and service contract providers and administrators.

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

SECTION 1. Section 1304.002(4), Occupations Code, is amended to read as follows:

(4) "Consumer" means an individual to whom a service contract is sold, offered, or marketed ~~[who, for a purpose other than resale, buys tangible personal property that is:~~

~~[(A) distributed in commerce; and~~

~~[(B) normally used for personal, family, or household purposes and not for business or research purposes].~~

SECTION 2. Section 1304.003(a), Occupations Code, is amended by amending Subdivisions (2) and (4) and adding Subdivision (5) to read as follows:

(2) "Service contract" means an agreement that is entered into for a separately stated consideration and for a specified term under which a provider agrees to:

(A) repair, replace, or maintain a product, or provide reimbursement or payment ~~[indemnification]~~ for the repair, replacement, or maintenance of a product, for operational or structural failure, for damage caused by a power surge to a product, or for damage caused by a defect in materials or workmanship or by normal wear;

(B) provide identity recovery, if the service contract is financed under Chapter 348 or 353, Finance Code;

(C) provide compensation to the lessee or buyer of a vehicle on the total constructive loss under a depreciation benefit optional member program; ~~or~~

(D) provide a service, reimbursement, or payment under a residential service contract; or

(E) in conjunction with a leased motor vehicle, provide for:

(i) the repair, replacement, or maintenance of property due to:

(a) excess wear and use;

(b) damage for items such as tires, paint cracks or chips, interior stains, rips or scratches, exterior dents or scratches, windshield cracks or chips, and missing interior or exterior parts; or

(c) excess mileage that would result in a lease-end charge; and

(ii) payment, in an amount not to exceed the purchase price of the vehicle, for:

(a) the repair, replacement, or maintenance of property due to excess wear and use, damage for items described by Subparagraph (i)(b), or excess mileage that would result in a charge at the end of the lease term; or

(b) any other charge for damage that is considered as excess wear and use by a lessor under a motor vehicle lease.

(4) "Residential service contract":

(A) means a service contract, other than a service contract described by Paragraph (B), of any duration under which a provider ~~[agrees to]~~, in the event of the operational or structural failure of, damage caused by a power surge to, a defect in materials or workmanship of, or damage caused by normal wear to 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, agrees to:

(i) perform ~~[(A)]~~ service, maintain, repair, or replace all or any part of the covered items ~~[the structural component, appliance, or electrical, plumbing, heating, cooling, or air-conditioning system]~~;

(ii) ~~[(B)]~~ provide incidental payment or reimbursement ~~[of indemnity]~~ under limited circumstances for the covered items, including food spoilage; or

(iii) ~~[(C)]~~ provide reimbursement or payment instead of service, repair, or replacement of the covered items; and

(B) does not include a service contract offered:

(i) in connection with the retail purchase of an appliance and the terms of which do not include any other item listed in Paragraph (A); or

(ii) by a registered provider that covers appliances attached to or located on residential property and the terms of which do not include any other item listed in Paragraph (A)

1 ~~[when a part, structural component, appliance, or service provider~~
2 ~~or technician is unavailable]~~.

3 (5) "Residential service contract provider" means a
4 provider who is contractually obligated to a service contract
5 holder under the terms of a residential service contract and may
6 also offer service contracts that cover appliances attached to or
7 located on the residential property with or without coverage for
8 structural components or an electrical, plumbing, heating,
9 cooling, or air-conditioning system of a residential property.

10 SECTION 3. Section 1304.003(b), Occupations Code, is
11 amended to read as follows:

12 (b) A service contract described by Subsection (a)(2)(A)
13 may provide for:

14 (1) incidental payment or reimbursement ~~[indemnity]~~
15 under limited circumstances, including towing, rental, and
16 emergency road service;

17 (2) the repair or replacement of a product for damage
18 resulting from ~~[a power surge or for]~~ accidental damage incurred in
19 handling the product;

20 (3) identity recovery, if the service contract is
21 financed under Chapter 348 or 353, Finance Code; or

22 (4) the replacement of a motor vehicle key or key fob
23 in the event the key or key fob is inoperable, lost, or stolen.

24 SECTION 4. Section 1304.004, Occupations Code, is amended
25 to read as follows:

26 Sec. 1304.004. EXEMPTIONS. (a) In this section:

27 (1) "Maintenance agreement" means an agreement that

provides only for scheduled maintenance for a specified ~~[limited]~~ period. The term does not include coverage for repairs or other incidental expenses necessitated by an operational or structural failure due to the breakdown of a part, regardless of whether the replacement of the part otherwise constitutes scheduled maintenance.

(2) "Scheduled maintenance" means service performed at or with reference to a time or wear interval for a device, appliance, electrical, plumbing, heating, cooling, or air-conditioning system, or motor vehicle and may include the replacement of fluids, filters, brake pads, wiper blades, belts, tires, and other similar parts designed to wear out with normal use and recommended to be replaced or replenished at designated intervals.

(3) ~~(2)~~ "Warranty" means an undertaking made solely by the manufacturer or importer of a product or the seller of a product, structural component, system, or service that:

(A) guarantees ~~[indemnity for]~~ a ~~[defective part, mechanical or electrical breakdown, or labor cost or guarantees another]~~ remedial measure in the event of a defect in or performance failure of the covered item. The remedial measure may include reimbursement for costs related to the defect or failure, ~~[including]~~ the repair or replacement of the product, component, system, or part, or the repetition of service;

(B) is made without payment of additional consideration;

(C) is not negotiated or separated from the sale

1 of the product or service; and

2 (D) is incidental to the sale of the product or
3 service.

4 (b) This chapter does not apply to:

5 (1) a warranty;

6 (2) a maintenance agreement;

7 (3) a service contract sold or offered for sale to a
8 person concerning property purchased for other than personal,
9 family, or household purposes ~~[who is not a consumer]~~;

10 (4) an agreement issued by an automobile service club
11 that holds a certificate of authority under Chapter 722,
12 Transportation Code;

13 (5) a service contract sold by a motor vehicle dealer
14 on a motor vehicle sold by that dealer, if the dealer:

15 (A) is the provider;

16 (B) is licensed as a motor vehicle dealer under
17 Chapter 2301; and

18 (C) covers its obligations under the service
19 contract with a reimbursement insurance policy; or

20 (6) a contract offered by a local exchange telephone
21 company that provides for the repair of inside telephone wiring,
22 if:

23 (A) the contract term does not exceed one month;

24 and

25 (B) the consumer can terminate the contract
26 before a new contract term begins without liability except for
27 payment of charges for the term that has begun.

SECTION 5. Section 1304.0041, Occupations Code, is amended to read as follows:

Sec. 1304.0041. CERTAIN EXEMPT AGREEMENTS. This chapter does not apply to:

(1) a performance guarantee offered by ~~+~~
[~~(A)~~] the builder of a residential property~~[-or~~
[~~(B)~~ the manufacturer or seller of an appliance
or other system or component of a residential property];

(2) a residential service contract executed before August 28, 1979; or

(3) ~~a guarantee or warranty that is:~~
[~~(A)~~ designed to guarantee or warrant the repair
or service of an appliance, system, or component of a residential
property; and

[~~(B)~~ issued by a person who sells, services,
repairs, or replaces the appliance, system, or component at the
time or before the guarantee or warranty is issued;

[~~(4)~~ a service or maintenance agreement or a warranty
that:

[~~(A)~~ is sold, offered for sale, or issued by a
manufacturer or merchant who manufactures or sells a product or
part of a product, including a structural component, an appliance,
or an electrical, plumbing, heating, cooling, or air-conditioning
system of a building or residence; and

[~~(B)~~ provides for, warrants, or guarantees the
maintenance, repair, replacement, or performance of the product or
part of the product; or

1 ~~[(5)]~~ home warranty insurance as defined by Section
2 2005.001, Insurance Code.

3 SECTION 6. Section 1304.051(b), Occupations Code, is
4 amended to read as follows:

5 (b) On request of the executive director, a provider or
6 administrator shall make the records required by Section 1304.155
7 available to the executive director as necessary to enable the
8 executive director to reasonably determine compliance with this
9 chapter.

10 SECTION 7. Section 1304.101(b), Occupations Code, is
11 amended to read as follows:

12 (b) Except for the requirements ~~[registration requirement]~~
13 of this chapter and Chapter 51, a provider, seller, administrator,
14 or other person who markets, sells, issues, or offers to sell
15 service contracts is exempt from any licensing requirement of this
16 state that relates to an activity regulated under this chapter.

17 SECTION 8. Section 1304.151(b-4), Occupations Code, is
18 amended to read as follows:

19 (b-4) The amount of the security deposit required under
20 Subsection (b) may not be less than \$25,000 for a ~~[provider of a]~~
21 residential service contract provider.

22 SECTION 9. Section 1304.1531, Occupations Code, is amended
23 by amending Subsections (a), (b), and (d) and adding Subsection (e)
24 to read as follows:

25 (a) A provider or administrator may employ or contract with
26 a seller to be responsible for:

27 (1) all or any part of the sale or marketing of service

contracts for the provider; and

(2) compliance with this chapter in connection with the sale or marketing of service contracts.

(b) The hiring of or contracting with a seller under this section does not affect a provider's or administrator's responsibility to comply with this chapter.

(d) A seller shall process a service contract application and a payment from a consumer in accordance with this chapter and with any sales agreement or contract between the provider or administrator and the seller or administrator.

(e) A seller that violates this chapter is liable for administrative or civil penalties under this chapter and Chapter 51.

SECTION 10. Section 1304.154, Occupations Code, is amended to read as follows:

Sec. 1304.154. PROVIDER OR ADMINISTRATOR REQUIREMENTS. (a) A provider may not sell, offer for sale, or issue a service contract in this state unless the provider gives the service contract holder:

(1) a receipt for, or other written evidence of, the purchase of the contract; and

(2) a copy of the contract within a reasonable period after the date of purchase.

(b) A residential service contract provider or administrator, as applicable, shall exercise reasonable care to ensure that:

(1) any repairs provided to the service contract

holder are performed by persons licensed to perform the type of work, if the work requires a license; and

(2) under normal circumstances, not later than 48 hours after the contract holder requests services, the provider or administrator:

(A) initiates the performance of services; or

(B) if the provider or administrator does not initiate the performance of services, furnishes the contract holder a documented explanation of the reason the performance of the requested services was not initiated.

(c) A residential service contract provider or administrator is presumed to have exercised reasonable care under Subsection (b)(1) with respect to air conditioning or electrical work if:

(1) the provider or administrator notes on any work order or in the claim file the name and license number of the air conditioning and refrigeration contractor licensed under Chapter 1302 or the electrical contractor licensed under Chapter 1305 under whose supervision the work will be performed; or

(2) the provider or administrator:

(A) selects the service provider from a regularly updated roster of licensed service providers that:

(i) is maintained by the provider or administrator; and

(ii) includes the license numbers of the service providers; and

(B) makes the roster available to the department

1 for inspection on request.

2 SECTION 11. Section 1304.155(a), Occupations Code, is
3 amended to read as follows:

4 (a) A provider shall maintain accurate accounts, books, and
5 other records regarding transactions regulated under this
6 chapter. The provider's records must include:

7 (1) a copy of each unique form of service contract
8 sold;

9 (2) the name and address of each service contract
10 holder who provided the holder's name and address;

11 (3) a list of each location at which the provider's
12 service contracts are marketed, sold, or offered for sale; and

13 (4) written claims files that contain at least:

14 (A) the date; ~~and~~

15 (B) a description of each claim related to the
16 service contracts;

17 (C) a copy of any claim-related correspondence
18 with the service contract holder; and

19 (D) documentation of any reason for the denial of
20 a claim.

21 SECTION 12. Section 1304.157, Occupations Code, is amended
22 to read as follows:

23 Sec. 1304.157. RESIDENTIAL SERVICE CONTRACTS. (a) A
24 person may not sell, offer to sell, arrange or solicit the sale of,
25 or receive an application for a residential service contract unless
26 the person is:

27 (1) employed by a residential service contract

1 provider or an administrator [~~of a residential service contract~~]
2 who is registered [~~licensed~~] under this chapter; or

3 (2) licensed as a real estate sales agent, real estate
4 broker, mobile home dealer, or insurance agent in this state.

5 (b) Notwithstanding Subsection (a), a person compensated by
6 a residential service contract provider or administrator, but who
7 is not employed by that provider or administrator, may sell, offer
8 to sell, arrange or solicit the sale of, or receive an application
9 for a residential service contract if the contract contains the
10 following statement in at least 10-point boldface type: "NOTICE:
11 THIS COMPANY PAYS PERSONS NOT EMPLOYED BY THE PROVIDER FOR THE SALE,
12 ADVERTISING, INSPECTION, OR PROCESSING OF A RESIDENTIAL SERVICE
13 CONTRACT UNDER CHAPTER 1304, OCCUPATIONS CODE." For purposes of
14 Subsection (a) and this subsection, a person is employed by a
15 residential service contract provider or administrator if, in
16 connection with the person selling, offering to sell, arranging or
17 soliciting the sale of, or receiving applications for residential
18 service contracts, the provider or administrator:

19 (1) directs and controls the person's performance; and

20 (2) is responsible for representations made by the
21 person when acting within the scope of the person's employment.

22 (c) Notwithstanding Section 1304.151(a)(1), a residential
23 service contract provider [~~of a residential service contract~~] may
24 use a reimbursement insurance policy issued by a captive insurance
25 company as defined by Section 964.001, Insurance Code, to insure
26 the provider's [~~residential~~] service contracts if the provider
27 maintains a funded reserve equal to not less than an amount computed

1 by subtracting the amount of any claims paid from the product of 25
2 percent and the gross consideration the provider received from
3 consumers from the sale of all the provider's service contracts
4 issued and outstanding in this state. The department shall
5 prescribe a calculation form to be used by a provider to calculate
6 the minimum amount required to be maintained in the provider's
7 reserve account under this subsection. A reimbursement insurance
8 policy issued to a residential service contract provider in
9 accordance with this subsection:

10 (1) is not subject to Section 1304.152; and

11 (2) is considered to satisfy the requirements of
12 Sections 1304.1025 and 1304.151(a)(1) for purposes of this chapter.

13 SECTION 13. Section 1304.161(a), Occupations Code, is
14 amended to read as follows:

15 (a) A provider, administrator, seller, or other
16 representative of the provider may not, in the provider's service
17 contracts or literature or in any oral or written communication
18 with a consumer concerning a proposed or executed service contract:

19 (1) intentionally, knowingly, or recklessly make,
20 permit, or cause to be made any false, deceptive, or misleading
21 statement; or

22 (2) deliberately omit a material statement if the
23 omission would mislead a reasonable consumer [~~be considered~~
24 ~~misleading~~].

25 SECTION 14. Section 1304.1521, Occupations Code, is
26 repealed.

27 SECTION 15. The changes in law made by this Act apply only

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1 to a service contract entered into on or after the effective date of
2 this Act. A service contract entered into before the effective date
3 of this Act is governed by the law in effect on the date the contract
4 was entered into, and the former law is continued in effect for that
5 purpose.

6 SECTION 16. This Act takes effect September 1, 2025.