

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. Sections 1304.003(a)(2) and (4), Occupations  
14 Code, are amended to read as follows:

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

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

24 (B) provide identity recovery, if the service

1 contract is financed under Chapter 348 or 353, Finance Code;

2 (C) provide compensation to the lessee or buyer

3 of a vehicle on the total constructive loss under a depreciation

4 benefit optional member program; [or]

5 (D) provide a service, reimbursement, or payment

6 under a residential service contract; or

7 (E) in conjunction with a leased motor vehicle,

8 provide for:

9 (i) the repair, replacement, or maintenance

10 of property due to:

11 (a) excess wear and use;

12 (b) damage for items such as tires,

13 paint cracks or chips, interior stains, rips or scratches, exterior

14 dents or scratches, windshield cracks or chips, and missing

15 interior or exterior parts; or

16 (c) excess mileage that would result

17 in a lease-end charge; and

18 (ii) payment, in an amount not to exceed the

19 purchase price of the vehicle, for:

20 (a) the repair, replacement, or

21 maintenance of property due to excess wear and use, damage for items

22 described by Subparagraph (i)(b), or excess mileage that would

23 result in a charge at the end of the lease term; or

24 (b) any other charge for damage that

25 is considered as excess wear and use by a lessor under a motor

26 vehicle lease.

27 (4) "Residential service contract":

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

24 (ii) by a registered provider that covers  
25 appliances attached to or located on residential property and the  
26 terms of which do not include any other item listed in Paragraph (A)  
27 [when a part, structural component, appliance, or service provider

1 ~~or technician is unavailable~~].

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

4 (b) A service contract described by Subsection (a)(2)(A)  
5 may provide for:

6 (1) incidental payment or reimbursement [~~indemnity~~]  
7 under limited circumstances, including towing, rental, and  
8 emergency road service;

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

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

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

16 SECTION 4. Section 1304.004, Occupations Code, is amended  
17 to read as follows:

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

19 (1) "Maintenance agreement" means an agreement that  
20 provides only for scheduled maintenance for a specified [~~limited~~]  
21 period. The term does not include coverage for repairs or other  
22 incidental expenses necessitated by an operational or structural  
23 failure due to the breakdown of a part, regardless of whether the  
24 replacement of the part otherwise constitutes scheduled  
25 maintenance.

26 (2) "Scheduled maintenance" means service performed  
27 at or with reference to a time or wear interval for a device,

1 appliance, electrical, plumbing, heating, cooling, or  
2 air-conditioning system, or motor vehicle and may include the  
3 replacement of fluids, filters, brake pads, wiper blades, belts,  
4 tires, and other similar parts designed to wear out with normal use  
5 and recommended to be replaced or replenished at designated  
6 intervals.

7                   (3) [+] "Warranty" means an undertaking made solely  
8 by the manufacturer or importer of a product or the seller of a  
9 product, structural component, system, or service that:

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

17                   (B) is made without payment of additional  
18 consideration;

19                   (C) is not negotiated or separated from the sale  
20 of the product or service; and

21                   (D) is incidental to the sale of the product or  
22 service.

23                   (b) This chapter does not apply to:

24                   (1) a warranty;

25                   (2) a maintenance agreement;

26                   (3) a service contract sold or offered for sale to a  
27 person concerning property purchased for other than personal,

1 family, or household purposes [who is not a consumer];

2 (4) an agreement issued by an automobile service club

3 that holds a certificate of authority under Chapter 722,

4 Transportation Code;

5 (5) a service contract sold by a motor vehicle dealer

6 on a motor vehicle sold by that dealer, if the dealer:

7 (A) is the provider;

8 (B) is licensed as a motor vehicle dealer under

9 Chapter 2301; and

10 (C) covers its obligations under the service

11 contract with a reimbursement insurance policy; or

12 (6) a contract offered by a local exchange telephone

13 company that provides for the repair of inside telephone wiring,

14 if:

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

16 and

17 (B) the consumer can terminate the contract

18 before a new contract term begins without liability except for

19 payment of charges for the term that has begun.

20 SECTION 5. Section 1304.0041, Occupations Code, is amended

21 to read as follows:

22 Sec. 1304.0041. CERTAIN EXEMPT AGREEMENTS. This chapter

23 does not apply to:

24 (1) a performance guarantee offered by [+]

25 [(A)] the builder of a residential property[; or]

26 [(B)] the manufacturer or seller of an appliance

27 or other system or component of a residential property];

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3 (3) [a guarantee or warranty that is:

4 [ (A) ~~designed to guarantee or warrant the repair~~  
5 ~~or service of an appliance, system, or component of a residential~~  
6 ~~property; and~~

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

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

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

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

20 [ (5) ] home warranty insurance as defined by Section  
21 2005.001, Insurance Code.

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

24 (b) On request of the executive director, a provider or  
25 administrator shall make the records required by Section 1304.155  
26 available to the executive director as necessary to enable the  
27 executive director to reasonably determine compliance with this

1 chapter.

2 SECTION 7. Section [1304.101\(b\)](#), Occupations Code, is  
3 amended to read as follows:

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

9 SECTION 8. Section [1304.151\(b-4\)](#), Occupations Code, is  
10 amended to read as follows:

11 (b-4) The amount of the security deposit required under  
12 Subsection (b) may not be less than \$25,000 for a provider of a  
13 residential service contract. This subsection does not apply to a  
14 service contract described by Section [1304.003\(a\)\(4\)\(B\)](#) offered by  
15 a residential service contract provider.

16 SECTION 9. Section [1304.1531](#), Occupations Code, is amended  
17 by amending Subsections (a), (b), and (d) and adding Subsection (e)  
18 to read as follows:

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

21 (1) all or any part of the sale or marketing of service  
22 contracts for the provider; and

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

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

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

5                   (e) A seller that violates this chapter is liable for  
6 administrative or civil penalties under this chapter and Chapter  
7 51.

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

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

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

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

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

21                   (1) any repairs provided to the service contract  
22 holder are performed by persons licensed to perform the type of  
23 work, if the work requires a license; and

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

27                   (A) initiates the performance of services; or

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

12 (2) the provider or administrator;

21 SECTION 11. Section 1304.155(a), Occupations Code, is  
22 ~~1304.155(a), Occupations Code, is~~

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

26 (1) a copy of each unique form of service contract  
27 sold.

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

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

6 (A) the date; [and]

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

13 SECTION 12. Section [1304.157](#), Occupations Code, is amended  
14 to read as follows:

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

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

24 (b) Notwithstanding Subsection (a), a person compensated by  
25 a residential service contract provider or administrator, but who  
26 is not employed by that provider or administrator, may sell, offer  
27 to sell, arrange or solicit the sale of, or receive an application

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1 for a residential service contract if the contract contains the  
2 following statement in at least 10-point boldface type: "NOTICE:  
3 THIS COMPANY PAYS PERSONS NOT EMPLOYED BY THE PROVIDER FOR THE SALE,  
4 ADVERTISING, INSPECTION, OR PROCESSING OF A RESIDENTIAL SERVICE  
5 CONTRACT UNDER CHAPTER [1304](#), OCCUPATIONS CODE." For purposes of  
6 Subsection (a) and this subsection, a person is employed by a  
7 residential service contract provider or administrator if, in  
8 connection with the person selling, offering to sell, arranging or  
9 soliciting the sale of, or receiving applications for residential  
10 service contracts, the provider or administrator:

11 (1) directs and controls the person's performance; and  
12 (2) is responsible for representations made by the  
13 person when acting within the scope of the person's employment.

14 (c) Notwithstanding Section 1304.151(a)(1), a residential  
15 service contract provider [~~of a residential service contract~~] may  
16 use a reimbursement insurance policy issued by a captive insurance  
17 company as defined by Section 964.001, Insurance Code, to insure  
18 the provider's [~~residential~~] service contracts if the provider  
19 maintains a funded reserve equal to not less than an amount computed  
20 by subtracting the amount of any claims paid from the product of 25  
21 percent and the gross consideration the provider received from  
22 consumers from the sale of all the provider's service contracts  
23 issued and outstanding in this state. The department shall  
24 prescribe a calculation form to be used by a provider to calculate  
25 the minimum amount required to be maintained in the provider's  
26 reserve account under this subsection. A reimbursement insurance  
27 policy issued to a residential service contract provider in

1 accordance with this subsection:

2 (1) is not subject to Section 1304.152; and  
3 (2) is considered to satisfy the requirements of  
4 Sections 1304.1025 and 1304.151(a)(1) for purposes of this chapter.

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

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

11 (1) intentionally, knowingly, or recklessly make,  
12 permit, or cause to be made any false, deceptive, or misleading  
13 statement; or

14 (2) deliberately omit a material statement if the  
15 omission would mislead a reasonable consumer [be considered  
16 misleading].

17 SECTION 14. Section 1304.1521, Occupations Code, is  
18 repealed.

19 SECTION 15. The changes in law made by this Act apply only  
20 to a service contract entered into on or after the effective date of  
21 this Act. A service contract entered into before the effective date  
22 of this Act is governed by the law in effect on the date the contract  
23 was entered into, and the former law is continued in effect for that  
24 purpose.

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