

By: Goldman

H.B. No. 2279

Substitute the following for H.B. No. 2279:

By: Kuempel

C.S.H.B. No. 2279

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of residential service contracts.

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

SECTION 1. Section 1303.002, Occupations Code, is amended by adding Subdivisions (2-a) and (3-a) and amending Subdivision (5) to read as follows:

(2-a) "Executive director" means the executive director of the Texas Real Estate Commission.

(3-a) "Reimbursement insurance policy" means a policy of insurance issued to a residential service company to:

(A) provide reimbursement to the residential service company under the terms of the insured residential service contracts issued or sold by the residential service company; or

(B) pay on behalf of the residential service company, in the event of the residential service company's nonperformance, all covered contractual obligations incurred by the residential service company under the terms of the insured residential service contracts issued or sold by the residential service company.

(5) "Residential service contract" means an agreement that is entered into for a separately stated consideration and for a specified term under which [~~in exchange for a fee~~] a person agrees to, in the event of the operational or structural failure of or damage caused by a defect in materials or workmanship or by

1 normal wear to [~~undertakes for a specified period to maintain,~~
2 ~~repair, or replace all or any part of~~] a structural component, an
3 appliance, or an electrical, plumbing, heating, cooling, or
4 air-conditioning system of a residential property that is attached
5 to the residential property:

6 (A) [~~. The term does not include a service or~~
7 ~~maintenance agreement sold, offered for sale, or issued by a~~
8 ~~manufacturer or merchant under which the manufacturer or merchant~~
9 ~~undertakes to~~] maintain, repair, or replace all or any part of the
10 [a product or part of a product, including a] structural component,
11 [an] appliance, or [an] electrical, plumbing, heating, cooling, or
12 air-conditioning system;

13 (B) provide incidental payment of indemnity
14 under limited circumstances, including food spoilage; or

15 (C) provide payment instead of repair when a
16 part, structural component, appliance, or service provider or
17 technician is unavailable [~~of a residential property, that is:~~

18 [~~(A) manufactured or sold by the manufacturer or~~
19 ~~merchant; or~~

20 [~~(B) installed by the merchant in a building or~~
21 ~~residence]~~.

22 SECTION 2. Section [1303.053](#), Occupations Code, is amended
23 by adding Subsection (c) to read as follows:

24 (c) Information prepared or compiled by the commission
25 relating to an examination conducted under this section, including
26 the examination file, is confidential and exempt from disclosure
27 under Chapter [552](#), Government Code. The commission may withhold

1 the information without the necessity of requesting a decision from
2 the attorney general under Subchapter G, Chapter 552, Government
3 Code.

4 SECTION 3. Section 1303.101(b), Occupations Code, is
5 amended to read as follows:

6 (b) A person may not sell, offer to sell, arrange or solicit
7 the sale of, or receive an application for a residential service
8 contract unless:

9 (1) the person is:

10 (A) employed by a residential service company
11 licensed under this chapter; or

12 (B) licensed as or employed by a real estate
13 sales agent [~~salesperson~~], real estate broker, mobile home dealer,
14 or insurance agent in this state; and

15 (2) the contract is issued by a residential service
16 company licensed under this chapter.

17 SECTION 4. Section 1303.103, Occupations Code, is amended
18 by amending Subsection (b) and adding Subsection (d) to read as
19 follows:

20 (b) Each application for a license must contain or be
21 accompanied by:

22 (1) a copy of the articles of incorporation, articles
23 of association, partnership agreement, trust agreement, or any
24 other basic organizational document of the applicant;

25 (2) a copy of any amendment to the applicant's basic
26 organizational document;

27 (3) a copy of any bylaws, rules, or other similar

1 document that regulates the conduct of the applicant's internal
2 affairs;

3 (4) the name, address, and official position of each
4 person who will be responsible for the conduct of the applicant's
5 affairs, including:

6 (A) each member of the board of directors, board
7 of trustees, executive committee, or other governing body or
8 committee of the applicant;

9 (B) the applicant's principal officer, if the
10 applicant is a corporation; and

11 (C) each partner or member of the applicant, if
12 the applicant is a partnership or association;

13 (5) a copy of the residential service contract made or
14 to be made between the applicant and another person;

15 (6) a general description of the residential service
16 contract or the contract's coverage or plan;

17 (7) the most recent [a] financial statements for the
18 applicant [statement that]:

19 (A) that are [is]:

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

22 (ii) certified as accurate by at least two
23 of the residential service company's principal officers, if the

24 residential service company uses a reimbursement insurance policy
25 to insure its outstanding residential service contracts written in

26 this state in accordance with Section 1303.151(b) [within six
27 months preceding the date the application is submitted]; and

1 (B) that show [~~shows~~] the applicant's assets,
2 liabilities, and sources of financial support;

3 (8) a description of the applicant's proposed method
4 of marketing a residential service contract;

5 (9) a statement regarding the applicant's sources of
6 working capital and any other funding sources;

7 (10) if the applicant is not domiciled in this state, a
8 power of attorney appointing the executive director
9 [~~administrator~~] and the executive director's [~~administrator's~~]
10 successors in office, or the executive director's [~~administrator's~~]
11 authorized deputy, as the applicant's agent for service of process
12 in this state in a legal action arising in this state against the
13 applicant or the applicant's agents; and

14 (11) any other information the commission requires to
15 make a determination required by this chapter.

16 (d) Any financial information submitted to the commission
17 in connection with an application is confidential and exempt from
18 disclosure under Chapter 552, Government Code. The commission may
19 withhold the financial information without the necessity of
20 requesting a decision from the attorney general under Subchapter G,
21 Chapter 552, Government Code.

22 SECTION 5. Section 1303.151, Occupations Code, is amended
23 to read as follows:

24 Sec. 1303.151. RESERVE OR REIMBURSEMENT INSURANCE POLICY
25 REQUIRED. (a) Except as provided by Subsection (b), a [~~A~~]
26 residential service company shall maintain a funded reserve against
27 its liability to provide repair and replacement services under its

1 outstanding residential service contracts written in this state.

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

7 (1) an admitted insurer; or

8 (2) a surplus lines insurer or a surplus lines bonding
9 company if the insurer or bonding company:

10 (A) is rated A+ or better by a rating service
11 recognized by the commission; and

12 (B) submits to the commission for its approval
13 evidence, in the form of a certified audit and other pertinent
14 information the commission may require, of the insurer's or bonding
15 company's ability to meet its contractual obligations.

16 SECTION 6. Section 1303.152, Occupations Code, is amended
17 by amending Subsection (c) and adding Subsection (d) to read as
18 follows:

19 (c) For purposes of this chapter, to the extent a
20 residential service company uses a reimbursement insurance policy
21 described by Section 1303.151(b) to insure an outstanding
22 residential service contract written in this state, the company's
23 reserve is not required to include a contract fee on the [a]
24 residential service contract [~~to the extent that provision is made~~
25 ~~for reinsurance of the outstanding risk on the contract by:~~

26 [~~(1) a residential service company licensed in this~~
27 ~~state,~~

1 ~~[(2) an admitted insurer, or~~

2 ~~[(3) a surplus line insurer or a surplus line bonding~~
3 ~~company if the insurer or bonding company:~~

4 ~~[(A) is rated A+ or better by a rating service~~
5 ~~recognized by the commission; and~~

6 ~~[(B) submits to the commission for its approval~~
7 ~~evidence, in the form of a certified audit and other pertinent~~
8 ~~information the commission may require, of the insurer's or bonding~~
9 ~~company's ability to meet its contractual obligations].~~

10 (d) If a residential service company's reimbursement
11 insurance policy is issued by a captive insurance company as
12 defined by Section 964.001, Insurance Code, the residential service
13 company shall maintain a funded reserve of at least 25 percent of
14 the reserve amount described by Subsection (a).

15 SECTION 7. Subchapter D, Chapter 1303, Occupations Code, is
16 amended by adding Section 1303.1525 to read as follows:

17 Sec. 1303.1525. REIMBURSEMENT INSURANCE POLICY. (a) An
18 insurer that issues a reimbursement insurance policy to a
19 residential service company is considered to have received the
20 premiums for the policy on the dates contract holders pay for
21 residential service contracts issued by the residential service
22 company.

23 (b) An insurer may not cancel a reimbursement insurance
24 policy until the insurer mails or delivers a notice of cancellation
25 to the executive director. The cancellation of the policy does not
26 affect the issuer's liability for a residential service contract
27 issued by the insured residential service company before the

1 effective date of the cancellation.

2 SECTION 8. Section 1303.153, Occupations Code, is amended
3 by amending Subsection (a) and adding Subsection (d) to read as
4 follows:

5 (a) Except as provided by Subsection (d), as [~~As~~] a
6 guarantee that a residential service company will meet its
7 obligations to its contract holders, the company shall maintain
8 with the commission a bond or other security accepted by the
9 commission.

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

14 SECTION 9. Section 1303.154, Occupations Code, is amended
15 by amending Subsection (a) and adding Subsection (d) to read as
16 follows:

17 (a) Except as provided by Subsection (d), an [~~An~~] applicant
18 for a new license must provide security in the amount of \$25,000.
19 The amount of the security may not be reduced before the residential
20 service company files a second report under Section 1303.202.

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

25 SECTION 10. Sections 1303.202(b) and (c), Occupations Code,
26 are amended to read as follows:

27 (b) The report must:

1 (1) be on a form prescribed by the commission;

2 (2) be verified by at least two of the residential
3 service company's principal officers; and

4 (3) include:

5 (A) ~~[a]~~ financial statements ~~[statement]~~ of the
6 residential service company, including its balance sheet and
7 receipts and disbursements for the preceding year, certified as
8 accurate by:

9 (i) an independent public accountant; or

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

15 (B) any material change to the information
16 submitted under Section 1303.103;

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

22 (D) any other information that:

23 (i) relates to the performance and solvency
24 of the residential service company; and

25 (ii) is necessary for the commission to
26 perform its duties under this chapter.

27 (c) Any information ~~[Information]~~ provided by a residential

1 service company in connection with the report required by this
2 section or any midyear report required by the commission [~~under~~
3 ~~Subsection (b)(3)(D)] is confidential and exempt from disclosure
4 under Chapter 552, Government Code. The commission may withhold
5 the information without the necessity of requesting a decision from
6 the attorney general under Subchapter G, Chapter 552, Government
7 Code [+~~

8 [(1) ~~confidential, and~~
9 [(2) ~~for the exclusive use of the commission].~~

10 SECTION 11. Section 1303.251, Occupations Code, is amended
11 to read as follows:

12 Sec. 1303.251. CONTRACT DELIVERY AND FILING [~~EVIDENCE OF~~
13 ~~COVERAGE~~]. (a) Each contract holder residing in this state is
14 entitled to receive a copy of the [~~evidence of coverage under a~~
15 residential service contract not later than the 15th day after the
16 date the contract holder pays for the residential service contract
17 or the effective date of the residential service contract,
18 whichever is later. The residential service company may provide
19 [~~that issued~~] the copy by mail, e-mail, or other means of delivery
20 acceptable to the commission [~~contract shall issue evidence of~~
21 ~~coverage under the contract~~].

22 (b) A residential service company shall file with the
23 commission for approval [~~may not issue or deliver evidence of~~
24 ~~coverage under~~] a residential service contract, or an amendment to
25 a previously filed residential service contract that changes the
26 residential service contract's coverage or substantially amends a
27 disclosure required by Section 1303.252 [~~evidence, to a person in~~

1 ~~this state until a copy of the evidence or amendment is filed with~~
2 ~~and approved by the commission].~~

3 (c) The commission may require a residential service
4 company to submit relevant information the commission considers
5 necessary to determine whether to approve or disapprove a filing
6 made under Subsection (b) ~~[the company's evidence of coverage].~~

7 (d) The commission shall approve a filing made under
8 Subsection (b) ~~[residential service company's evidence of~~
9 ~~coverage]~~ if the requirements of this section and Section [1303.252](#)
10 are met.

11 (d-1) For a filing made under Subsection (b) after a
12 residential service company is licensed, the commission shall have
13 30 days to consider the filing from the date of the filing or the
14 date that the commission receives any associated filing fee,
15 whichever is later. On the 31st day after that date, the filing is
16 considered approved unless the commission issues a written order
17 disapproving the filing or notifies the residential service company
18 that the filing violates this section or Section [1303.252](#).

19 (d-2) If the commission notifies the residential service
20 company that the filing violates this section or Section [1303.252](#),
21 the residential service company may submit a response to that
22 notification. On receipt of a response from the residential
23 service company, the commission shall have 30 days to reconsider
24 the filing. On the 31st day after the commission receives the
25 residential service company's response, the filing is considered
26 approved unless the commission issues a written order disapproving
27 the filing.

1 (d-3) The commission may not require a residential service
2 company to waive a 30-day consideration period provided by this
3 section or make the approval of a filing contingent on waiving a
4 30-day consideration period provided by this section.

5 (e) If the commission disapproves a filing made under
6 Subsection (b) [~~residential service company's evidence of~~
7 ~~coverage]~~, the commission shall notify the company of the
8 disapproval and in the notice shall specify in detail the reason for
9 the disapproval.

10 (f) A residential service company whose filing under
11 Subsection (b) [~~evidence of coverage]~~ is disapproved by the
12 commission is entitled to a hearing conducted by the State Office of
13 Administrative Hearings [~~may request a hearing on the commission's~~
14 ~~decision. If a hearing is requested, the commission shall set a~~
15 ~~hearing on the decision as soon as reasonably possible. Not later~~
16 ~~than the 60th day after the date of the hearing, the commission by~~
17 ~~written order shall approve or disapprove the evidence. If the~~
18 ~~evidence is disapproved, the commission shall state in the order~~
19 ~~the grounds for the disapproval].~~

20 (g) A hearing under Subsection (f) is governed by the
21 contested case procedures under Chapter 2001, Government Code.

22 SECTION 12. Section 1303.252, Occupations Code, is amended
23 to read as follows:

24 Sec. 1303.252. FORM OF CONTRACT AND REQUIRED DISCLOSURES
25 [~~CONTENTS OF EVIDENCE OF COVERAGE]~~. (a) A residential service
26 contract marketed, sold, offered for sale, issued, made, proposed
27 to be made, or administered in this state must be written, printed,

1 or typed in clear, understandable language that is easy to read and
2 must disclose the following [~~Evidence of coverage under a~~
3 ~~residential service contract must contain a clear and complete~~
4 ~~statement, if the evidence is a contract, or a reasonably complete~~
5 ~~facsimile, if the evidence is a certificate, of]:~~

6 (1) the services or benefits to which the contract
7 holder is entitled;

8 (2) any limitation on the services, kinds of services,
9 or benefits to be provided, including a deductible or co-payment
10 provision;

11 (3) where and in what manner information is available
12 on how to obtain services;

13 (4) the period during which the coverage is in effect;

14 (5) the residential service company's agreement to
15 perform services on the contract holder's telephone request to the
16 company, without a requirement that a claim form or application be
17 filed before the services are performed;

18 (6) the company's agreement that, under normal
19 circumstances, the company will initiate the performance of
20 services within 48 hours after the contract holder requests the
21 services; and

22 (7) any service fee to be charged for a service call.

23 (b) A service fee under Subsection (a)(7) is not required to
24 be preprinted on the residential service contract but must be
25 disclosed in writing to the contract holder before the purchase of
26 the residential service contract.

27 (c) A residential service contract insured under a

1 reimbursement insurance policy in accordance with Section
2 1303.151(b) must contain a statement substantially similar to the
3 following: "The residential service company's obligations under
4 this residential service contract are insured under a reimbursement
5 insurance policy." The residential service contract must also:

6 (1) state the name and address of the insurer; and
7 (2) state that the contract holder may apply for
8 reimbursement directly to the insurer if a covered service is not
9 provided to the contract holder by the residential service company
10 before the 61st day after the date the contract holder provides
11 proof of loss.

12 (d) A residential service contract [~~Evidence of coverage~~]
13 may not contain a provision that encourages misrepresentation or
14 that is unjust, unfair, inequitable, misleading, deceptive, or
15 false.

16 SECTION 13. Section 1303.253, Occupations Code, is amended
17 to read as follows:

18 Sec. 1303.253. SCHEDULE OF CHARGES. [~~(a)~~] A residential
19 service company shall file [~~may not use in conjunction with a~~
20 ~~residential service contract~~] a schedule of charges for services
21 covered under a residential service [~~the~~] contract and any [~~or an~~]
22 amendment to a previously filed [~~that~~] schedule with the commission
23 before implementation of the schedule of charges or amendment. A
24 filing made under this section is not subject to prior approval and
25 is made for informational purposes only [~~until a copy of the~~
26 ~~schedule or amendment is filed with and approved by the~~
27 ~~commission~~].

1 ~~[(b) The commission shall approve a schedule of charges if~~
2 ~~the commission determines that the schedule is reasonably related~~
3 ~~to the amount, term, and conditions of the contract.~~

4 ~~[(c) If the commission determines that the schedule of~~
5 ~~charges is not reasonably related to the contract as described by~~
6 ~~Subsection (b), the commission may reject the schedule. If the~~
7 ~~commission rejects the schedule, the commission shall notify the~~
8 ~~company of the rejection and shall specify in detail the reason for~~
9 ~~the rejection.~~

10 ~~[(d) A residential service company whose schedule of~~
11 ~~charges is rejected by the commission may request a hearing on the~~
12 ~~commission's decision to be held as soon as reasonably possible.~~
13 ~~Not later than the 60th day after the date of the hearing, the~~
14 ~~commission by written order shall approve or reject the schedule.~~
15 ~~If the schedule is rejected, the commission shall state in the order~~
16 ~~the grounds for the rejection.]~~

17 SECTION 14. Section [1303.301\(a\)](#), Occupations Code, is
18 amended to read as follows:

19 (a) A residential service company may not cause or permit
20 the use of:

21 (1) a false or misleading advertisement or
22 solicitation; or

23 (2) any deceptive residential service contract
24 ~~[evidence of coverage]~~.

25 SECTION 15. Section [1303.352\(a\)](#), Occupations Code, is
26 amended to read as follows:

27 (a) The commission may discipline a residential service

1 company under Section 1303.351 if the continued operation of the
2 company would be hazardous to its contract holders or if the
3 company:

4 (1) operates in conflict with its basic organizational
5 document or in a manner that is contrary to that described in and
6 reasonably inferred from information submitted under Section
7 1303.103, unless an amendment to the information has been filed
8 with and approved by the commission;

9 (2) issues a residential service contract [~~evidence of~~
10 ~~coverage~~] that does not comply with Sections 1303.251 and 1303.252;

11 (3) uses a schedule of charges that has not been filed
12 with the commission in accordance [~~does not comply~~] with Section
13 1303.253;

14 (4) is not financially responsible and may be
15 reasonably expected to be unable to meet the company's obligations
16 to contract holders;

17 (5) did not comply with Subchapter D;

18 (6) advertised or marketed the company's services in a
19 false, misrepresentative, misleading, deceptive, or unfair manner;
20 or

21 (7) otherwise did not substantially comply with this
22 chapter or a rule adopted under this chapter.

23 SECTION 16. The changes in law made by this Act apply only
24 to a residential service contract entered into or renewed on or
25 after the effective date of this Act. A residential service
26 contract entered into or renewed before that date is governed by the
27 law as it existed immediately before the effective date of this Act,

1 and that law is continued in effect for that purpose.

2 SECTION 17. This Act takes effect September 1, 2017.