

OCCUPATIONS CODE

TITLE 8. REGULATION OF ENVIRONMENTAL AND INDUSTRIAL TRADES

CHAPTER 1303. RESIDENTIAL SERVICE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1303.001. SHORT TITLE. This chapter may be cited as the Residential Service Company Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Real Estate Commission.

(2) "Contract holder" means a person who is entitled to receive services from a residential service company under a residential service contract.

(3) "Person" means an individual, partnership, corporation, association, or other organization.

(4) "Residential service company" means a person who:
(A) issues a residential service contract; and
(B) performs or arranges to perform services under the contract.

(5) "Residential service contract" means an agreement under which, in exchange for a fee, a person undertakes for a specified period to maintain, repair, or replace all or any part of a structural component, an appliance, or an electrical, plumbing, heating, cooling, or air-conditioning system of a residential property. The term does not include a service or maintenance agreement sold, offered for sale, or issued by a manufacturer or merchant under which the manufacturer or merchant undertakes to maintain, repair, or replace a product or part of a product, including a structural component, an appliance, or an electrical, plumbing, heating, cooling, or air-conditioning system of a residential property, that is:

(A) manufactured or sold by the manufacturer or merchant; or

(B) installed by the merchant in a building or

residence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.003. APPLICABILITY OF INSURANCE LAWS. (a) Except as otherwise provided by this chapter, the insurance laws of this state do not apply to a residential service company. This subsection does not apply to an insurance company licensed and regulated under the insurance laws of this state.

(b) This chapter does not exempt a warranty or service contract other than a residential service contract from the Insurance Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.0035. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. The sale of a residential service contract governed by this chapter is not a good or service governed by Chapter 601, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.336(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.28, eff. April 1, 2009.

Sec. 1303.004. NONAPPLICABILITY TO CERTAIN PERSONS. (a) This chapter does not apply to a person who:

(1) manufactures or sells a product or part of a product; and

(2) sells, offers to sell, or issues a service or maintenance agreement that provides for the maintenance, repair, replacement, or performance of the product or part of the product.

(b) A person described by Subsection (a) or an employee or agent of a person described by Subsection (a) is not required to be licensed or regulated under this chapter.

(c) This chapter does not apply to a person who engages in the business of structural pest control in compliance with Chapter 1951.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.005. APPLICABILITY TO CERTAIN AGREEMENTS. This chapter does not apply to:

- (1) a performance guarantee given by:
 - (A) the builder of a residential property; or
 - (B) the manufacturer or seller of an appliance or other system or component of a residential property;
- (2) a residential service contract executed before August 28, 1979;
- (3) a service contract, guarantee, or warranty that is:
 - (A) designed to guarantee or warrant the repair or service of an appliance, system, or component of a residential property; and
 - (B) issued by a person who:
 - (i) does not engage in the business of a residential service company; and
 - (ii) sells, services, repairs, or replaces the appliance, system, or component at the time or before the contract, guarantee, or warranty is issued;
- (4) a service or maintenance agreement or a warranty that:
 - (A) is sold, offered for sale, or issued by a manufacturer or merchant who manufactures or sells a product or part of a product, including a structural component, an appliance, or an electrical, plumbing, heating, cooling, or air-conditioning system of a building or residence; and
 - (B) provides for, warrants, or guarantees the maintenance, repair, replacement, or performance of the product or part of the product; or
- (5) home warranty insurance as defined by Section 2, Article 5.53-A, Insurance Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.006. LIABILITY FOR CERTAIN ACTIONS BY AGENT. This chapter does not exempt a residential service company from common law or statutory liability for an action taken by the

company's agent or representative that is relevant to the conduct of the company's business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

SUBCHAPTER B. COMMISSION POWERS AND DUTIES

Sec. 1303.051. GENERAL POWERS AND DUTIES OF COMMISSION; DELEGATION. (a) The commission shall administer this chapter and may adopt and enforce rules necessary to implement this chapter.

(b) The commission may delegate a power, right, or duty under this chapter to the administrator or assistant administrator of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.052. FEES. (a) A residential service company must pay to the commission a fee for filing an application for a license or an amendment to the application.

(b) A residential service company shall pay to the commission a fee for:

(1) filing an annual report under Section [1303.202](#); and

(2) any other filing required by this chapter.

(c) A residential service company shall pay to the commission a fee for the cost of an examination conducted under Section [1303.053](#).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. [914](#)), Sec. 56, eff. September 1, 2007.

Sec. 1303.053. EXAMINATION OF RESIDENTIAL SERVICE COMPANY.

(a) The commission may examine the affairs of a residential service company as necessary. For the purpose of an examination, the commission may administer an oath to and examine an officer or agent of the residential service company.

(b) A residential service company shall:

(1) make available for the examination its books and

records relating to its operation; and

(2) facilitate the examination in every way.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 1303.101. LICENSE REQUIRED. (a) A person may not issue a residential service contract or perform or arrange to perform services under a residential service contract unless the person is licensed as a residential service company under this chapter or is the authorized representative of a person licensed as a residential service company under this chapter.

(b) A person may not sell, offer to sell, arrange or solicit the sale of, or receive an application for a residential service contract unless:

(1) the person is:

(A) employed by a residential service company licensed under this chapter; or

(B) licensed as a real estate salesperson, real estate broker, mobile home dealer, or insurance agent in this state; and

(2) the contract is issued by a residential service company licensed under this chapter.

(c) A person may not use the phrase "residential service company" in the course of engaging in business unless the person:

(1) is licensed by the commission as provided by this chapter; and

(2) complies with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.102. ELIGIBILITY. (a) Notwithstanding any other law of this state, any person may apply to the commission for and obtain a license to issue residential service contracts in compliance with this chapter.

(b) A foreign corporation may qualify under this chapter if the corporation:

(1) registers to engage in business in this state as a

foreign corporation under the Texas Business Corporation Act; and

(2) complies with this chapter and other applicable statutes of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.103. LICENSE APPLICATION. (a) An application for a license under this chapter must be:

(1) on a form prescribed by commission rule; and

(2) verified by the applicant or an officer or other authorized representative of the applicant.

(b) Each application for a license must contain or be accompanied by:

(1) a copy of the articles of incorporation, articles of association, partnership agreement, trust agreement, or any other basic organizational document of the applicant;

(2) a copy of any amendment to the applicant's basic organizational document;

(3) a copy of any bylaws, rules, or other similar document that regulates the conduct of the applicant's internal affairs;

(4) the name, address, and official position of each person who will be responsible for the conduct of the applicant's affairs, including:

(A) each member of the board of directors, board of trustees, executive committee, or other governing body or committee of the applicant;

(B) the applicant's principal officer, if the applicant is a corporation; and

(C) each partner or member of the applicant, if the applicant is a partnership or association;

(5) a copy of the residential service contract made or to be made between the applicant and another person;

(6) a general description of the residential service contract or the contract's coverage or plan;

(7) a financial statement that:

(A) is prepared by an independent certified public accountant within six months preceding the date the

application is submitted; and

(B) shows the applicant's assets, liabilities, and sources of financial support;

(8) a description of the applicant's proposed method of marketing a residential service contract;

(9) a statement regarding the applicant's sources of working capital and any other funding sources;

(10) if the applicant is not domiciled in this state, a power of attorney appointing the administrator and the administrator's successors in office, or the administrator's authorized deputy, as the applicant's agent for service of process in this state in a legal action arising in this state against the applicant or the applicant's agents; and

(11) any other information the commission requires to make a determination required by this chapter.

(c) For the proper administration of this chapter, the commission may require additional or more recent financial information than the financial information required under Subsection (b)(7).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.104. APPROVAL OF APPLICATION MATERIALS. (a) The commission shall approve or disapprove the application materials in writing as soon as reasonably possible after the date the application materials are submitted. Except as provided by Subsection (b), the application materials are considered approved unless disapproved not later than the 30th day after the date the application materials are submitted.

(b) The commission by official order may postpone approval or disapproval of the application materials for a period necessary for proper consideration, not to exceed 30 days.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.105. ISSUANCE OR DENIAL OF LICENSE. (a) On receipt of an approved application as provided by Section [1303.104](#), the commission shall determine whether the applicant has demonstrated the potential ability to ensure that the services will

be provided in a timely and responsible manner. The commission shall issue a license to an applicant if the commission determines that:

(1) the applicant has demonstrated the potential ability to ensure that the services will be provided in a timely and responsible manner;

(2) the person responsible for the conduct of the applicant's affairs is competent and trustworthy and possesses a good reputation;

(3) the applicant may reasonably be expected to meet its obligations under its residential service contract; and

(4) the applicant has complied with or will comply with this chapter.

(b) In making the determination under Subsection (a)(3), the commission shall consider:

(1) the applicant's financial soundness;

(2) any agreement between the applicant and another party to provide the services required in the residential service contract; and

(3) any other matter the commission considers relevant.

(c) Not later than the 75th day after the date the commission receives an approved application, the commission shall, in writing, issue or deny a license to the applicant.

(d) If the commission denies a license, the commission shall notify the applicant in writing of the denial not later than the fifth day after the date of denial.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.106. LICENSE DENIAL: APPEAL TO COMMISSION. (a) To appeal the denial of a license as provided by Section [1303.354](#), a license applicant must file not later than the 10th day after the date of the notice of denial a written appeal requesting a hearing before the commission. If an applicant fails to request a hearing as provided by this subsection, the commission's decision is final and not subject to judicial review.

(b) The commission shall:

(1) set a time and place for the hearing not later than the 30th day after the date the commission receives the appeal; and

(2) notify the applicant in writing of the scheduled hearing not later than the 10th day before the date of the scheduled hearing.

(c) The hearing may be continued with the applicant's consent. After the hearing, the commission shall enter an appropriate order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.107. TERM OF LICENSE. A license continues in effect as long as the license holder meets the requirements of this chapter or until the license is:

(1) suspended or revoked by the commission; or

(2) terminated at the request of the license holder.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

SUBCHAPTER D. FINANCIAL REQUIREMENTS

Sec. 1303.151. RESERVE REQUIRED. A residential service company shall maintain a funded reserve against its liability to provide repair and replacement services under its outstanding residential service contracts written in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.152. AMOUNT OF RESERVE. (a) The amount of the reserve required by Section [1303.151](#) is based on the amount of liability remaining under outstanding residential service contracts written in this state by the residential service company, as determined by multiplying the total number of months remaining on all of those contracts by the pro rata monthly contract charge.

(b) The amount of the reserve must be equal to the lesser of:

(1) an amount equal to the amount of remaining liability multiplied by the ratio of direct losses incurred by the residential service company to contract fees earned by the company during the preceding calendar year; or

(2) an amount equal to 50 percent of the amount of

remaining liability.

(c) For purposes of this chapter, the reserve is not required to include a contract fee on a residential service contract to the extent that provision is made for reinsurance of the outstanding risk on the contract by:

(1) a residential service company licensed in this state;

(2) an admitted insurer; or

(3) a surplus line insurer or a surplus line bonding company if the insurer or bonding company:

(A) is rated A+ or better by a rating service recognized by the commission; and

(B) submits to the commission for its approval evidence, in the form of a certified audit and other pertinent information the commission may require, of the insurer's or bonding company's ability to meet its contractual obligations.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.153. SECURITY REQUIRED. (a) As a guarantee that a residential service company will meet its obligations to its contract holders, the company shall maintain with the commission a bond or other security accepted by the commission.

(b) A bond posted as security must:

(1) be issued by a carrier admitted in this state;

(2) be continuous;

(3) be cancellable by the surety only after not less than 90 days' notice to the commission; and

(4) recognize that the obligation continues for the terms of the residential service contracts written by the residential service company while the bond is in force.

(c) Any security provided under this section in a form other than a bond must be convertible to cash by the commission for the benefit of contract holders in this state, without resort to the courts, if the commission determines that the residential service company is in default of its financial obligations to the contract holders. Any amount remaining after all contract holders' claims are paid must be returned to the residential service company not

later than the 120th day after the date the last outstanding residential service contract expires.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.154. AMOUNT OF SECURITY. (a) An applicant for a new license must provide security in the amount of \$25,000. The amount of the security may not be reduced before the residential service company files a second report under Section [1303.202](#).

(b) After a residential service company files the second report, the company must maintain security in one of the following minimum amounts based on the amount of claims paid in this state during the preceding calendar year:

(1) \$10,000, if the amount of claims paid is less than \$50,000;

(2) \$25,000, if the amount of claims paid is \$50,000 or more but less than \$200,000;

(3) \$50,000, if the amount of claims paid is \$200,000 or more but less than \$500,000; and

(4) \$100,000, if the amount of claims paid is \$500,000 or more.

(c) A revision to the amount of security must be based on the figures a residential service company provides in its report under Section [1303.202](#). The company shall revise the amount of security as required by the commission not later than the 30th day after the date the company is notified by the commission of the revised amount.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

SUBCHAPTER E. GENERAL POWERS AND DUTIES OF LICENSE HOLDER

Sec. 1303.201. NOTICE OF MODIFICATION. A residential service company shall file notice with the commission before the company modifies an operation or document described in Section [1303.103](#).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.202. ANNUAL REPORT. (a) Not later than April 1

of each year, each residential service company shall file with the commission a report covering the preceding calendar year.

(b) The report must:

(1) be on a form prescribed by the commission;

(2) be verified by at least two of the residential service company's principal officers; and

(3) include:

(A) a financial statement of the residential service company, including its balance sheet and receipts and disbursements for the preceding year, certified by an independent public accountant;

(B) any material change to the information submitted under Section 1303.103;

(C) the number of residential service contracts entered into during the year, the number of contract holders as of the end of the year, and the number of contracts terminating during the year; and

(D) any other information that:

(i) relates to the performance and solvency of the residential service company; and

(ii) is necessary for the commission to perform its duties under this chapter.

(c) Information provided by a residential service company under Subsection (b)(3)(D) is:

(1) confidential; and

(2) for the exclusive use of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

SUBCHAPTER F. RESIDENTIAL SERVICE CONTRACTS

Sec. 1303.251. EVIDENCE OF COVERAGE. (a) Each contract holder residing in this state is entitled to evidence of coverage under a residential service contract. The residential service company that issued the contract shall issue evidence of coverage under the contract.

(b) A residential service company may not issue or deliver evidence of coverage under a residential service contract, or an

amendment to that evidence, to a person in this state until a copy of the evidence or amendment is filed with and approved by the commission.

(c) The commission may require a residential service company to submit relevant information the commission considers necessary to determine whether to approve or disapprove the company's evidence of coverage.

(d) The commission shall approve a residential service company's evidence of coverage if the requirements of this section and Section 1303.252 are met.

(e) If the commission disapproves a residential service company's evidence of coverage, the commission shall notify the company of the disapproval and in the notice shall specify in detail the reason for the disapproval.

(f) A residential service company whose evidence of coverage is disapproved by the commission may request a hearing on the commission's decision. If a hearing is requested, the commission shall set a hearing on the decision as soon as reasonably possible. Not later than the 60th day after the date of the hearing, the commission by written order shall approve or disapprove the evidence. If the evidence is disapproved, the commission shall state in the order the grounds for the disapproval.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.252. CONTENTS OF EVIDENCE OF COVERAGE. (a) Evidence of coverage under a residential service contract must contain a clear and complete statement, if the evidence is a contract, or a reasonably complete facsimile, if the evidence is a certificate, of:

(1) the services or benefits to which the contract holder is entitled;

(2) any limitation on the services, kinds of services, or benefits to be provided, including a deductible or co-payment provision;

(3) where and in what manner information is available on how to obtain services;

(4) the period during which the coverage is in effect;

(5) the residential service company's agreement to perform services on the contract holder's telephone request to the company, without a requirement that a claim form or application be filed before the services are performed;

(6) the company's agreement that, under normal circumstances, the company will initiate the performance of services within 48 hours after the contract holder requests the services; and

(7) any service fee to be charged for a service call.

(b) Evidence of coverage may not contain a provision that encourages misrepresentation or that is unjust, unfair, inequitable, misleading, deceptive, or false.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.253. SCHEDULE OF CHARGES. (a) A residential service company may not use in conjunction with a residential service contract a schedule of charges for services covered under the contract or an amendment to that schedule until a copy of the schedule or amendment is filed with and approved by the commission.

(b) The commission shall approve a schedule of charges if the commission determines that the schedule is reasonably related to the amount, term, and conditions of the contract.

(c) If the commission determines that the schedule of charges is not reasonably related to the contract as described by Subsection (b), the commission may reject the schedule. If the commission rejects the schedule, the commission shall notify the company of the rejection and shall specify in detail the reason for the rejection.

(d) A residential service company whose schedule of charges is rejected by the commission may request a hearing on the commission's decision to be held as soon as reasonably possible. Not later than the 60th day after the date of the hearing, the commission by written order shall approve or reject the schedule. If the schedule is rejected, the commission shall state in the order the grounds for the rejection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.254. REMEDIES NOT WAIVED; NOTICE. (a) A contract holder does not waive under a residential service contract a remedy that the holder may have under another law against another person.

(b) A person may not sell or offer to sell a residential service contract unless the contract contains the following statement in at least 10-point bold type above or adjacent to the signature of the buyer:

NOTICE: YOU THE BUYER HAVE OTHER RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT WHICH ARE IN ADDITION TO ANY REMEDY WHICH MAY BE AVAILABLE UNDER THIS CONTRACT.

FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY OR THE ATTORNEY OF YOUR CHOICE.
Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.255. CANCELLATION OF CONTRACT. A residential service company may not cancel a residential service contract during the initial term for which the contract is issued unless:

(1) the contract holder does not pay a fee or charge due under the terms of the contract;

(2) the contract holder engages in fraud or misrepresentation of facts material to the issuance of the contract; or

(3) an interest in the residential property covered under the contract is sold, and the contract is contingent on an interest in the property not being sold.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

SUBCHAPTER G. PROHIBITED PRACTICES

Sec. 1303.301. FALSE OR DECEPTIVE STATEMENTS PROHIBITED.

(a) A residential service company may not cause or permit the use of:

(1) a false or misleading advertisement or

solicitation; or

(2) any deceptive evidence of coverage.

(b) Unless a residential service company is licensed as an insurer, the company may not use in the company's name, contracts, or literature the word "insurance," "casualty," "surety," or "mutual" or another word that is:

(1) descriptive of the insurance, casualty, or surety business; or

(2) deceptively similar to the name or description of an insurance or surety corporation or another residential service company engaging in business in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.302. CERTAIN CONDITIONAL SALES OF PROPERTY PROHIBITED. (a) A seller of a residential property or the buyer's or seller's agent may not condition the sale of the property on the buyer's purchase of a residential service contract.

(b) A seller of a residential property or the buyer's or seller's agent shall provide to the buyer a statement that clearly and conspicuously states that:

(1) the purchase of a residential service contract is optional; and

(2) the buyer may purchase similar coverage through another residential service company or insurance company authorized to engage in business in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 13, eff. September 1, 2007.

Sec. 1303.303. CERTAIN CHARGES WITHOUT CONSENT PROHIBITED. Unless a homeowner, lessor, or renter consents in writing, a residential service company or the company's agent may not knowingly charge the homeowner, lessor, or renter for duplication of coverage or duties required by:

(1) state or federal law, including coverage under Subchapter H, Chapter 1201;

(2) a warranty expressly issued by a manufacturer or seller of a product; or

(3) an implied warranty enforceable against a lessor, seller, or manufacturer of a product.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.304. CERTAIN PAYMENTS BY RESIDENTIAL SERVICE COMPANY PROHIBITED. (a) A residential service company may not directly or indirectly pay, as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract, a commission or other consideration to an agent, representative, attorney, or employee of an owner or prospective owner of a residential property for which a residential service contract has been or will be issued.

(b) Notwithstanding Subsection (a), a residential service company may pay a reasonable amount for the sale, advertising, inspection, or processing of a residential service contract.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

SUBCHAPTER H. DISCIPLINARY ACTION AND OTHER PROCEDURES

Sec. 1303.351. DISCIPLINARY POWERS OF COMMISSION. The commission may suspend or revoke a license issued to a residential service company under this chapter if the commission determines that a ground for discipline exists under Section [1303.352](#).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.352. GROUNDS FOR DISCIPLINARY ACTION. (a) The commission may discipline a residential service company under Section [1303.351](#) if the continued operation of the company would be hazardous to its contract holders or if the company:

(1) operates in conflict with its basic organizational document or in a manner that is contrary to that described in and reasonably inferred from information submitted under Section [1303.103](#), unless an amendment to the information has been filed with and approved by the commission;

(2) issues evidence of coverage that does not comply

with Sections [1303.251](#) and [1303.252](#);

(3) uses a schedule of charges that does not comply with Section [1303.253](#);

(4) is not financially responsible and may be reasonably expected to be unable to meet the company's obligations to contract holders;

(5) did not comply with Subchapter D;

(6) advertised or marketed the company's services in a false, misrepresentative, misleading, deceptive, or unfair manner; or

(7) otherwise did not substantially comply with this chapter or a rule adopted under this chapter.

(b) Subsection (a)(6) applies to any advertising or marketing conducted on behalf of a residential service company by another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.3525. HEARING. (a) The commission may authorize the State Office of Administrative Hearings to conduct a hearing and enter a final decision in a proceeding under Section [1303.351](#).

(b) All hearings conducted under Subsection (a) are governed by Chapter [2001](#), Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.336(b), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. [862](#)), Sec. 7, eff. May 12, 2009.

Sec. 1303.353. DUTIES AFTER LICENSE REVOCATION. (a) Immediately after the effective date of an order revoking a residential service company's license, the company:

(1) shall wind up its affairs;

(2) may not engage in further advertising or solicitation; and

(3) may not conduct further business except as may be essential to the orderly conclusion of the company's affairs.

(b) Notwithstanding Subsection (a), to provide contract

holders with the greatest practical opportunity to obtain services for which they contracted, the commission by written order may permit further operation of the residential service company as the commission determines is in the best interests of the contract holders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.354. JUDICIAL REVIEW. (a) A person who is adversely affected by a rule or decision of the commission may file in a district court in Travis County a petition stating the particular objection to the rule or decision. The commission is a defendant in the action.

(b) The petition must be filed not later than the 20th day after the date the commission enters an order.

(c) The district court may not enjoin or stay the commission's decision except on application to that court after notice to the commission.

(d) The substantial evidence rule applies to the proceedings in the district court.

(e) Each party to the action may appeal from the district court. The appeal takes precedence in the appellate court over all actions of a different character pending in that court. The commission is not required to give an appeal bond in an action arising under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.355. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty as provided by Subchapter O, Chapter [1101](#), on a person who violates this chapter or a rule adopted or order issued by the commission under this chapter.

(b) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

(c) In determining the amount of the penalty, the administrator shall consider:

(1) the seriousness of the violation, including the

nature, circumstances, extent, and gravity of the violation;

- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(d) The commission by rule shall adopt a schedule of administrative penalties based on the criteria listed in Subsection (c) for violations subject to an administrative penalty under this section to ensure that the amount of a penalty imposed is appropriate to the violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 57, eff. September 1, 2007.

Sec. 1303.356. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the commission is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 57, eff. September 1, 2007.

SUBCHAPTER I. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1303.401. HAZARDOUS FINANCIAL CONDITION OF RESIDENTIAL SERVICE COMPANY. (a) If the financial condition of a residential service company indicates that its continued operation may be hazardous to its contract holders or creditors or to the public, the commission may, after notice of hearing, order the company to take reasonably necessary action to remedy the condition, including:

(1) reducing the total amount of present and potential liability for benefits by reinsurance or by obtaining an appropriate bond from an admitted carrier or a surplus line carrier;

(2) reducing the volume of new business being accepted;

(3) reducing expenses by specified methods;

(4) suspending or limiting the writing of new business for a period of time; or

(5) increasing the company's net worth by contribution.

(b) The commission by rule may establish:

(1) uniform standards and criteria for early warning that the continued operation of a residential service company may be hazardous to its contract holders or creditors or to the public; and

(2) standards for evaluating the financial condition of a residential service company that are consistent with the purposes described in Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.402. APPOINTMENT OF RECEIVER. (a) If in the commission's opinion the continued operation of a residential service company would be hazardous to its contract holders or the public, the commission may request a district court of Travis County to appoint a receiver.

(b) After adequate notice and a hearing, if the court

determines that a receiver should be appointed to protect the rights of the contract holders or the public, the court shall issue an order appointing a receiver. The order must clearly state whether the receiver has the power to:

(1) manage and operate the residential service company's business generally; or

(2) manage only the residential service company's finances.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.403. INJUNCTIVE RELIEF. (a) The commission may bring an action in the name of the state in a district court of Travis County for a restraining order, injunction, or other relief the court determines is appropriate if it appears to the commission that:

(1) a residential service company is violating or has violated this chapter or a rule adopted under this chapter; and

(2) bringing the action is in the public interest.

(b) The commission has exclusive authority to bring an action under this section.

(c) On application for injunctive relief and a finding that a residential service company is violating or has violated this chapter or a rule adopted under this chapter, the court shall grant the injunctive relief that the facts warrant. The court shall grant the relief without a bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.404. CIVIL PENALTY. (a) A person who violates this chapter is liable for a civil penalty in an amount not to exceed \$2,500 for each violation or \$50,000 in the aggregate for all violations of a similar nature.

(b) The commission may bring an action to collect a civil penalty under this section.

(c) For purposes of this section, violations are of a similar nature if the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice occurred.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.405. DECEPTIVE TRADE PRACTICE. A violation of this chapter is actionable by a consumer as a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code. Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.406. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) wilfully violates this chapter or a rule adopted under this chapter; or

(2) knowingly makes a false statement with respect to a report or a statement required by this chapter.

(b) An offense under this section is a Class B misdemeanor. Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1303.407. ADDITIONAL PENALTY. A residential service company that engages in business in violation of this chapter shall pay \$100 for each day the company continues to write new business while in violation of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.