

**SUBJECT:** Exempting residential service contracts from customer cancellation

**COMMITTEE:** Business and Industry — favorable, without amendment

**VOTE:** 5 ayes — Brimer, J. Davis, Elkins, Giddings, Woolley  
0 nays  
4 absent — Dukes, Corte, George, Solomons

**SENATE VOTE:** On final passage, May 3 — 30-0, on Local and Uncontested Calendar

**WITNESSES:** None

**BACKGROUND:** Business and Commerce Code, chapter 39 allows a consumer to cancel within three days any contract in which the merchant or the merchant's agent personally solicits the sale at a place other than the merchant's place of business. The provision is intended to protect consumers against abuses by door-to-door salespeople. Sec. 39.002 excludes from this provision real estate transactions and insurance sales regulated by the Texas Department of Insurance.

The Residential Service Company Act (Art. 6572b, V.T.C.S.) defines a "residential service contract" as a contract or agreement under which a person other than the manufacturer agrees for a specified fee and period of time to maintain, repair, or replace structural components, appliances, or the electrical, heating, cooling, or air-conditioning system of a residential property.

**DIGEST:** SB 560 would exempt residential service contracts regulated by the Texas Real Estate Commission (TREC) from provisions allowing consumers to cancel contracts signed away from the merchant's place of business within three days.

The bill would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

Residential service contracts function much like insurance policies in that they involve payment of a premium to repair or replace the mechanical, electrical, structural, or plumbing system in a consumer's home. Since these transactions are regulated by the TREC, they also serve as a type of real estate transaction. It would be logical for residential service contracts to qualify for the exemption from the three-day cancellation provision already provided for both insurance sales and real estate transactions.

SB 560 is narrowly drawn to cover residential service contract sales regulated by the TREC. Those regulations specifically exclude residential service contracts sold by the manufacturer or seller of the property. This bill would avoid the unintended consequences of creating unregulated insurance sales identified by Gov. Bush in his veto of service contract legislation in 1997.

This bill would not eliminate other protections afforded consumers who might be defrauded by those selling dubious residential service contracts. Even without the three-day cancellation provision, the contracts fall under TREC regulation. Consumers have other legal remedies as well.

**OPPONENTS  
SAY:**

Exempting certain transactions from the three-day cancellation provision only encourages dishonest people to dress up old confidence games as one of those exempted transactions. Consumers need protection against fly-by-night salespeople pitching potentially worthless "residential service contracts" and should be allowed to cancel such agreements within three days.

**NOTES:**

The 75th Legislature enacted SB 1913 by Sibley, which would have exempted service contracts to repair or maintain property offered by the manufacturer or seller of the property. Gov. George W. Bush vetoed the bill, saying that it could "permit the unregulated sale of insurance."