OCCUPATIONS CODE
TITLE 8. REGULATION OF ENVIRONMENTAL AND INDUSTRIAL TRADES
CHAPTER 1304. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS
(Effective September 1, 2019)

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1304.001. SHORT TITLE.

This chapter may be cited as the Service Contract Regulatory Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.002. DEFINITIONS.

In this chapter:

(1) "Administrator" means a person, other than the provider of the service contract or an employee of the provider, who is responsible for the third-party administration of a service contract.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 13.010(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.337(a).

(4) "Consumer" means an individual 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.

(5) "Department" means the Texas Department of Licensing and Regulation.

(5-a) "Executive director" means the executive director of the department.

(6) "Person" means an individual or an association, company, corporation, partnership, or other group.

(7) "Provider" means a person who is contractually obligated to a service contract holder under the terms of a service contract.

(8) "Reimbursement insurance policy" means a policy of insurance issued to a provider to:

(A) reimburse the provider under a service contract the provider issued or sold; or

(B) pay on behalf of the provider all covered contractual obligations that are incurred by the provider under a service contract the provider issued or sold and that the provider does not perform.

(8-a) "Seller" means a person, other than the provider or administrator of a service contract, who markets, sells, offers to sell, negotiates, or issues a service contract to a consumer on behalf of a provider, but who is not contractually obligated to a service contract holder under the terms of a service contract.

(9) "Service contract holder" means a person who purchases or otherwise holds a service contract.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 13.001, 13.010(1), eff. Sept. 1, 2003;
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.337(a), (b), eff. Sept. 1, 2003.
Amended by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 2, eff. January 1, 2006.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.01, eff. September 1, 2011.

Sec. 1304.003. SERVICE CONTRACT.

(a) In this chapter:

(1) "Identity recovery" means a process, through a limited power of attorney and the assistance of an identity recovery expert, that returns the identity of an identity theft victim to pre-identity theft event status.

(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 indemnification for the repair, replacement, or maintenance of a product, for operational or structural failure or 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; or

(C) provide compensation to the buyer of a vehicle on the total constructive loss under a depreciation benefit optional member program.

(3) "Depreciation benefit optional member program" means a service contract financed under Chapter 348 or 353, Finance Code, that pays to the buyer, as a credit toward the purchase of a replacement vehicle at a participating dealer, an amount less than or equal to the difference between the purchase price and actual cash value for a total constructive loss.

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

(1) incidental payment or indemnity under limited circumstances, including towing, rental, and emergency road service;

(2) the repair or replacement of a product for damage resulting from a power surge or for accidental damage incurred in handling the product;

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

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

(c) For purposes of Subsection (a), normal wear for a motor vehicle may include minor and reasonable wear and tear that a vehicle sustains in everyday ordinary operation including:

(1) small dents, dings, and creases repairable by the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels or sanding, bonding, or painting;

(2) small windshield chips and cracks repairable without replacement of the entire windshield;

(3) worn tire tread;

(4) worn interior fabric or carpet items; and

(5) tire and wheel damage resulting from ordinary road hazards such as potholes, rocks, wood debris, metal parts, glass, plastic, or composite scraps.

(d) Subsection (c)(5) does not apply to tire damage covered under an agreement sold by a tire manufacturer.

(e) A service contract described by Subsection (a)(2)(C):

(1) may not be required as a condition of approval of a loan for the purchase of a vehicle;

(2) may not be offered by a dealer who requires a loan for the purchase of a vehicle to be financed exclusively with the dealer;

(3) may be canceled by the buyer not later than the 30th day after a buyer enters into the contract, without a penalty;

(4) may be canceled by the buyer later than the 30th day after a buyer enters into the contract, with a pro rata refund to be provided to the buyer; and

(5) may only charge a fee that is reasonable in relation to the benefit provided by the service contract.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2007, 80th Leg., R.S., Ch. 1059 (H.B. 2261), Sec. 1, eff. September 1, 2007.
Amended by Acts 2009, 81st Leg., R.S., Ch. 36 (S.B. 778), Sec. 2, eff. September 1, 2009.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 19, eff. September 1, 2011.
Amended by Acts 2013, 83rd Leg., R.S., Ch. 1207 (S.B. 1388), Sec. 3, eff. September 1, 2013.
Amended by Acts 2017, 85th Leg., R.S., Ch. 401 (S.B. 1199), Sec. 1, eff. September 1, 2017.
Amended by Acts 2017, 85th Leg., R.S., Ch. 473 (H.B. 2275), Sec. 1, eff. September 1, 2017.

Sec. 1304.0035. CONTROLLING PERSON.

(a) In this chapter, "controlling person" means an individual who:

(1) possesses direct or indirect control of at least 25 percent of the voting securities of a corporation;

(2) possesses the authority to set policy and direct the management of a business entity;

(3) is the president, the secretary, or a director of a corporation; or

(4) is a general partner of a partnership.

(b) An individual who is a controlling person of a corporation or other business entity that is the general partner of a limited partnership is a controlling person of the limited partnership.

Added by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 3, eff. January 1, 2006.

Sec. 1304.004. EXEMPTIONS.

(a) In this section:

(1) "Maintenance agreement" means an agreement that provides only for scheduled maintenance for a limited period.

(2) "Warranty" means an undertaking made solely by the manufacturer or importer of a product or the seller of a product or service that:

(A) guarantees indemnity for a defective part, mechanical or electrical breakdown, or labor cost or guarantees another remedial measure, including the repair or replacement of the product or the repetition of service;

(B) is made without payment of additional consideration;

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

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

(b) This chapter does not apply to:

(1) a warranty;

(2) a maintenance agreement;

(3) a service contract sold or offered for sale to a person who is not a consumer;

(4) a residential service contract sold by an entity licensed by the Texas Real Estate Commission under Chapter 1303;

(5) an agreement issued by an automobile service club that holds a certificate of authority under Chapter 722, Transportation Code;

(6) a service contract sold by a motor vehicle dealer on a motor vehicle sold by that dealer, if the dealer:

(A) is the provider;

(B) is licensed as a motor vehicle dealer under Chapter 2301; and

(C) covers its obligations under the service contract with a reimbursement insurance policy; or

(7) a contract offered by a local exchange telephone company that provides for the repair of inside telephone wiring, if:

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

(B) the consumer can terminate the contract before a new contract term begins without liability except for payment of charges for the term that has begun.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.005. EXEMPTIONS FROM CERTAIN OTHER LAWS.

Marketing, selling, offering for sale, issuing, making, proposing to make, and administering a service contract are exempt from:

(1) Chapter 1303;

(2) Chapter 722, Transportation Code; and

(3) the Insurance Code and other laws of this state regulating the business of insurance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

Sec. 1304.052. RULES.

The commission shall adopt rules necessary to implement and administer this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.02, eff. September 1, 2011.

Sec. 1304.051. GENERAL INVESTIGATIVE POWER OF EXECUTIVE DIRECTOR.

(a) The executive director may investigate a provider, administrator, seller, or other person as necessary to enforce this chapter and protect service contract holders in this state.

(b) On request of the executive director, a provider 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 chapter.

Transferred, redesignated and amended from Occupations Code, Section 1304.007 by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.03, eff. September 1, 2011.

SUBCHAPTER C. REGISTRATION REQUIREMENTS

Sec. 1304.101. REGISTRATION REQUIRED; EXEMPTION FROM OTHER LICENSING REQUIREMENTS.

(a) A person may not operate as a provider or administrator of service contracts sold or issued in this state unless the person is registered with the department.

(b) Except for the registration requirement of this chapter, a provider, seller, administrator, or other person who markets, sells, issues, or offers to sell service contracts is exempt from any licensing requirement of this state that relates to an activity regulated under this chapter.

(c) A provider or administrator may not contract with or use the services of a person to perform an activity that requires registration with the department as a provider or administrator unless that person is appropriately registered.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 4, eff. March 1, 2006.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.04, eff. September 1, 2011.

Sec. 1304.102. APPLICATION FOR REGISTRATION OR RENEWAL; GENERAL REQUIREMENTS.

(a) An applicant for registration or registration renewal must submit an application to the executive director.

(b) The application must:

(1) be in the form prescribed by the executive director; and

(2) include evidence satisfactory to the executive director of compliance with the applicable financial security requirements prescribed by Section 1304.151, if the application is for a provider registration or renewal.

(c) The department may refuse to issue or renew a registration, suspend or revoke a registration, or take any other disciplinary action under Subchapter E if the applicant or a controlling person of the applicant:

(1) has violated this chapter or a rule adopted or order issued by the commission or executive director under this chapter;

(2) has made a material misrepresentation or false statement in an application or in any document accompanying an application;

(3) has had a license issued under Title 13, Insurance Code, revoked as provided by that code; or

(4) has had a license or registration as a provider, administrator, or seller revoked in this state or another state.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1081, Sec. 1.20(a)(2), eff. September 1, 2011.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.039, eff. Sept. 1, 2003;
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.341, eff. Sept. 1, 2003.

Amended by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 5, eff. January 1, 2006.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.05, eff. September 1, 2011.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.20(a)(2), eff. September 1, 2011.

Sec. 1304.1025. ADDITIONAL REGISTRATION AND RENEWAL REQUIREMENTS FOR PROVIDERS.

(a) In addition to the requirements of Section 1304.102, an applicant for issuance or renewal of a provider registration must file with the application:

(1) the reimbursement insurance policy, if the provider is using a reimbursement insurance policy to meet the financial security requirements of Section 1304.151;

(2) the financial security deposit and the documentation required by the department demonstrating adequate funding of the reserve account, if the provider is using a funded reserve account and financial security deposit to meet the financial security requirements of Section 1304.151;

(3) the proof necessary to demonstrate the applicant or its parent company maintains at least $100 million net worth, if the applicant is using net worth to meet the financial security requirements of Section 1304.151; and

(4) information about each controlling person of the applicant in a form prescribed by the executive director.

(b) The executive director may not issue or renew a registration to a provider unless the provider provides evidence to the executive director that:

(1) each controlling person of the provider is trustworthy and can competently manage the affairs of the provider in compliance with this chapter; and

(2) the provider can meet the provider's obligations under service contracts and this chapter.

(c) Not later than the 30th day after the date of a provider's initial registration, the provider must provide to the department a list of any Internet website address through which a consumer may purchase the provider's service contracts and the name, assumed name, street address, and telephone number of:

(1) any administrator appointed by the provider under Section 1304.153; and

(2) any seller of the provider's service contracts, other than a seller that is:

(A) an employee of the provider; or

(B) a business with a physical location in this state at which a consumer may purchase a service contract.

(d) The provider shall update the list required by Subsection (c) with each renewal.

Added by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 6, eff. January 1, 2006.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.06, eff. September 1, 2011.

Sec. 1304.103. REGISTRATION AND RENEWAL FEES.

(a) The executive director shall develop a tiered schedule of registration and renewal fees under which a provider's fee is based on the number of service contracts the provider sold or issued in this state during the preceding 12-month period.

(b) The commission shall set fees to cover the costs of administering this chapter, including registration and renewal fees for administrators.

(c) To register or renew a registration, a provider or administrator must pay the appropriate fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 13.006, eff. Sept. 1, 2003;
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.342, eff. Sept. 1, 2003.
Amended by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 7, eff. January 1, 2006.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.07, eff. September 1, 2011.

Sec. 1304.1035. IDENTITY RECOVERY SERVICE CONTRACT REPORT; FEE.

Not later than the 30th day after the date each calendar quarter ends, a provider must report to the department the number of service contracts described by Section 1304.003(a)(2)(B) that were sold or issued to consumers in this state during the most recent calendar quarter and must submit a fee of $1 for each of those service contracts to the department. The report and fee are required only for a service contract that provides only for identity recovery services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1207 (S.B. 1388), Sec. 4, eff. September 1, 2013.

Sec. 1304.104. INFORMATION CONCERNING NUMBER OF SERVICE CONTRACTS SOLD OR ISSUED.

Information concerning the number of service contracts sold or issued by a provider that is submitted under Section 1304.103 or 1304.1035 is a trade secret to which Section 552.110, Government Code, applies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.040, eff. Sept. 1, 2003;
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.343, eff. Sept. 1, 2003.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.08, eff. September 1, 2011.
Amended by Acts 2013, 83rd Leg., R.S., Ch. 1207 (S.B. 1388), Sec. 5, eff. September 1, 2013.

Sec. 1304.105. RENEWAL.

The commission shall adopt rules regarding the renewal of a registration issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 13.007, eff. Sept. 1, 2003.

SUBCHAPTER D. PRACTICE BY SERVICE CONTRACT PROVIDERS, ADMINISTRATORS, AND SELLERS

Sec. 1304.151. FINANCIAL SECURITY REQUIREMENTS; DISTRIBUTION OF FUNDS HELD IN TRUST.

(a) To ensure the faithful performance of a provider's obligations to its service contract holders, each provider must:

(1) insure the provider's service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or by a surplus lines insurer eligible to place coverage in this state under Chapter 981, Insurance Code;

(2) maintain a funded reserve account covering the provider's obligations under its service contracts that are issued and outstanding in this state and place in trust with the executive director a financial security deposit consisting of:

(A) a statutory deposit of cash;

(B) a letter of credit issued by a qualified financial institution; or

(C) a certificate of deposit issued by a qualified financial institution; or

(3) maintain, or have a parent company that maintains, a net worth or stockholders' equity of at least $100 million.

(b) If the provider ensures its obligations under Subsection (a)(2), the amount maintained in the reserve account may not be less than an amount equal to 40 percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid. The executive director may review and examine the reserve account. Except as provided by Subsection (b-1), the amount of the security deposit may not be less than $250,000. The provider must submit to the executive director on request a copy of the provider's financial statements that must be prepared in accordance with generally accepted accounting principles, be without qualification as to the going concern status of the provider, and be audited by an independent certified public accountant. The commission by rule may require the provider to submit additional financial reports.

(b-1) Subject to Subsection (b-2), the amount of the security deposit required under Subsection (b) may not be less than $25,000 if the provider:

(1) is a motor vehicle dealer licensed under Chapter 2301; and

(2) offers to sell service contracts only on motor vehicles sold by the provider.

(b-2) The amount of the security deposit required under Subsection (b-1) is:

(1) $25,000 for a motor vehicle dealer that generated $1,125,000 or less in annual gross revenue in this state from the sale of service contracts in the preceding year;

(2) $50,000 for a motor vehicle dealer that generated more than $1,125,000 and not more than $2,500,000 in annual gross revenue in this state from the sale of service contracts in the preceding year; and

(3) $75,000 for a motor vehicle dealer that generated more than $2,500,000 in annual gross revenue in this state from the sale of service contracts in the preceding year.

(b-3) If a motor vehicle dealer described by Subsection (b-1) has no gross revenue in this state from the sale of service contracts in the preceding year, the security deposit shall be $25,000.

(c) If the provider ensures its obligations under Subsection (a)(3), the provider must give to the executive director on request:

(1) a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the preceding calendar year; or

(2) if the provider or the provider's parent company does not file with the Securities and Exchange Commission, a copy of the provider's or the provider's parent company's audited financial statements showing a net worth of the provider or its parent company of at least $100 million.

(d) If the provider's parent company's Form 10-K, Form 20-F, or audited financial statements are filed to show that the provider meets the financial security requirement, the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state.

(e) The executive director may not require a provider to meet any additional financial security requirement.

(f) In the event of a provider's bankruptcy or a similar event affecting the ability of the provider to faithfully perform its obligations to its service contract holders, the executive director may distribute any funds held in trust as financial security for the provider under this section to eligible service contract holders as payment for claims. The executive director must distribute the funds in an equitable and cost-effective manner as determined by the executive director.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 13.008, eff. Sept. 1, 2003.

Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.10, eff. September 1, 2011.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.11, eff. September 1, 2011.
Amended by Acts 2019, 86th Leg., R.S., Ch. 1319 (H.B. 4120), Sec. 1, eff. September 1, 2019.

Sec. 1304.152. REIMBURSEMENT INSURANCE POLICY.

(a) A reimbursement insurance policy that a provider uses to comply with Sections 1304.1025 and 1304.151(a)(1) must state that:

(1) the insurer that issued the policy shall:

(A) reimburse or pay on behalf of the provider any covered amount the provider is legally obligated to pay; or

(B) provide the service that the provider is legally obligated to perform according to the provider's contractual obligations under the insured service contract;

(2) if the covered service is not provided to a service contract holder not later than the 60th day after the date of proof of loss, the insurer shall pay the covered amount directly to the service contract holder or provide the required service; and

(3) if a refund is not paid to the service contract holder or credited to the service contract holder's account as required by Section 1304.158, the insurer, after receiving written notice, shall pay the refund amount directly to the service contract holder.

(a-1) For a reimbursement insurance policy to comply with Section 1304.151(a)(1), the insurer issuing the policy must:

(1) maintain surplus as to policyholders and paid-in capital of at least $15 million and annually file with the executive director copies of the insurer's audited financial statements, National Association of Insurance Commissioners annual statement, and actuarial certification if the certification is required and filed in the insurer's state of domicile; or

(2) maintain surplus as to policyholders and paid-in capital of at least $10 million but not more than $15 million, demonstrate to the satisfaction of the executive director that the insurer maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not more than three to one, and annually file with the executive director copies of the insurer's audited financial statements, National Association of Insurance Commissioners annual statement, and actuarial certification if the certification is required and filed in the insurer's state of domicile.

(b) The insurer may not cancel the reimbursement insurance policy until the insurer delivers to the provider and the executive director a written notice of cancellation that complies with the notice requirements prescribed by Subchapters B and C, Chapter 551, Insurance Code, for cancellation of an insurance policy under those subchapters. Cancellation of the policy does not affect the insurer's liability for a service contract issued by the provider and insured under the policy before the effective date of the cancellation.

(b-1) If the insurer or provider cancels the reimbursement insurance policy, the provider named on the policy may not issue a new service contract after the effective date of the cancellation unless:

(1) the provider files with the executive director a copy of a new policy that meets the requirements of this section and that provides coverage after that date; or

(2) the provider complies with other financial security requirements provided by Section 1304.151(a).

(c) A provider is considered the agent of an insurer that issues a reimbursement insurance policy for purposes of obligating the insurer to the service contract holder in accordance with the service contract and this chapter. The insurer issuing the reimbursement insurance policy is considered to have received the premium for the policy on the date the service contract holder pays the purchase price of the service contract.

(d) This chapter does not prevent or limit the right of the insurer to seek indemnification or subrogation against a provider for any amount the insurer pays or is obligated to pay to a service contract holder on behalf of the provider.

(e) In this section, "net written premiums" means the sum of direct written premiums and assumed reinsurance premiums, minus ceded reinsurance premiums.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.041, eff. Sept. 1, 2003;
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.345, eff. Sept. 1, 2003.
Amended by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 9, eff. January 1, 2006.
Amended by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.150, eff. September 1, 2005.

Sec. 1304.1521. FINANCIAL SECURITY TRANSITION.

(a) In this section, "provider that maintained a funded reserve account" means a provider that, in order to ensure the faithful performance of the provider's obligations to service contract holders, maintained a funded reserve account covering the provider's obligations under service contracts that were issued and outstanding in this state and placed in trust with the executive director a financial security deposit consisting of:

(1) a surety bond issued by an authorized surety;

(2) securities of the type eligible for deposit by an authorized insurer in this state;

(3) a statutory deposit of cash or cash equivalents;

(4) a letter of credit issued by a qualified financial institution; or

(5) another form of security prescribed by commission rules.

(b) This section applies only to a provider that maintained a funded reserve account on August 31, 2011.

(c) Not later than September 1, 2012, a provider that maintained a funded reserve account shall submit to the executive director documentation that the provider is in compliance with the financial security requirements provided by Section 1304.151 for service contracts sold or issued in this state on or after September 1, 2012. A provider that maintained a funded reserve account may not sell or issue a service contract on or after September 1, 2012, unless the provider is in compliance with this subsection.

(d) A provider that maintained a funded reserve account shall:

(1) continue to maintain the funded reserve account and security deposit at appropriate levels for service contracts that were sold or issued in this state before September 1, 2012, until the contracts are no longer in effect; or

(2) provide financial security for service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1304.151.

(e) If a provider provides financial security for service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1304.151, the provider shall give to the executive director satisfactory documentation that the reimbursement insurance policy, funded reserve account and security deposit, or net worth covers all outstanding service contracts issued before September 1, 2012.

(f) A service contract that is sold or issued before September 1, 2012, and is covered under a funded reserve account and security deposit may not be extended or renewed at the end of the service contract term unless the provider provides financial security for those service contracts by complying with the financial security requirements of Section 1304.151 before the extension or renewal.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.12, eff. September 1, 2011.

Sec. 1304.153. APPOINTMENT AND RESPONSIBILITIES OF ADMINISTRATOR.

(a) A provider may appoint an administrator registered under this chapter to be responsible for:

(1) all or any part of the administration or sale of service contracts; and

(2) compliance with this chapter, except for Section 1304.151.

(b) The appointment of an administrator under this section does not affect a provider's responsibility to comply with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 10, eff. March 1, 2006.

Sec. 1304.1531. SERVICE CONTRACT SELLERS; RESPONSIBILITIES.

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

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

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

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

(c) Unless registered as a provider or administrator, a seller is prohibited from engaging in activities that would require registration as a provider or administrator.

(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 and the seller.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.12, eff. September 1, 2011.

Sec. 1304.154. PROVIDER REQUIREMENTS.

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.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.155. PROVIDER RECORDS.

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

(1) a copy of each unique form of service contract 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 the date and a description of each claim related to the service contracts.

(b) The records required by this section may be maintained in an electronic medium or through other recordkeeping technology. If a record is not in a hard copy, the provider must be able to reformat the record into a legible hard copy at the request of the executive director.

(c) Except as provided by Subsection (d), a provider shall retain the records required by this section until at least the first anniversary of the expiration date of the specified period of coverage under the service contract.

(d) A provider that discontinues business in this state shall retain its records until the provider furnishes the executive director with proof satisfactory to the executive director that the provider has discharged all obligations to service contract holders in this state.

(e) An administrator appointed to maintain the provider's records is responsible for compliance with this section to the same extent as the provider.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.042, eff. Sept. 1, 2003;
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.346, eff. Sept. 1, 2003.
Amended by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 11, eff. January 1, 2006.

Sec. 1304.156. FORM OF SERVICE CONTRACT AND REQUIRED DISCLOSURES.

(a) A service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) state the name and address of the provider;

(3) state the purchase price of the contract and the terms under which the contract is sold;

(4) state the terms and restrictions governing cancellation of the contract by the provider or the service contract holder before the expiration date of the contract;

(5) identify:

(A) any administrator and any registration number issued to the administrator under this chapter;

(B) the seller; and

(C) the service contract holder, if the service contract holder provides the holder's name;

(6) state the amount of any deductible;

(7) specify the products and services to be provided under the contract and any limitation, exception, or exclusion;

(8) specify any restriction governing the transferability of the contract;

(9) state the duties of the service contract holder, including any duty to protect against any further damage and any requirement to follow the instructions in the owner's manual; and

(10) state whether the contract provides for or excludes consequential damages or preexisting conditions, if applicable.

(b) The identity and, if applicable, registration number issued under this chapter of a person described by

Subsection (a)(5) is not required to be preprinted on the service contract and may be added to the contract at the time of sale.

(c) The purchase price is not required to be preprinted on the service contract and may be negotiated with the service contract holder at the time of sale.

(d) A service contract insured under a reimbursement insurance policy under Section 1304.152 must:

(1) state the name and address of the insurer;

(2) state that the service contract holder may apply for reimbursement directly to the insurer if:

(A) a covered service is not provided to the service contract holder by the provider before the 61st day after the date of proof of loss; or

(B) a refund or credit is not paid before the 46th day after the date on which the contract is canceled under Section 1304.1581; and

(3) contain a statement substantially similar to the following: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy."

(e) A service contract that is not insured under a reimbursement insurance policy must contain a statement substantially similar to the following: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider." (V.A.C.S. Art. 9034, Secs. 10(a), (b), (c), (d), (e), (f) (part), (g), as added Acts 76th Leg., R. S., Ch. 1559.)

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 12, eff. January 1, 2006.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.13, eff. September 1, 2011.

Sec. 1304.1581. CANCELLATION BY SERVICE CONTRACT HOLDER; REFUND.

(a) A service contract must allow the service contract holder to cancel the service contract at any time.

(b) If a service contract holder cancels a service contract before the 31st day after the date of purchase, the provider:

(1) shall refund to the service contract holder or credit to the account of the service contract holder the full purchase price of the contract, decreased by the amount of any claims paid under the contract; and

(2) may not impose a cancellation fee.

(c) If a service contract holder cancels a service contract on or after the 31st day after the date of purchase, the provider:

(1) shall refund to the service contract holder or credit to the account of the service contract holder the prorated purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract; and

(2) may impose a reasonable cancellation fee not to exceed $50.

(d) A provider may allow a service contract holder to cancel a service contract on other terms included in the contract, provided the terms do not conflict with this section.

(e) A provider who does not pay the refund or credit the service contract holder's account before the 46th day after the date notice of cancellation is received by the provider is liable to the service contract holder for a penalty for each month an amount remains outstanding equal to 10 percent of the amount outstanding. The penalty is in

addition to the full or prorated purchase price of the contract that is owed to the service contract holder under this section or the terms of the contract.

(f) The right to cancel a service contract is not transferable to a subsequent holder of the contract.

(g) Notwithstanding Subsection (b)(1) or (c)(1), a provider is not required to deduct the amount of any claims paid under a service contract from the amount of a refund required under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.14, eff. September 1, 2011.
Amended by Acts 2017, 85th Leg., R.S., Ch. 473 (H.B. 2275), Sec. 2, eff. September 1, 2017.

Sec. 1304.159. CANCELLATION BY PROVIDER; REFUND.

(a) A provider may cancel a service contract by mailing a written notice of cancellation to the service contract holder at the service contract holder's last known address according to the records of the provider. The provider must mail the notice before the fifth day preceding the effective date of the cancellation. The notice must state the effective date of the cancellation and the reason for the cancellation.

(b) The provider is not required to provide prior notice of cancellation if the service contract is canceled because of:

(1) nonpayment of the consideration for the contract;

(2) fraud or a material misrepresentation by the service contract holder to the provider or the provider's administrator; or

(3) a substantial breach of a duty by the service contract holder relating to the covered product or its use.

(c) A service contract holder whose contract is canceled by the provider in accordance with this section is entitled to a prorated refund of the purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract. A provider who cancels a contract under this section may not impose a cancellation fee.

(d) Notwithstanding Subsection (c), a provider is not required to deduct the amount of any claims paid under a service contract from the amount of a refund a service contract holder is entitled to under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.15, eff. September 1, 2011.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.16, eff. September 1, 2011.
Amended by Acts 2017, 85th Leg., R.S., Ch. 473 (H.B. 2275), Sec. 3, eff. September 1, 2017.

Sec. 1304.160. LIMITATIONS ON PROVIDER NAME.

(a) A provider may not use a name that:

(1) includes "insurance," "casualty," "surety," or "mutual" or any other word descriptive of the insurance, casualty, or surety business; or

(2) is deceptively similar to the name or description of an insurance or surety corporation or to the name of any other provider.

(b) A provider may include in its name "guaranty" or a similar word.

(c) This section does not apply to a provider that, before September 1, 1999, included a word prohibited under this section in its name. A provider described by this subsection must include in each service contract a statement substantially similar to the following: "This agreement is not an insurance contract."

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.161. PROHIBITED ACTS.

(a) A provider, administrator, seller, or other representative of the provider may not, in the provider's service contracts or literature or in any written communication:

(1) make, permit, or cause to be made any false, deceptive, or misleading statement; or

(2) deliberately omit a material statement if the omission would be considered misleading.

(b) A person, including a bank, a savings and loan association, a lending institution, or the manufacturer or seller of a product, may not require the purchase of a service contract as a condition of a loan or the sale of property.

(c) A provider, administrator, seller, or other representative of the provider may not make a telemarketing call to a consumer as provided by Sections 304.002 and 304.003, Business & Commerce Code, unless the provider, administrator, seller, or representative has an established business relationship, as defined by Section 304.002, Business & Commerce Code, with the consumer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.17, eff. September 1, 2011.

SUBCHAPTER E. DISCIPLINARY ACTION

Sec. 1304.201. DISCIPLINARY ACTION.

On a finding that a ground for disciplinary action exists under this chapter, the commission or executive director may impose an administrative sanction or administrative penalty or seek a civil penalty or any other remedy as provided by this chapter and Chapter 51.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 13.009, 13.010(2), eff. Sept. 1, 2003;
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.347(a), eff. Sept. 1, 2003.
Amended by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.18, eff. September 1, 2011.

Sec. 1304.202. INJUNCTIVE RELIEF; CIVIL PENALTY.

(a) The executive director may institute an action under Section 51.352 for injunctive relief to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the executive director may institute an action for a civil penalty as provided by Section 51.352. The amount of a civil penalty assessed under this section may not exceed:

(1) $2,500 for each violation; or

(2) $50,000 in the aggregate for all violations of a similar nature.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.043, eff. Sept. 1, 2003.

Sec. 1304.203. MULTIPLE VIOLATIONS.

For purposes of this subchapter, violations are of a similar nature if the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice occurred.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.204. ADMINISTRATIVE PROCEDURE.

Sections 51.305, 51.310, and 51.354 apply to disciplinary action taken under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.347(b), eff. Sept. 1, 2003.

Sec. 1304.205. REMEDY FOR SERVICE CONTRACT HOLDERS.

(a) If the commission by order, including an agreed order, determines that a person has operated as a provider or administrator in this state without holding the appropriate registration under this chapter, the person shall offer to a service contract holder who holds a service contract sold or issued by the person during the period that the person was not registered under this chapter the right to:

(1) cancel the contract and obtain a refund of the full purchase price of the contract; or

(2) retain the contract.

(b) If a seller fails to process a service contract application or a payment from a consumer in accordance with this chapter and any sales agreement or contract between the provider and the seller, the commission or executive director may, by commission order, including an agreed order, require the seller to refund the full purchase price of the contract to the consumer.

(c) The remedies described in this section are in addition to any administrative penalty, administrative sanction, civil penalty, or other disciplinary or enforcement action sought under this chapter or Chapter 51.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.19, eff. September 1, 2011.