

BILL ANALYSIS

Senate Research Center
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S.B. 1775
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Economic Development
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DIGEST

Currently, the sale of service contracts by a manufacturer or seller of consumer products is unregulated. A service contract is an agreement, under which a provider agrees to repair, replace, or maintain a product or provide indemnification for the product, for operational or structural failure caused by a defect or by normal wear. The contract may provide for incidental payment or indemnity under limited circumstances, including towing, rental, and emergency road service, or for repair or replacement of a product for damage resulting from power surges or accidental damage. S.B. 1775 would establish regulation, through the Texas Department of Licensing and Regulation, of certain service contract providers, and create the Service Contract Providers Advisory Board.

PURPOSE

As proposed, S.B. 1775 regulates certain providers of service contracts.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioner of the Texas Department of Licensing and Regulation in SECTION 1 (Section 3(a), Article 9034, Title 132, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 132, V.T.C.S., by adding Article 9034, as follows:

Art. 9034. REGULATION OF CERTAIN SERVICE CONTRACT PROVIDERS

Sec. 1. SHORT TITLE: Service Contract Regulatory Act.

Sec. 2. DEFINITIONS. Defines “administrator,” “commissioner,” “commission,” “consumer,” “department,” “maintenance agreement,” “person,” “premium,” “provider,” “provider fee,” “reimbursement insurance policy,” “service contract,” “service contract holder,” and “warranty.”

Sec. 3. POWERS AND DUTIES OF COMMISSIONER. Authorizes the commissioner of the Texas Department of Licensing and Regulation (commissioner) to adopt rules to implement this article. Authorizes the commissioner to investigate providers, administrators, or other persons to enforce this article and protect contract holders. Requires a provider to produce Section 9 records regarding service contracts on request by the commissioner to determine compliance.

Sec. 4. SERVICE CONTRACT PROVIDERS ADVISORY BOARD. Provides that the service contract providers advisory board (advisory board) is an advisory body to the Texas Department of Licensing and Regulation (department). Requires the advisory board to advise the commissioner and the Texas Commission of Licensing and Regulation (commission) in adopting rules and administering this article and setting fees. Sets forth the board’s composition, terms of service, appointments by the commissioner, and meeting requirements. Provides that a decision of the board is not effective unless four members affirm the decision by vote. Provides that the board members receive no compensation. Entitles a member to reimbursement for expenses incurred as a member of the board, subject to the General Appropriations Act.

Sec. 5. REGISTRATION REQUIREMENTS; EXEMPTIONS. Prohibits a person from operating as a provider of service contracts that are sold in the state unless the person registers with the department. Exempts certain persons selling service contracts from any licensing

requirements, except registration, that relates to the activities regulated under this article. Requires each registration applicant to file a registration application with the commissioner and to include evidence of complying with the financial security requirement of Section 6. Requires each registered provider to pay annually a fee not to exceed \$2,000 as set by the commission to cover the costs of administering this article. Exempts certain business transactions from the Insurance Code and other laws of this state regulating the business of insurance; Article 6573b, V.T.C.S.; and Chapter 722, Transportation Code. Sets forth contracts and agreements that are specifically exempt from this article.

Sec. 6. FINANCIAL SECURITY REQUIREMENTS. Requires each provider to comply with the financial security requirements of this article in order to ensure faithful performance of a provider's obligations. Authorizes a provider to insure service contracts under a reimbursement policy issued by an authorized insurer or issued under a surplus lines insurance policy under Article 1.14-2, Insurance Code. Authorizes a provider, instead of insurance, to maintain a funded reserve account, to place a security deposit with the commissioner, and to maintain a net worth or stockholders' equity of at least \$100,000,000. Requires the reserves in a funded reserve account to equal at least 40 percent of the total consideration received on the sale of certain service contracts. Requires a security deposit to have a certain value and consist of certain deposits or securities. Requires a provider who establishes the financial security to transmit a copy of a Form 10-K or Form 20-F filed with the Securities and Exchange Commission (SEC). Requires the provider to submit a copy of an audited financial statement showing net worth, if the company does not file with the SEC. Requires a parent company to guarantee the obligations of the provider regarding service contracts, if the provider's parent company's forms or financial statements are filed to meet the provider's security requirement under this section.

Sec. 7. REIMBURSEMENT INSURANCE POLICY. Sets forth requirements for a reimbursement insurance policy used to comply with Section 6. Prohibits an insurer who issues a reimbursement insurance policy from canceling the policy until the insurer delivers to the provider a certain notice of cancellation. Requires the provider to forward a copy of the notice to the commissioner by a certain date. Provides that the cancellation of a reimbursement insurance policy does not reduce the insurer's responsibility for service contracts issued by the provider and insurer under the policy before the cancellation. Establishes that the provider is considered the agent of the insurer who issues the reimbursement insurance policy. Provides that this article does not limit the right of an insurer to seek indemnification or subrogation against certain providers.

Sec. 8. GENERAL PROVIDER OPERATION REQUIREMENTS. Authorizes a provider to appoint an administrator or other designee to be responsible for a service contract's administration, sale, and compliance. Prohibits a service contract from being issued, sold, or offered unless the provider provides certain evidence regarding the possession of the contract.

Sec. 9. PROVIDER RECORDS. Requires each provider to maintain accurate accounts, books, and other records regarding transactions under this article. Requires the records to include certain information. Requires each provider to retain all the records for one year after the expiration date under the contract. Authorizes the records to be maintained in an electronic medium or other record-keeping technology. Requires a provider who discontinues its business in the state to maintain its records until the provider furnishes proof to the commissioner that the provider has discharged all obligations to service contract holders in this state.

Sec. 10. REQUIRED DISCLOSURES. Requires each service contract to be in clear, understandable, and easy to read language, and to disclose the requirements of this section. Requires certain contracts to contain a particular statement regarding obligations of the provider. Requires the service contract to contain certain information regarding the ability of the holder to apply for reimbursement from the service contract reimbursement insurance company. Requires a service contract that is not insured under a reimbursement insurance policy to contain a certain statement regarding the obligation of the provider. Requires that each service contract include the address of the provider, the price and terms of the contract, cancellation terms, and other information.

Sec. 11. VOIDING OF CONTRACT. Requires each service contract to require the provider to permit the holder to return the contract by a certain date. Requires the contract to be void with the

timely return of the service contract and the provider to refund the price or credit the account of the holder. Prohibits the right to void the contract from being transferred out of the original holder. Establishes that the provider is liable for 10 percent of a contract that is not refunded or credited within a certain time period.

Sec. 12. LIMITATIONS ON PROVIDER NAME. Prohibits a provider from using its name in association with certain words of the insurance, casualty, or surety business; from using a name similar to any insurance or surety corporation; or a name deceptively similar to the name of another provider. Authorizes the provider to use the word "guaranty." Provides that this section does not apply to certain providers who used certain prohibited words, but must include a specific statement in their service contracts.

Sec. 13. PROHIBITED ACTS. Prohibits a provider or a provider's representative from using in the service contract false or misleading statements or from deliberately omitting statements that would be considered misleading. Prohibits a person, including certain banks, manufacturers, or sellers of any product from requiring the purchase or service of a service contract as a condition of a loan or the sale of a property.

Sec. 14. ENFORCEMENT. Authorizes the commissioner to impose appropriate administrative sanctions, including a penalty under Article 9100, V.T.C.S., on a finding that a ground for disciplinary action exists under provisions of this article. Prohibits the administrative penalty from exceeding \$500 per violation or \$10,000 in the aggregate for all violations. Provides that a disciplinary action is subject to Subject 17(d), Article 9100, V.T.C.S. Authorizes the commissioner to bring an action for an injunctive proceeding under Section 18, Article 9100, V.T.C.S., for threatened or existing violations and to bring an action for civil penalties as provided by that section. Prohibits a civil penalty from exceeding \$2,500 per violation or \$50,000 for the aggregate of similar violations. Provides that a violation under Subsections (a) and (c) is of a similar nature if the violation consists of a similar course of conduct, action, or practice, regardless of the number of times the act, conduct, or practice occurred.

SECTION 2. Effective date: September 1, 1999.

Makes application of this Act prospective to January 1, 2000.

SECTION 3. Emergency clause.