

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2279
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2279 amends Chapter 1303 (Residential Service Companies), Occupations Code, to better reflect the current residential service company (RSC) industry landscape. RSCs are licensed entities, overseen by the Texas Real Estate Commission (TREC), that sell residential service contracts (i.e., home warranties), typically during the sale of a home by either the home buyer looking for additional assurances on home appliances or the home seller in an effort to increase the marketability of the home.

H.B. 2279 updates the current statute in several ways, including amending the form filing requirement so that forms not disapproved by TREC within 30 days are approved, stating the schedule of charges filed with TREC by RSCs backed by reimbursement insurance are filed for information only while RSCs backed by reserves must be approved, making clear that information submitted in connection with an examination of a RSC by TREC is exempt from public records disclosure, confirming that that an insurer may not cancel a reimbursement insurance policy without notifying TREC, and codifying existing regulations concerning captive insurance companies backing residential service company programs. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 2279 amends current law relating to the regulation of residential service contracts.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTION 10 (Section 1303.202, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1303.002, Occupations Code, by adding Subdivisions (2-a) and (3-a) and amending Subdivision (5), to define "executive director" and "reimbursement insurance policy" and redefine "residential service contract."

SECTION 2. Amends Section 1303.052(b), Occupations Code, as follows:

(b) Requires a residential service company to pay the Texas Real Estate Commission (TREC) a fee for:

(1) filing a report, rather than an annual report, under Section 1303.202 (Annual Report); and

(2) makes no change to this subdivision.

SECTION 3. Amends Section 1303.053, Occupations Code, by adding Subsection (c), to provide that information prepared or compiled by TREC relating to an examination conducted under this section, including the examination file, is confidential and exempt from disclosure under Chapter 552 (Public Information), Government Code. Authorizes TREC to withhold the information without the necessity of requesting a decision from the Texas attorney general (attorney general) under Subchapter G (Attorney General Decisions), Chapter 552, Government Code.

SECTION 4. Amends Section 1303.103, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires that each application for a license contain or be accompanied by:

(1) through (6) makes no changes to these subdivisions;

(7) the most recent financial statements for the applicant, rather than a financial statement that:

(A) that are, rather than is:

(i) prepared by an independent certified public accountant; or

(ii) certified as accurate by at least two of the residential service company's principal officers, if the residential service company uses a reimbursement insurance policy to insure its outstanding residential service contracts written in this state in accordance with Section 1303.151(b), rather than within six months preceding the date the application is submitted; and

(B) that show, rather than shows, the applicant's assets, liabilities, and sources of financial support;

(8) and (9) makes no changes to these subdivisions;

(10) changes references to administrator and administrator's to the executive director of TREC (executive director) and executive director's; and

(11) makes no change to this subdivision.

(d) Requires TREC to maintain the confidentiality of information submitted to TREC by an applicant under this section that is claimed to be confidential for competitive purposes. Provides that the confidential information is exempt from disclosure under Chapter 552, Government Code. Authorizes TREC to withhold the information without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code.

SECTION 5. Amends Section 1303.151, Occupations Code, as follows:

Sec. 1303.151. New heading: RESERVE OR REIMBURSEMENT INSURANCE POLICY REQUIRED. (a) Requires a residential service company, except as provided by Subsection (b), to maintain a funded reserve against its liability to provide repair and replacement services under its outstanding residential service contract written in this state.

(b) Provides that, except as provided by Section 1303.152(d), a residential service company is not required to maintain a funded reserve if it insures all of its risk under its outstanding residential service contracts written in this state under a reimbursement insurance policy issued by:

(1) an admitted insurer; or

(2) a surplus lines insurer or a surplus lines bonding company if the insurer or bonding company is rated A+ or better by a rating service recognized by TREC and submits to TREC for its approval evidence, in the form of a certified audit and other pertinent information TREC is authorized to require, of the insurer's or bonding company's ability to meet its contractual obligations.

SECTION 6. Amends Section 1303.152, Occupations Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that for purposes of this chapter, to the extent a residential service company uses a reimbursement insurance policy described by Section 1303.151(b) to insure an outstanding residential service contract written in this state, the company's reserve is not required to include a contract fee on the residential service contract. Deletes existing text providing that for purposes of this chapter, the reserve is not required to include a contract fee on a residential service contract to the extent that provision is made for reinsurance of the outstanding risk on the contract by certain entities.

(d) Requires the residential service company, if a residential service company's reimbursement insurance policy is issued by a captive insurance company as defined by Section 964.001, Insurance Code, to maintain a funded reserve of at least 25 percent of the reserve amount described by Subsection (a).

SECTION 7. Amends Subchapter D, Chapter 1303, Occupations Code, by adding Section 1303.1525, as follows:

Sec. 1303.1525. REIMBURSEMENT INSURANCE POLICY. (a) Provides that an insurer that issues a reimbursement insurance policy to a residential service company is considered to have received the premiums for the policy on the dates contract holders pay for residential service contracts issued by the residential service company.

(b) Prohibits an insurer from cancelling a reimbursement insurance policy until the insurer mails or delivers a notice of cancellation to TREC. Provides that the cancellation of the policy does not affect the issuer's liability for a residential service contract issued by the insured residential service company before the effective date of the cancellation.

SECTION 8. Amends Section 1303.153, Occupations Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires the residential service company, except as provided by Subsection (d), as a guarantee that a residential service company will meet its obligations to its contract holders, to maintain with TREC a bond or other security accepted by TREC.

(d) Provides that this section does not apply to a residential service company that uses a reimbursement insurance policy to insure its outstanding residential service contracts written in this state in accordance with Section 1303.151(b).

SECTION 9. Amends Section 1303.154, Occupations Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires an applicant for a new license, except as provided by Subsection (d), to provide security in the amount of \$25,000. Makes a nonsubstantive change.

(d) Provides that this section does not apply to a residential service company that uses a reimbursement insurance policy to insure its outstanding residential service contracts written in this state in accordance with Section 1303.151(b).

SECTION 10. Amends Section 1303.202, Occupations Code, as follows:

Sec. 1303.202. New heading: REPORT. (a) Authorizes TREC to adopt rules requiring each residential service company to file with TREC a report that meets the requirements in Subsection (b). Deletes existing text requiring each residential service company, not later than April 1 of each year, to file with TREC a report covering the preceding calendar year.

(b) Requires that the report:

(1) and (2) makes no changes to these subdivisions; and

(3) include:

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

(i) an independent public accountant; or

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

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

(C) if the residential service company maintains a reserve required by Section 1303.151(a), the number of residential service contracts entered into during the year, the number of contract holders as of the end of the year, and the number of contracts terminating during the year; and

(D) makes no changes to this paragraph.

(c) Requires TREC to maintain the confidentiality of information provided to TREC by a residential service company under this section that is claimed to be confidential for competitive purposes. Provides that the confidential information is exempt from disclosure under Chapter 552, Government Code. Authorizes TREC to withhold the information without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code. Deletes existing text providing that information provided by a residential service company under Subsection (b)(3)(D) is confidential and for the exclusive use of TREC. Makes a nonsubstantive change.

SECTION 11. Amends Section 1303.251, Occupations Code, as follows:

Sec. 1303.251. New heading: CONTRACT DELIVERY AND FILING. (a) Provides that each contract holder residing in this state is entitled to receive a copy of the, rather than evidence of coverage under a, residential service contract not later than the 15th day after the date the contract holder pays for the residential service contract or the effective date of the residential service contract, whichever is later. Authorizes the residential service company to provide the copy by mail, e-mail, or other means of delivery acceptable to TREC. Deletes existing text requiring the residential service company that issued the contract to issue evidence of coverage under the contract.

(b) Requires a residential service company to file with TREC for approval a residential service contract, or an amendment to a previously filed residential service contract that changes the residential service contract's coverage or substantially amends a disclosure required by Section 1303.252. Deletes existing text prohibiting a residential service company from issuing or delivering evidence of coverage under a residential service contract, or an amendment to that evidence, to a person in this state until a copy of the evidence or amendment is filed with and approved by TREC.

(c) Authorizes TREC to require a residential service company to submit relevant information TREC considers necessary to determine whether to approve or disapprove a filing made under Subsection (b), rather than the company's evidence of coverage.

(d) Requires TREC to approve a filing made under Subsection (b), rather than a residential service company's evidence of coverage, if the requirements of this section and Section 1303.252 are met.

(d-1) Requires that TREC, for a filing made under Subsection (b) after a residential service company is licensed, have 30 days to consider the filing from the date of the filing or the date that TREC receives any associated filing fee, whichever is later. Provides that on the 31st day after that date, the filing is considered approved unless TREC disapproves the filing or notifies the residential service company in writing that the filing violates this section or Section 1303.252.

(d-2) Authorizes the residential service company, if TREC notifies the residential service company that the filing violates this section of Section 1303.252, to submit a written response to that notification. Requires that TREC have 30 days to reconsider the filing from the date that TREC receives the residential service company's written response. Provides that on the 31st day after TREC receives the residential service company's written response, the filing is considered approved unless TREC disapproves the filing. Provides that if the residential service company does not respond in writing before the 61st day after being notified by TREC that the filing violates this section or Section 1303.252, the filing is automatically disapproved.

(d-3) Prohibits TREC from requiring a residential service company to waive a 30-day consideration period provided by this section or making the approval of a filing contingent on waiving a 30-day consideration period provided by this section.

(e) Requires TREC, if TREC disapproves a filing made under Subsection (b), rather than disapproves a residential service company's evidence of coverage, to notify the company of the disapproval and in the notice to specify in detail the reason for disapproval.

(f) Provides that a residential service company whose filing under Subsection (b) is disapproved by TREC is entitled to a hearing conducted by the State Office of Administrative Hearings (SOAH). Deletes existing text authorizing a residential service company whose evidence of coverage is disapproved by TREC to request a hearing on TREC's decision. Deletes existing text requiring TREC, if a hearing is requested, to set a hearing on the decision as soon as reasonably possible. Deletes existing text requiring TREC by written order, not later than the 60th day after the date of the hearing, to approve or disapprove the evidence and if the evidence is disapproved, to state in the order the grounds for the disapproval.

(g) Provides that a hearing under Subsection (f) is governed by the contested case procedures under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 12. Amends Section 1303.252, Occupations Code, as follows:

Sec. 1303.252. New heading: FORM OF CONTRACT AND REQUIRED DISCLOSURES. (a) Requires that a residential service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state be written, printed, or typed in clear, understandable language that is easy to read and disclose certain information. Deletes existing text requiring that evidence of coverage under a residential service contract contain a clear and complete statement, if the evidence is a

contract, or a reasonably complete facsimile, if the evidence is a certificate of certain information.

(b) Provides that a service fee under Subsection (a)(7) (relating to any service fee to be charged for a service call) is not required to be preprinted on the residential service contract but is required to be disclosed in writing to the contract holder before the purchase of the residential service contract.

(c) Requires that a residential service contract insured under a reimbursement insurance policy in accordance with Section 1303.151(b) contain a statement substantially similar to the following: "The residential service company's obligations under this residential service contract are insured under a reimbursement insurance policy." Requires that the residential service contract also state the name and address of the insurer and state that the contract holder may apply for reimbursement directly to the insurer if a covered service is not provided to the contract holder by the residential service company before the 61st day after the date the contract holder provides proof of loss.

(d) Prohibits a residential service contract, rather than evidence of coverage, from containing a provision that encourages misrepresentation or that is unjust, unfair, inequitable, misleading, deceptive, or false.

SECTION 13. Amends Section 1303.253, Occupations Code, as follows:

Sec. 1303.253. SCHEDULE OF CHARGES. Requires a residential service company to file with TREC a schedule of charges for services covered under a residential service contract and any amendment to a previously filed schedule before implementation of the schedule of charges or amendment. Deletes existing text prohibiting a residential service company from using in conjunction with a residential service contract a schedule of charges for services covered under the contract or an amendment to that schedule until a copy of the schedule or amendment is filed with and approved by TREC.

(b) Provides that a filing made under Subsection (a) by a residential service company that uses a reimbursement insurance policy to insure its outstanding residential service contracts written in this state in accordance with Section 1303.151(b) is not subject to approval by TREC and is made for information purposes only.

(c) Prohibits a filing made under Subsection (a) by a residential service company that maintains a reserve required by Section 1303.151(a) from being implemented until approved by TREC.

(d) Requires TREC to approve a filing made under Subsection (a), rather than schedule or charges, if TREC determines that the filing, rather than schedule, is reasonably related to the amount, term, and conditions of the contract to which the filing applies.

(e) Changes references to Subsection (b) to Subsection (d) and to reject to disapprove. Makes conforming and nonsubstantive changes. Redesignates Subsection (c) as Subsection (e).

(f) Requires that TREC, for a filing made under Subsection (a) by a residential service company described by Subsection (c) after the residential service company is licensed, have 30 days to consider the filing from the date of the filing or the date that TREC receives any associated filing fee, whichever is later. Provides that on the 31st day after the date, the filing is considered approved unless TREC disapproves the filing or notifies the residential service company in writing that the filing is not reasonably related to the amount, term, and conditions of the contract to which the filing applies.

(g) Authorizes the residential service company, if TREC notifies the residential service company that the filing is not reasonably related to the amount, term, and conditions of the contract to which the filing applies, to submit a written response to that notification. Requires that TREC have 30 days to reconsider the filing from the date that TREC receives the residential service company's written response. Provides that on the 31st day after TREC receives the residential service company's written response, the filing is considered approved unless TREC disapproves the filing. Provides that if the residential service company does not respond in writing before the 61st day after being notified by TREC that the filing is not reasonably related to the amount, term, and conditions of the contract to which the filing applies, the filing is automatically disapproved.

(h) Prohibits TREC, from requiring a residential service company to waive a 30-day consideration period provided by this section or making the approval of a filing contingent on waiving a 30-day consideration period provided by this section.

(i) Provides that a residential service company whose filing under Subsection (a) is disapproved by TREC is entitled to a hearing conducted by SOAH. Deletes existing text authorizing a residential service company whose schedule of charges is rejected by TREC to request a hearing on TREC's decision to be held as soon as reasonably possible. Deletes existing text requiring TREC by written order, not later than the 60th day after the date of the hearing, to approve or reject the schedule. Deletes existing text requiring TREC, if the schedule is rejected, to state in the order the grounds for the rejection. Redesignates Subsection (d) as Subsection (i).

(j) Provides that a hearing under Subsection (i) is governed by the contested case procedures under Chapter 2001, Government Code.

SECTION 14. Amends Section 1303.301(a), Occupations Code, to prohibit a residential service company from causing or permitting the use of a false or misleading advertisement or solicitation or any deceptive residential service contract, rather than evidence of coverage.

SECTION 15. Amends Section 1303.352(a), Occupations Code, as follows:

(a) Authorizes TREC to discipline a residential service company under Section 1303.351 if the continued operation of the company would be hazardous to its contract holders or if the company:

(1) makes no changes to this subdivision;

(2) issues a residential service contract, rather than evidence of coverage, that does not comply with Sections 1303.251 and 1303.252;

(3) through (7) makes no changes to these subdivisions.

SECTION 16. Provides that the changes in law made by this Act apply only to a residential service contract entered into or renewed on or after the effective date of this Act. Provides that a residential service contract entered into or renewed before that date is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 17. Effective date: January 1, 2018.