

SUBJECT: Regulating service contract providers and administrators

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 6 ayes — Flores, Geren, Goolsby, Homer, D. Jones, Morrison
0 nays
3 absent — Chisum, Hamilton, Quintanilla

WITNESSES: For — Diane Greene, GSFS Group and Gulf State Toyota, Inc.
Against — None

BACKGROUND: Chap.1304 of the Occupations Code, the Service Contract Regulatory Act adopted in 1999, regulates service contracts, also known as extended warranties, that cover the repair, replacement or maintenance of consumer goods, including motor vehicles.

Under chap. 1304, a contract provider must register with and pay annual registration fees to the Texas Department of Licensing and Regulation (TDLR) in order to operate in Texas. An administrator is defined as a person responsible for the administration of a service contract and is not required to register with TDLR.

A provider must maintain a form of financial security to ensure the faithful performance of the provider's obligations. This can be done by securing a bond, providing proof of the company's net worth of at least \$100 million, or obtaining a reimbursement insurance policy.

The Service Contract Providers Advisory Board advises TDLR on adopting rules and on enforcement.

DIGEST: HB 1286 would amend the Service Contract Regulatory Act to revise TDLR regulation of service contract providers and administrators.

Effective March 1, 2006, the bill would require administrators of service contracts sold in Texas to register with TDLR and would make

administrators responsible for recordkeeping to the same extent as providers. It would define an administrator as someone, other than the provider or a provider's employee, who is responsible for third-party administration of the contract.

HB 1286 would permit TDLR to refuse to issue or renew a registration if the applicant had violated certain TDLR rules. A person who made false statements in an application would be subject to disciplinary action. HB 1286 would require an application for registration renewal.

HB 1286 would require the following from providers registering with TDLR:

- a reimbursement policy on file with the application, if that was the financial security of choice;
- a biographical affidavit on file for each controlling person of the service provider;
- evidence that each controlling person was trustworthy and able to manage the affairs of the provider;
- evidence that contract and legal obligations could be met;
- a list of Internet website addresses where a consumer could buy that provider's service contracts. This list would have to include physical contact information for any appointed contract administrator and service contract seller without a physical location in this state; and
- registration and renewal fees from administrators.

The bill would add requirements to reimbursement insurance policies held by a provider to comply with the act. If a contract had been made void and a credit not given by the provider, the insurer on written notice would refund the amount to the contract holder. The bill would describe terms for applying for such a refund.

An insurer issuing a such a policy would have to file copies annually of the insurer's audited financial statements, National Association of Insurance Commissioners annual statement, and an actuarial certification if required. The insurer also would have to:

- maintain surplus as to policyholders and paid-in capital of at least \$15 million; or
- maintain surplus as to policyholders and paid-in capital of at least

\$10 million but not more than \$15 million, and demonstrate that the insurer maintained a ratio of net written premiums to surplus as to policyholders and paid-in capital of not more than three to one.

HB 1286 also would require an active contract provider that chose the reimbursement insurance option to have continuous coverage.

The bill would eliminate the Service Contract Providers Advisory Board.

Except as otherwise provided, this bill would take effect on January 1, 2006. It would apply to registrations that expired on or after that date and to reimbursement insurance policies entered into on or after that date.

**SUPPORTERS
SAY:**

HB 1286 would improve protection for consumers by making it harder for disreputable service contract companies to do business in Texas. A consumer who purchases an extended warranty from a service contract provider should be able to expect that the warranty will be honored.

Currently, the TDLR can revoke the registration of providers for non-compliance with existing law. However, nothing prevents a provider whose registration has been revoked from registering a new company or escaping regulation by becoming a third-party administrator managing the business of other providers. The requirement for registration of third-party administrators would help TDLR keep track of who is operating in the state and monitor and address problems as they arise. TDLR also would have greater discretion not to register or renew the registration of previous violators or those shown to be untrustworthy.

Increasing the capital and surplus requirement for insurers who provide reimbursement insurance would help ensure the companies are solvent and strengthen those providing the insurance.

Several elements of HB 1286 have been adopted by other states and are becoming part of nationwide standards adopted around the country. Texas should be in step with national standards.

The Service Contract Providers Advisory Board has not been meeting and essentially has been defunct for years. It has been too difficult to find qualified participants willing to serve as board members. Doing away with this board would save administrative costs and effort.

**OPPONENTS
SAY:**

Although HB 1286 would improve consumer protections with respect to service contract providers, the bill would not go far enough. A recent study suggests that more than 50 percent of car buyers pay hundreds of dollars too much for extended warranties. TDLR should have authority to determine fair prices for extended warranties. Also, extended warranties should be classified as insurance, and this exception from insurance regulation should be removed.

NOTES:

The companion bill, SB 600 by Brimer, has been referred to the Senate Business and Commerce Committee.