

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. Sections 1304.003(a)(2) and (4), Occupations Code, are amended 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)

~~[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) ~~[(2)]~~ "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]~~;

(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~~

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

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

(b) On request of the executive director, a provider or administrator shall make the records required by Section 1304.155 available to the executive director as necessary to enable the 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.

(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

1 (B) furnishes the contract holder a documented
2 explanation for failure to provide the requested service.

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:

7 (1) the provider or administrator notes on any work
8 order or in the claim file the name and license number of the air
9 conditioning and refrigeration contractor licensed under Chapter
10 1302 or the electrical contractor licensed under Chapter 1305 under
11 whose supervision the work will be performed; or

12 (2) the provider or administrator:

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

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

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

19 (B) makes the roster available to the department
20 for inspection on request.

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

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;

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

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

(4) written claims files that contain at least:

(A) the date; ~~[and]~~

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

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

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

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

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

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

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

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

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.