

By: Phelan

H.B. No. 4830

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

10 ~~[(A) distributed in commerce, and~~

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

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

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

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

H.B. No. 4830

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

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

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

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

21 (B) does not include a service contract offered:

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

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

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

15 (3) [(2)] "Warranty" means an undertaking made solely
16 by the manufacturer or importer of a product or the seller of a
17 product, structural component, system, or service that:

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

25 (B) is made without payment of additional
26 consideration;

27 (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.

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

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

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

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

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

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

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

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

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

1 [45] 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

1 contracts for the provider; and

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

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

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

11 (e) A seller that violates this chapter is liable for
12 administrative or civil penalties under this chapter and Chapter
13 51.

14 SECTION 10. Section [1304.154](#), Occupations Code, is amended
15 to read as follows:

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

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

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

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

27 (1) any repairs provided to the service contract

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

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

6 (A) initiates the performance of services; or
7 (B) if the provider or administrator does not
8 initiate the performance of services, furnishes the contract holder
9 a documented explanation of the reason the performance of the
10 requested services was not initiated.

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

15 (1) the provider or administrator notes on any work
16 order or in the claim file the name and license number of the air
17 conditioning and refrigeration contractor licensed under Chapter
18 1302 or the electrical contractor licensed under Chapter 1305 under
19 whose supervision the work will be performed; or

20 (2) the provider or administrator:

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

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

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

27 (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

H.B. No. 4830

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.