

BILL ANALYSIS

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S.B. 1263
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Service contracts provide protection for consumer products when the product suffers a failure due to a defect in materials or workmanship or normal wear and tear. These contracts, which are optional to purchase, are offered to consumers for a specific period of time and for an additional cost in addition to the price of a product. Service contracts are offered on products such as appliances, consumer electronics, and motor vehicles. In addition to the "core" coverage being provided, a service contract may also provide for other benefits incidental to that core coverage which includes towing, rental, emergency road service, and repair or replacement of cracked windshields, tire or wheel damage, and worn fabric or carpet.

The Texas Department of Licensing and Regulation has regulated service contracts since 1999. S.B. 1263 will make two, pro-consumer amendments to the Service Contract Regulatory Act (the "Act") found in Chapter 1304, Occupations Code.

As some motor vehicle keys and key fobs have become more costly to replace — often in excess of hundreds of dollars — this legislation allows the cost of a replacement key or key fob to be covered by a service contract if the key was lost, stolen, or damaged. Twenty states have allowed this benefit to be provided in recent years, and seven states currently have legislation or regulation pending which would permit this benefit to be provided within a service contract. The benefit has, as you can imagine with the increase in the cost to replace a lost or broken key fob, become popular with consumers and is in high demand. There is regulatory uncertainty as to whether the product can be offered in Texas and this amendment would clarify the ability to provide it under the current regulatory framework applicable to service contracts in Texas which provides significant protection to Texas consumers electing to purchase the product.

Texas service contract law was amended in 2011 to state that a service contract provider shall refund to the contract holder either the full amount of the amount paid for the service contract if cancelled during the free look period or a pro rata amount if cancelled subsequent to that time frame "decreased by the amount of any claims paid under the contract." The amendments in 2011 specified that a provider "may allow [cancellation] on other terms included in the contract, provided the terms do not conflict with this section."

- A 2015 attorney general's opinion, taking a strict interpretation of the Act, concluded that a refund must deduct funds for claims paid and thus the refund could not be more generous than that which was codified by the 2011 legislation. This legislation clarifies the 2011 legislation and allows a service contract provider to elect not to deduct claims paid from any refunds and, therefore, provide a more generous refund to consumers when a service contract is canceled. While the deduction of claims paid should be permitted to be deducted from a cancellation refund, it should not be required. S.B. 1263 recognizes that.

As proposed, S.B. 1263 amends current law relating to the regulation of a service contract.

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 Section 1304.003(b), Occupations Code, as follows:

(b) Authorizes a service contract described by Subsection (a)(2)(A) (relating to the definition of "service contract") to also provide for:

(1) makes no changes to this subdivision;

(2) the replacement of a motor vehicle key or key-fob in the event that the key or key-fob becomes inoperable or is lost or stolen;

(3) creates this subdivision from existing text and makes no further changes to this subdivision; or

(4) redesignates existing Subdivision (3) as Subdivision (4) and makes no further changes to this subdivision.

SECTION 2. Amends Section 1304.1581, Occupations Code, by adding Subsection (d), as follows:

(d)(1) Creates this subdivision from existing text and makes no further changes to this subdivision.

(2) Provides that a provider is not required to deduct the amount of any claims paid under a service contract from the amount of a refund due pursuant to this section.

SECTION 3. Amends Section 1304.159, Occupations Code, by adding Subsection (d), to provide that a provider is not required to deduct the amount of any claims paid under a service contract from the amount of a refund due pursuant to this section.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2017.