

## BILL ANALYSIS

Senate Research Center

H.B. 1286  
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Business & Commerce  
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Engrossed

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

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. Service contracts have been regulated by the Texas Department of Licensing and Regulation (TDLR) since 1999. It is necessary to provide TDLR with additional regulatory authority to improve oversight regarding this industry.

H.B. 1286 requires administrators of service contract providers to register with TDLR; provides TDLR with additional controls to ensure providers and their controlling persons are trustworthy; increases the capital and service requirements for insurers providing reimbursement insurance policies to providers; and creates other consumer protections.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 1304, Occupations Code, to read as follows:

#### CHAPTER 1304. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

SECTION 2. Amends Section 1304.002(1), Occupations Code, to redefine "administrator."

SECTION 3. Amends Subchapter A, Chapter 1304, Occupations Code, by adding Section 1304.0035, as follows:

Sec. 1304.0035. CONTROLLING PERSON. Defines "controlling person." Provides that 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.

SECTION 4. Amends Section 1340.101(a), Occupations Code, as follows:

Sec. 1304.101. Adds a provision prohibiting a person from operating as an administrator of service contracts sold in this state unless the person is registered with the Texas Department of Licensing and Regulation (department).

SECTION 5. Amends Section 1304.102, Occupations Code, as follows:

Sec. 1304.102. New heading. APPLICATION FOR REGISTRATION OR RENEWAL; GENERAL REQUIREMENTS. (a) Adds a requirement for an applicant for registration renewal to an application to the executive director.

(b)(2) Makes conforming changes.

(c) Authorizes the department to refuse to issue or renew a registration under certain circumstances.

(d) Provides that a person who makes a false statement in an application or in any document provided with an application is subject to disciplinary action under Subchapter E, including denial of the application or suspension or revocation of a registration.

SECTION 6. Amends Subchapter C, Chapter 1304, Occupations Code, by adding Section 1304.1025, as follows:

Sec. 1304.1025. **ADDITIONAL REGISTRATION AND RENEWAL REQUIREMENTS FOR PROVIDERS.** (a) Sets forth required items to be filed by an applicant for issuance or renewal of a provider registration, in addition to the requirements of Section 1304.102.

(b) Prohibits the executive director from issuing or renewing a registration to a provider unless the provider proves to the executive director that specific circumstances exist.

(c) Requires the provider to provide a specific list to the department as specified.

(d) Requires the provider to update the list required by Subsection (c) with each renewal.

SECTION 7. Amends Section 1304.103, Occupations Code, as follows:

Sec. 1304.103. New heading. **REGISTRATION AND RENEWAL FEES.** Makes conforming changes. Amends the requirement that the Texas Commission of Licensing and Regulation (commission) set the amount of fees to cover the costs of administering this chapter to include registration and renewal fees for administrators. Requires a provider or administrator to pay the appropriate fee in order to register or renew a registration.

SECTION 8. Amends Subchapter D, Chapter 1304, Occupations Code, to read as follows:

**SUBCHAPTER D. PRACTICE BY SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS**

SECTION 9. Amends Section 1304.152, Occupations Code, by amending Subsections (a)-(c), and adding Subsections (a-1), (b-1), and (e), as follows:

(a) Requires that a reimbursement insurance policy that a provider uses to comply with Sections 1304.1025 and 1304.151(a)(1), rather than Section 1304.151(a)(1), makes specific statements.

(a-1) Requires that an insurer issuing a reimbursement insurance policy comply with Section 1304.151(a)(1) by performing specified tasks.

(b) Prohibits the insurer from canceling the reimbursement insurance policy until the insurer delivers a written notice of cancellation as specified to the provider and the executive director. Deletes the requirement that the provider forward a copy of the cancellation to the executive director not later than the 15th business day after the date the notice is delivered to the provider. Makes nonsubstantive changes.

(b-1) Prohibits the provider named on the policy from issuing a new service contract after the effective date of the cancellation under certain circumstances, unless the provider takes specified actions.

(c) Provides that 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.

(e) Defines "net written premiums."

SECTION 10. Amends Section 1304.153, Occupations Code, as follows:

(a) Creates this subsection from existing text. Authorizes a provider to appoint an administrator registered under this chapter, rather than appoint an administrator or designate a person, to be responsible for specified tasks.

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

SECTION 11. Amends Section 1304.155, Occupations Code, by adding Subsection (e), to provide that an administrator appointed to maintain the provider's records is responsible for compliance with this section to the same extent as the provider.

SECTION 12. Amends Section 1304.156(a) and (d), Occupations Code, as follows:

(a) Requires certain contracts to identify any administrator, rather than any administrator who is not the provider.

(d) Requires a service contract insured under a reimbursement insurance policy under Section 1304.151(a)(1) to state that the service contract holder may apply for reimbursement directly to the insurer under specified circumstances.

SECTION 13. Repealer: Subchapter B, (Service Contract Providers Advisory Board), Chapter 1304, Occupations Code.

SECTION 14. Makes application of Section 1304.102, Occupations Code, as amended by this Act, and Section 1304.1025, Occupations Code, as added by this Act, prospective.

SECTION 15. Provides that Sections 1304.101(a) and 1304.153, Occupations Code, as amended by this Act, take effect on March 1, 2006.

SECTION 16. Makes application of Sections 1304.152 and 1304.156, Occupations Code, as amended by this Act, prospective.

SECTION 17. Effective date: January 1, 2006.