

OCCUPATIONS CODE

TITLE 8. REGULATION OF ENVIRONMENTAL AND INDUSTRIAL TRADES

CHAPTER 1303. RESIDENTIAL SERVICE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1303.001. SHORT TITLE. This chapter may be cited as the Residential Service Company Act.

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

Sec. 1303.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Real Estate Commission.

(2) "Contract holder" means a person who is entitled to receive services from a residential service company under a residential service contract.

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

(3) "Person" means an individual, partnership, corporation, association, or other organization.

(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.

(4) "Residential service company" means a person who:

(A) issues a residential service contract; and

(B) performs or arranges to perform services under the contract.

(5) "Residential service contract" means an agreement that is entered into for a separately stated consideration and for a

specified term under which 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 normal wear to a structural component, an appliance, or an electrical, plumbing, heating, cooling, or air-conditioning system of a residential property that is attached to or located on the residential property:

(A) maintain, repair, or replace all or any part of the structural component, appliance, or electrical, plumbing, heating, cooling, or air-conditioning system;

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

(C) provide payment instead of repair when a part, structural component, appliance, or service provider or technician is unavailable.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. [2279](#)), Sec. 1, eff. January 1, 2018.

Sec. 1303.003. APPLICABILITY OF INSURANCE LAWS. (a) Except as otherwise provided by this chapter, the insurance laws of this state do not apply to a residential service company. This subsection does not apply to an insurance company licensed and regulated under the insurance laws of this state.

(b) This chapter does not exempt a warranty or service contract other than a residential service contract from the Insurance Code.

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

Sec. 1303.0035. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. The sale of a residential service contract governed by this chapter is not a good or service governed by Chapter [601](#), Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.336(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.28,

eff. April 1, 2009.

Sec. 1303.004. NONAPPLICABILITY TO CERTAIN PERSONS. (a) This chapter does not apply to a person who:

(1) manufactures or sells a product or part of a product; and

(2) sells, offers to sell, or issues a service or maintenance agreement that provides for the maintenance, repair, replacement, or performance of the product or part of the product.

(b) A person described by Subsection (a) or an employee or agent of a person described by Subsection (a) is not required to be licensed or regulated under this chapter.

(c) This chapter does not apply to a person who engages in the business of structural pest control in compliance with Chapter [1951](#).

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

Sec. 1303.005. APPLICABILITY TO CERTAIN AGREEMENTS. This chapter does not apply to:

(1) a performance guarantee given by:

(A) the builder of a residential property; or

(B) the manufacturer or seller of an appliance or other system or component of a residential property;

(2) a residential service contract executed before August 28, 1979;

(3) a service contract, guarantee, or warranty that is:

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

(B) issued by a person who:

(i) does not engage in the business of a residential service company; and

(ii) sells, services, repairs, or replaces the appliance, system, or component at the time or before the contract, guarantee, or warranty is issued;

(4) a service or maintenance agreement or a warranty

that:

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

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

(5) home warranty insurance as defined by Section 2, Article 5.53-A, Insurance Code.

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

Sec. 1303.006. LIABILITY FOR CERTAIN ACTIONS BY AGENT. This chapter does not exempt a residential service company from common law or statutory liability for an action taken by the company's agent or representative that is relevant to the conduct of the company's business.

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

#### SUBCHAPTER B. COMMISSION POWERS AND DUTIES

Sec. 1303.051. GENERAL POWERS AND DUTIES OF COMMISSION; DELEGATION. (a) The commission shall administer this chapter and may adopt and enforce rules necessary to implement this chapter.

(b) The commission may delegate a power, right, or duty under this chapter to the administrator or assistant administrator of the commission.

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

Sec. 1303.052. FEES. (a) A residential service company must pay to the commission a fee for filing an application for a license or an amendment to the application.

(b) A residential service company shall pay to the commission a fee for:

- (1) filing a report under Section [1303.202](#); and
- (2) any other filing required by this chapter.

(c) A residential service company shall pay to the commission a fee for the cost of an examination conducted under Section 1303.053.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 56, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. 2279), Sec. 2, eff. January 1, 2018.

Sec. 1303.053. EXAMINATION OF RESIDENTIAL SERVICE COMPANY.

(a) The commission may examine the affairs of a residential service company as necessary. For the purpose of an examination, the commission may administer an oath to and examine an officer or agent of the residential service company.

(b) A residential service company shall:

(1) make available for the examination its books and records relating to its operation; and

(2) facilitate the examination in every way.

(c) Information prepared or compiled by the commission relating to an examination conducted under this section, including the examination file, is confidential and exempt from disclosure under Chapter 552, Government Code. The commission may withhold the information without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. 2279), Sec. 3, eff. January 1, 2018.

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 1303.101. LICENSE REQUIRED. (a) A person may not issue a residential service contract or perform or arrange to perform services under a residential service contract unless the person is licensed as a residential service company under this

chapter or is the authorized representative of a person licensed as a residential service company under this chapter.

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

(1) the person is:

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

(B) licensed as a real estate salesperson, real estate broker, mobile home dealer, or insurance agent in this state; and

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

(c) A person may not use the phrase "residential service company" in the course of engaging in business unless the person:

(1) is licensed by the commission as provided by this chapter; and

(2) complies with this chapter.

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

Sec. 1303.102. ELIGIBILITY. (a) Notwithstanding any other law of this state, any person may apply to the commission for and obtain a license to issue residential service contracts in compliance with this chapter.

(b) A foreign corporation may qualify under this chapter if the corporation:

(1) registers to engage in business in this state as a foreign corporation under the Texas Business Corporation Act; and

(2) complies with this chapter and other applicable statutes of this state.

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

Sec. 1303.103. LICENSE APPLICATION. (a) An application for a license under this chapter must be:

(1) on a form prescribed by commission rule; and

(2) verified by the applicant or an officer or other authorized representative of the applicant.

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

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

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

(3) a copy of any bylaws, rules, or other similar document that regulates the conduct of the applicant's internal affairs;

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

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

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

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

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

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

(7) the most recent financial statements for the applicant:

(A) that are:

(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\(b\)](#); and

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

(8) a description of the applicant's proposed method

of marketing a residential service contract;

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

(10) if the applicant is not domiciled in this state, a power of attorney appointing the executive director and the executive director's successors in office, or the executive director's authorized deputy, as the applicant's agent for service of process in this state in a legal action arising in this state against the applicant or the applicant's agents; and

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

(c) For the proper administration of this chapter, the commission may require additional or more recent financial information than the financial information required under Subsection (b)(7).

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

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. 2279), Sec. 4, eff. January 1, 2018.

Sec. 1303.104. APPROVAL OF APPLICATION MATERIALS. (a) The commission shall approve or disapprove the application materials in writing as soon as reasonably possible after the date the application materials are submitted. Except as provided by Subsection (b), the application materials are considered approved unless disapproved not later than the 30th day after the date the application materials are submitted.

(b) The commission by official order may postpone approval or disapproval of the application materials for a period necessary



for proper consideration, not to exceed 30 days.

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

Sec. 1303.105. ISSUANCE OR DENIAL OF LICENSE. (a) On receipt of an approved application as provided by Section 1303.104, the commission shall determine whether the applicant has demonstrated the potential ability to ensure that the services will be provided in a timely and responsible manner. The commission shall issue a license to an applicant if the commission determines that:

(1) the applicant has demonstrated the potential ability to ensure that the services will be provided in a timely and responsible manner;

(2) the person responsible for the conduct of the applicant's affairs is competent and trustworthy and possesses a good reputation;

(3) the applicant may reasonably be expected to meet its obligations under its residential service contract; and

(4) the applicant has complied with or will comply with this chapter.

(b) In making the determination under Subsection (a)(3), the commission shall consider:

(1) the applicant's financial soundness;

(2) any agreement between the applicant and another party to provide the services required in the residential service contract; and

(3) any other matter the commission considers relevant.

(c) Not later than the 75th day after the date the commission receives an approved application, the commission shall, in writing, issue or deny a license to the applicant.

(d) If the commission denies a license, the commission shall notify the applicant in writing of the denial not later than the fifth day after the date of denial.

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

Sec. 1303.106. LICENSE DENIAL: APPEAL TO COMMISSION. (a)

To appeal the denial of a license as provided by Section 1303.354, a license applicant must file not later than the 10th day after the date of the notice of denial a written appeal requesting a hearing before the commission. If an applicant fails to request a hearing as provided by this subsection, the commission's decision is final and not subject to judicial review.

(b) The commission shall:

(1) set a time and place for the hearing not later than the 30th day after the date the commission receives the appeal; and

(2) notify the applicant in writing of the scheduled hearing not later than the 10th day before the date of the scheduled hearing.

(c) The hearing may be continued with the applicant's consent. After the hearing, the commission shall enter an appropriate order.

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

Sec. 1303.107. TERM OF LICENSE. A license continues in effect as long as the license holder meets the requirements of this chapter or until the license is:

(1) suspended or revoked by the commission; or

(2) terminated at the request of the license holder.

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

#### SUBCHAPTER D. FINANCIAL REQUIREMENTS

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

(b) 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:

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

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

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. 2279), Sec. 5, eff. January 1, 2018.

Sec. 1303.152. AMOUNT OF RESERVE. (a) The amount of the reserve required by Section 1303.151 is based on the amount of liability remaining under outstanding residential service contracts written in this state by the residential service company, as determined by multiplying the total number of months remaining on all of those contracts by the pro rata monthly contract charge.

(b) The amount of the reserve must be equal to the lesser of:

(1) an amount equal to the amount of remaining liability multiplied by the ratio of direct losses incurred by the residential service company to contract fees earned by the company during the preceding calendar year; or

(2) an amount equal to 50 percent of the amount of remaining liability.

(c) 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.

(1) Expired.

(2) Expired.

(3) Expired.

(d) If a residential service company's reimbursement insurance policy is issued by a captive insurance company as

defined by Section 964.001, Insurance Code, the residential service company shall maintain a funded reserve of at least 25 percent of the reserve amount described by Subsection (a).

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. 2279), Sec. 6, eff. January 1, 2018.

Sec. 1303.1525. REIMBURSEMENT INSURANCE POLICY. (a) 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) An insurer may not cancel a reimbursement insurance policy until the insurer mails or delivers a notice of cancellation to the commission. 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.

Added by Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. 2279), Sec. 7, eff. January 1, 2018.

Sec. 1303.153. SECURITY REQUIRED. (a) Except as provided by Subsection (d), as a guarantee that a residential service company will meet its obligations to its contract holders, the company shall maintain with the commission a bond or other security accepted by the commission.

(b) A bond posted as security must:

(1) be issued by a carrier admitted in this state;

(2) be continuous;

(3) be cancellable by the surety only after not less than 90 days' notice to the commission; and

(4) recognize that the obligation continues for the terms of the residential service contracts written by the residential service company while the bond is in force.

(c) Any security provided under this section in a form other

than a bond must be convertible to cash by the commission for the benefit of contract holders in this state, without resort to the courts, if the commission determines that the residential service company is in default of its financial obligations to the contract holders. Any amount remaining after all contract holders' claims are paid must be returned to the residential service company not later than the 120th day after the date the last outstanding residential service contract expires.

(d) 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\(b\)](#).

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. [2279](#)), Sec. 8, eff. January 1, 2018.

Sec. 1303.154. AMOUNT OF SECURITY. (a) Except as provided by Subsection (d), an applicant for a new license must provide security in the amount of \$25,000. The amount of the security may not be reduced before the residential service company files a second report under Section [1303.202](#).

(b) After a residential service company files the second report, the company must maintain security in one of the following minimum amounts based on the amount of claims paid in this state during the preceding calendar year:

(1) \$10,000, if the amount of claims paid is less than \$50,000;

(2) \$25,000, if the amount of claims paid is \$50,000 or more but less than \$200,000;

(3) \$50,000, if the amount of claims paid is \$200,000 or more but less than \$500,000; and

(4) \$100,000, if the amount of claims paid is \$500,000 or more.

(c) A revision to the amount of security must be based on the figures a residential service company provides in its report under Section [1303.202](#). The company shall revise the amount of security

as required by the commission not later than the 30th day after the date the company is notified by the commission of the revised amount.

(d) 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\(b\)](#).

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. [2279](#)), Sec. 9, eff. January 1, 2018.

#### SUBCHAPTER E. GENERAL POWERS AND DUTIES OF LICENSE HOLDER

Sec. 1303.201. NOTICE OF MODIFICATION. A residential service company shall file notice with the commission before the company modifies an operation or document described in Section [1303.103](#).

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

Sec. 1303.202. REPORT. (a) The commission may adopt rules requiring each residential service company to file with the commission a report that meets the requirements in Subsection (b).

(b) The report must:

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

(2) be verified by at least two of the residential service company's principal officers; 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 the commission 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) any other information that:

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

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

(c) The commission shall maintain the confidentiality of information provided to the commission by a residential service company under this section that is claimed to be confidential for competitive purposes. The confidential information is exempt from disclosure under Chapter 552, Government Code. The commission may withhold the information without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. 2279), Sec. 10, eff. January 1, 2018.

#### SUBCHAPTER F. RESIDENTIAL SERVICE CONTRACTS

Sec. 1303.251. CONTRACT DELIVERY AND FILING. (a) Each contract holder residing in this state is entitled to receive a copy of the 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. The residential service company may provide the copy by mail, e-mail, or other means of delivery acceptable to the commission.

(b) A residential service company shall file with the commission 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.

(c) The commission may require a residential service company to submit relevant information the commission considers necessary to determine whether to approve or disapprove a filing made under Subsection (b).

(d) The commission shall approve a filing made under Subsection (b) if the requirements of this section and Section 1303.252 are met.

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

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

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

(e) If the commission disapproves a filing made under



Subsection (b), the commission shall notify the company of the disapproval and in the notice shall specify in detail the reason for the disapproval.

(f) A residential service company whose filing under Subsection (b) is disapproved by the commission is entitled to a hearing conducted by the State Office of Administrative Hearings.

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

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. 2279), Sec. 11, eff. January 1, 2018.

Sec. 1303.252. FORM OF CONTRACT AND REQUIRED DISCLOSURES.

(a) A residential service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must be written, printed, or typed in clear, understandable language that is easy to read and must disclose the following:

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

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

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

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

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

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

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

(b) A service fee under Subsection (a)(7) is not required to be preprinted on the residential service contract but must be

disclosed in writing to the contract holder before the purchase of the residential service contract.

(c) A residential service contract insured under a reimbursement insurance policy in accordance with Section [1303.151](#)(b) must 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." The residential service contract must also:

- (1) state the name and address of the insurer; and
- (2) 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) A residential service contract may not contain a provision that encourages misrepresentation or that is unjust, unfair, inequitable, misleading, deceptive, or false.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. [2279](#)), Sec. 12, eff. January 1, 2018.

Sec. 1303.253. SCHEDULE OF CHARGES. (a) A residential service company shall file with the commission 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.

(b) 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 the commission and is made for informational purposes only.

(c) A filing made under Subsection (a) by a residential service company that maintains a reserve required by Section [1303.151](#)(a) may not be implemented until approved by the commission.

(d) The commission shall approve a filing made under Subsection (a) if the commission determines that the filing is reasonably related to the amount, term, and conditions of the contract to which the filing applies.

(e) If the commission determines that a filing made under Subsection (a) is not reasonably related to the contract as described by Subsection (d), the commission may disapprove the filing. If the commission disapproves the filing, the commission shall notify the company of the disapproval and shall specify in detail the reason for the disapproval.

(f) For a filing made under Subsection (a) by a residential service company described by Subsection (c) after the residential service company is licensed, the commission shall have 30 days to consider the filing from the date of the filing or the date that the commission receives any associated filing fee, whichever is later. On the 31st day after that date, the filing is considered approved unless the commission 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) If the commission 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, the residential service company may submit a written response to that notification. The commission shall have 30 days to reconsider the filing from the date that the commission receives the residential service company's written response. On the 31st day after the commission receives the residential service company's written response, the filing is considered approved unless the commission disapproves the filing. If the residential service company does not respond in writing before the 61st day after being notified by the commission 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) The commission may not require a residential service company to waive a 30-day consideration period provided by this section or make the approval of a filing contingent on waiving a

30-day consideration period provided by this section.

(i) A residential service company whose filing under Subsection (a) is disapproved by the commission is entitled to a hearing conducted by the State Office of Administrative Hearings.

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

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. 2279), Sec. 13, eff. January 1, 2018.

Sec. 1303.254. REMEDIES NOT WAIVED; NOTICE. (a) A contract holder does not waive under a residential service contract a remedy that the holder may have under another law against another person.

(b) A person may not sell or offer to sell a residential service contract unless the contract contains the following statement in at least 10-point bold type above or adjacent to the signature of the buyer:

NOTICE: YOU THE BUYER HAVE OTHER RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT WHICH ARE IN ADDITION TO ANY REMEDY WHICH MAY BE AVAILABLE UNDER THIS CONTRACT.

FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY OR THE ATTORNEY OF YOUR CHOICE.

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

Sec. 1303.255. CANCELLATION OF CONTRACT. A residential service company may not cancel a residential service contract during the initial term for which the contract is issued unless:

(1) the contract holder does not pay a fee or charge due under the terms of the contract;

(2) the contract holder engages in fraud or misrepresentation of facts material to the issuance of the contract; or

(3) an interest in the residential property covered

under the contract is sold, and the contract is contingent on an interest in the property not being sold.

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

#### SUBCHAPTER G. PROHIBITED PRACTICES

Sec. 1303.301. FALSE OR DECEPTIVE STATEMENTS PROHIBITED.

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

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

(2) any deceptive residential service contract.

(b) Unless a residential service company is licensed as an insurer, the company may not use in the company's name, contracts, or literature the word "insurance," "casualty," "surety," or "mutual" or another word that is:

(1) descriptive of the insurance, casualty, or surety business; or

(2) deceptively similar to the name or description of an insurance or surety corporation or another residential service company engaging in business in this state.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. [2279](#)), Sec. 14, eff. January 1, 2018.

Sec. 1303.302. CERTAIN CONDITIONAL SALES OF PROPERTY PROHIBITED. (a) A seller of a residential property or the buyer's or seller's agent may not condition the sale of the property on the buyer's purchase of a residential service contract.

(b) A seller of a residential property or the buyer's or seller's agent shall provide to the buyer a statement that clearly and conspicuously states that:

(1) the purchase of a residential service contract is optional; and

(2) the buyer may purchase similar coverage through another residential service company or insurance company

authorized to engage in business in this state.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 13, eff. September 1, 2007.

Sec. 1303.303. CERTAIN CHARGES WITHOUT CONSENT PROHIBITED. Unless a homeowner, lessor, or renter consents in writing, a residential service company or the company's agent may not knowingly charge the homeowner, lessor, or renter for duplication of coverage or duties required by:

(1) state or federal law, including coverage under Subchapter H, Chapter 1201;

(2) a warranty expressly issued by a manufacturer or seller of a product; or

(3) an implied warranty enforceable against a lessor, seller, or manufacturer of a product.

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

Sec. 1303.304. CERTAIN PAYMENTS BY RESIDENTIAL SERVICE COMPANY PROHIBITED. (a) A residential service company may not directly or indirectly pay, as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract, a commission or other consideration to an agent, representative, attorney, or employee of an owner or prospective owner of a residential property for which a residential service contract has been or will be issued.

(b) Notwithstanding Subsection (a), a residential service company may pay a reasonable amount for the sale, advertising, inspection, or processing of a residential service contract.

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

#### SUBCHAPTER H. DISCIPLINARY ACTION AND OTHER PROCEDURES

Sec. 1303.351. DISCIPLINARY POWERS OF COMMISSION. The commission may suspend or revoke a license issued to a residential service company under this chapter if the commission determines

that a ground for discipline exists under Section [1303.352](#).

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

Sec. 1303.352. GROUNDS FOR DISCIPLINARY ACTION. (a) The commission may 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) operates in conflict with its basic organizational document or in a manner that is contrary to that described in and reasonably inferred from information submitted under Section [1303.103](#), unless an amendment to the information has been filed with and approved by the commission;

(2) issues a residential service contract that does not comply with Sections [1303.251](#) and [1303.252](#);

(3) uses a schedule of charges that does not comply with Section [1303.253](#);

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

(5) did not comply with Subchapter D;

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

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

(b) Subsection (a)(6) applies to any advertising or marketing conducted on behalf of a residential service company by another person.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 845 (H.B. [2279](#)), Sec. 15, eff. January 1, 2018.

Sec. 1303.3525. HEARING. (a) The commission may authorize the State Office of Administrative Hearings to conduct a hearing and enter a final decision in a proceeding under Section [1303.351](#).

(b) All hearings conducted under Subsection (a) are

governed by Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.336(b), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 7, eff. May 12, 2009.

Sec. 1303.353. DUTIES AFTER LICENSE REVOCATION. (a) Immediately after the effective date of an order revoking a residential service company's license, the company:

(1) shall wind up its affairs;

(2) may not engage in further advertising or solicitation; and

(3) may not conduct further business except as may be essential to the orderly conclusion of the company's affairs.

(b) Notwithstanding Subsection (a), to provide contract holders with the greatest practical opportunity to obtain services for which they contracted, the commission by written order may permit further operation of the residential service company as the commission determines is in the best interests of the contract holders.

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

Sec. 1303.354. JUDICIAL REVIEW. (a) A person who is adversely affected by a rule or decision of the commission may file in a district court in Travis County a petition stating the particular objection to the rule or decision. The commission is a defendant in the action.

(b) The petition must be filed not later than the 20th day after the date the commission enters an order.

(c) The district court may not enjoin or stay the commission's decision except on application to that court after notice to the commission.

(d) The substantial evidence rule applies to the proceedings in the district court.

(e) Each party to the action may appeal from the district court. The appeal takes precedence in the appellate court over all



actions of a different character pending in that court. The commission is not required to give an appeal bond in an action arising under this section.

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

Sec. 1303.355. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty as provided by Subchapter O, Chapter 1101, on a person who violates this chapter or a rule adopted or order issued by the commission under this chapter.

(b) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

(c) In determining the amount of the penalty, the administrator shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The commission by rule shall adopt a schedule of administrative penalties based on the criteria listed in Subsection (c) for violations subject to an administrative penalty under this section to ensure that the amount of a penalty imposed is appropriate to the violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 57, eff. September 1, 2007.

Sec. 1303.356. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to

practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the commission is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 57, eff. September 1, 2007.

#### SUBCHAPTER I. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1303.401. HAZARDOUS FINANCIAL CONDITION OF RESIDENTIAL SERVICE COMPANY. (a) If the financial condition of a residential service company indicates that its continued operation may be hazardous to its contract holders or creditors or to the public, the commission may, after notice of hearing, order the company to take reasonably necessary action to remedy the condition, including:

(1) reducing the total amount of present and potential liability for benefits by reinsurance or by obtaining an appropriate bond from an admitted carrier or a surplus line carrier;

(2) reducing the volume of new business being accepted;

(3) reducing expenses by specified methods;

(4) suspending or limiting the writing of new business for a period of time; or

(5) increasing the company's net worth by contribution.

(b) The commission by rule may establish:

(1) uniform standards and criteria for early warning that the continued operation of a residential service company may be hazardous to its contract holders or creditors or to the public; and

(2) standards for evaluating the financial condition of a residential service company that are consistent with the purposes described in Subsection (a).

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

Sec. 1303.402. APPOINTMENT OF RECEIVER. (a) If in the commission's opinion the continued operation of a residential service company would be hazardous to its contract holders or the public, the commission may request a district court of Travis County to appoint a receiver.

(b) After adequate notice and a hearing, if the court determines that a receiver should be appointed to protect the rights of the contract holders or the public, the court shall issue an order appointing a receiver. The order must clearly state whether the receiver has the power to:

(1) manage and operate the residential service company's business generally; or

(2) manage only the residential service company's finances.

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

Sec. 1303.403. INJUNCTIVE RELIEF. (a) The commission may bring an action in the name of the state in a district court of Travis County for a restraining order, injunction, or other relief the court determines is appropriate if it appears to the commission that:

(1) a residential service company is violating or has violated this chapter or a rule adopted under this chapter; and

(2) bringing the action is in the public interest.

(b) The commission has exclusive authority to bring an action under this section.

(c) On application for injunctive relief and a finding that

a residential service company is violating or has violated this chapter or a rule adopted under this chapter, the court shall grant the injunctive relief that the facts warrant. The court shall grant the relief without a bond.

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

Sec. 1303.404. CIVIL PENALTY. (a) A person who violates this chapter is liable for a civil penalty in an amount not to exceed \$2,500 for each violation or \$50,000 in the aggregate for all violations of a similar nature.

(b) The commission may bring an action to collect a civil penalty under this section.

(c) For purposes of this section, 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. 1303.405. DECEPTIVE TRADE PRACTICE. A violation of this chapter is actionable by a consumer as a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code.

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

Sec. 1303.406. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) wilfully violates this chapter or a rule adopted under this chapter; or

(2) knowingly makes a false statement with respect to a report or a statement required by this chapter.

(b) An offense under this section is a Class B misdemeanor.

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

Sec. 1303.407. ADDITIONAL PENALTY. A residential service company that engages in business in violation of this chapter shall pay \$100 for each day the company continues to write new business while in violation of this chapter.

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