

BILL ANALYSIS

Senate Research Center
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S.B. 1176
By: Harris
Business & Commerce
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DIGEST AND PURPOSE

Currently, there is no licensing process for roofing contractors to ensure regulation of the industry. The lack of regulation could enable some contractors to enter the state, perform work, and leave, limiting a customer's ability to contact the roofer in the event something goes wrong with the workmanship. As proposed, S.B. 1176 establishes a framework for regulating roofing contractors, including mandating a minimum level of insurance coverage for roofing contractors and creating an advisory board.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Licensing and Regulation in SECTION 1 (Sections 1251.052, 1251.158, 1251.159, 1251.160 Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Licensing and Regulation director in SECTION 1 (Section 1251.255, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 7, Occupations Code, by adding Subtitle D, as follows:

SUBTITLE D. REGULATION OF CONSTRUCTION OF HOUSING AND BUILDINGS

CHAPTER 1251. ROOFING CONTRACTORS SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1251.001. DEFINITIONS. Defines "advisory board," "commercial roofing," "commission," "department," "executive director," "qualifying party," "residential roofing," and "roofing contracting."

Sec. 1251.002. EXEMPTIONS. (a) Provides that this chapter does not apply to a person who meets certain criteria.

(b) Provides that this chapter does not restrict the practice of architecture or engineering by a person licensed in this state to practice that profession.

[Reserves Sections 1251.003-1251.050 for expansion.]

SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

Sec. 1251.051. ADMINISTRATION; ENFORCEMENT. (a) Requires the Texas Department of Licensing and Regulation (TDLR) to administer this chapter.

(b) Authorizes TDLR to contract with another state agency or with a political subdivision of the state for the enforcement of this chapter and the rules adopted and orders issued under this chapter.

Sec. 1251.052. RULES; STANDARDS. (a) Authorizes TDLR to adopt rules to enforce this chapter.

(b) Requires TDLR to adopt rules for the practice of roofing contracting consistent with this chapter. Requires the standards prescribed by rule to be substantially the same as the standards set forth in the roofing manufacturers' standard requirements.

Sec. 1251.053. FORMS. Requires TDLR to prescribe application forms for original and renewal licenses and to design the licenses.

Sec. 1251.054. ON-LINE DIRECTORY. (a) Requires TDLR to make available on-line a directory of persons licensed under this chapter.

(b) Prohibits TDLR from charging for access to the on-line directory.

Sec. 1251.055. CONSUMER COMPLAINT INVESTIGATION. (a) Requires TDLR to investigate consumer complaints filed with TDLR. Authorizes TDLR, if TDLR determines after investigation that a license holder has violated this chapter or a rule adopted under this chapter, to take appropriate action under Subchapter F.

(b) Requires TDLR to maintain a file on each written complaint filed with it. Sets forth the required file contents.

(c) Requires TDLR to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of its policies and procedures relating to complaint investigation and resolution.

(d) Requires TDLR, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

[Reserves Sections 1251.056-1251.100 for expansion.]

SUBCHAPTER C. ADVISORY BOARD

Sec. 1251.101. ADVISORY BOARD. (a) Provides that the Roofing Contractors Advisory Board is created to advise TDLR in certain areas.

(b) Requires the Roofing Contractors Advisory Board (advisory board) to advise the Texas Commission of Licensing and Regulation (commission) in setting fees.

Sec. 1251.102. COMPOSITION. (a) Provides that the advisory board is composed of six members appointed by the executive director who are experienced in roofing contracting.

(b) Requires the executive director of TDLR (executive director), or the executive director's designee, to serve as an ex officio, nonvoting member of the advisory board.

Sec. 1251.103. APPOINTMENT. Sets forth the makeup of the advisory board, which the executive director is required to appoint.

Sec. 1251.104. TERM. Provides that members of the advisory board hold office for staggered terms of six years, with two terms expiring on February 1 of each odd-numbered year.

Sec. 1251.105. PRESIDING OFFICER. Requires the executive director to designate a

member of the advisory board to serve as presiding officer.

Sec. 1251.106. VACANCIES. Requires the executive director, if a vacancy occurs on the advisory board, to appoint a member who represents the same interests as the former member to serve the unexpired term.

Sec. 1251.107. MEETINGS. Requires the advisory board to meet at least once every six months and authorizes the advisory board to meet at other times at the call of the presiding officer and at a place in this state designated by the presiding officer.

Sec. 1251.108. VOTES. Provides that a decision of the advisory board is not effective unless it receives the affirmative vote of at least a majority of the members present.

Sec. 1251.109. COMPENSATION NOT ALLOWED. Provides that an advisory board member serves without compensation.

[Reserves Sections 1251.110-1251.150 for expansion.]

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 1251.151. LICENSE REQUIRED; CITATION. (a) Prohibits a person from performing roofing contracting without a license issued under this chapter, unless exempted under Section 1251.002.

(b) Requires a business entity that holds a license to have at least one qualifying party.

(c) Requires the license holder and the license holder's qualifying party to comply with the requirements of this chapter.

(d) Authorizes the commission or a municipal official to issue a citation to a person who performs roofing contracting without a license issued under this chapter.

Sec. 1251.152. SCOPE OF LICENSE. Provides that a license is valid throughout this state, and the license holder is not required to hold a municipal license or certificate to practice roofing contracting in any municipality in this state.

Sec. 1251.153. ROOFING CONTRACTOR LICENSE CLASSES. Sets forth the different classes of roofing contractor licenses.

Sec. 1251.154. APPLICATION; ELIGIBILITY. (a) Requires a license application to be made on a form prescribed by TDLR and to specify the class of license the applicant seeks.

(b) Requires, to be eligible for a license, the qualifying party to be at least 18 years old and to present to TDLR satisfactory evidence of at least three years of practical experience in roofing contracting in the previous five years.

(c) Sets forth items required to accompany the qualifying party's application.

Sec. 1251.155. EXAMINATIONS. (a) Requires TDLR to prescribe the method and content of examinations administered under this chapter and to set compliance requirements for the examinations. Requires the examination to be offered at least quarterly at various locations around the state as determined by the commission.

(b) Requires TDLR to prescribe separate examinations for each class of license. Requires TDLR to prescribe separate examinations for commercial and residential services for a Class I license.

(c) Requires the qualifying party to pass the examination before a license may be issued.

(d) Authorizes the qualifying party to retake the examination.

Sec. 1251.156. ISSUANCE; TERM. (a) Requires TDLR to issue a license to a person who qualifies for a license under this chapter.

(b) Provides that a license is valid for one year from the date of issuance.

Sec. 1251.157. RENEWAL; CONTINUING EDUCATION. (a) Requires a qualifying party of the license holder to complete eight hours of continuing education annually to renew a license.

(b) Requires TDLR to recognize, prepare, or administer a continuing education program for the qualifying parties of license holders. Authorizes TDLR to recognize a course offered by an appropriate trade association as satisfaction of the continuing education required under this section.

Sec. 1251.158. INSURANCE REQUIREMENT. (a) Sets forth the amounts of general liability insurance coverage a license holder is required to maintain.

(b) Requires each applicant for a license, and each license holder, on renewal of the license, to provide to TDLR a certificate of insurance that shows the license holder's name, business name, and address as it appears on the license. Requires the certificate form submitted to be the form furnished by TDLR. Requires each certificate of insurance to reflect all assumed names used by the license holder and registered with TDLR. Prohibits TDLR from accepting an insurance binder or an interim certificate valid for less than 60 days.

(c) Requires TDLR to adopt rules regarding requirements for the certificates of insurance. Requires the rules to require the insurance carrier to notify TDLR regarding cancellation or nonrenewal of the insurance coverage by the insurance carrier.

(d) Requires insurance to be obtained from an insurer authorized to engage in the business of insurance in this state or from an eligible surplus lines insurer, as defined by Chapter 981 (Surplus Lines Insurance), Insurance Code.

(e) Requires TDLR to notify a license holder whose proof of insurance has expired that the license holder has an insurance violation.

Sec. 1251.159. USE, DISPLAY, AND ADVERTISEMENT OF LICENSE; RULES. Requires TDLR, with the advice of the advisory board, to adopt rules relating to the use, display, and advertisement of a license issued under this chapter.

Sec. 1251.160. DISPOSAL OF ROOFING MATERIALS; RULES. Requires TDLR to adopt rules that require a license holder to obtain a permit from an approved landfill to dispose of roofing materials. Requires the rules to include a requirement that a license holder maintain a record for each disposal of roofing materials by the license holder.

Sec. 1251.161. RECIPROCITY. Authorizes TDLR to waive any prerequisite, except an insurance requirement, to obtaining a license for an applicant who holds a license issued by another jurisdiction with which this state has a reciprocity agreement. Authorizes the commission to make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

Sec. 1251.162. TEMPORARY LICENSE. (a) Authorizes TDLR to issue a temporary license to a license holder for a principal of a license holder to serve as that license

holder's qualifying party in certain circumstances.

(b) Requires the applicant for the temporary license to apply to TDLR on a form prescribed by TDLR and pay the required fee.

(c) Provides that the temporary license is valid for 30 days beyond the date of the next examination or six months, whichever is less. Requires the temporary license to be of the same class as the license being replaced.

(d) Provides that a temporary license is not renewable, but a second temporary license may be issued if the license holder's qualifying party becomes unavailable in circumstances that make the license holder again eligible to receive a temporary license.

[Reserves Sections 1251.163-1251.200 for expansion.]

SUBCHAPTER E. PROHIBITED ACTIVITIES

Sec. 1251.201. PROPER ROOFING INSTALLATION REQUIRED. (a) Defines "mechanical integrity."

(b) Provides that the failure to provide proper installation consistent with the manufacturer's specifications or consistent with commonly accepted roofing practices, proper service, and mechanical integrity under this chapter violates this chapter.

Sec. 1251.202. MISREPRESENTATION OF ROOFING CONTRACTING SERVICES. Provides that an intentional or knowing misrepresentation of a necessary roofing contracting service, roofing contracting service to be provided, or a roofing contracting service that has been provided, violates this chapter.

Sec. 1251.203. CERTAIN ADVERTISING PROHIBITED. Prohibits a person from advertising to the public that the person is engaged in the business of roofing contracting unless the person holds a license issued under this chapter.

[Reserves Sections 1251.204-1251.250 for expansion.]

SUBCHAPTER F. PENALTIES AND ENFORCEMENT

Sec. 1251.251. DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATE. (a) Provides that a violation of this chapter, a rule adopted under this chapter, or an order issued under this chapter is a ground for the denial, suspension, or revocation of a license and a ground for the imposition of an administrative penalty under Subchapter F, Chapter 51 (Administrative Penalty).

(b) Authorizes TDLR to place on probation a person whose license is suspended. Sets forth what TDLR is authorized to require if a license suspension is probated.

Sec. 1251.252. EMERGENCY ORDERS. (a) Authorizes TDLR to issue an emergency order as necessary to enforce this chapter if TDLR determines that an emergency exists or formerly existed requiring immediate temporary action to protect the public health and safety. Authorizes the order to be issued without notice and hearing or with notice and hearing as TDLR considers practicable under the circumstances.

(b) Requires TDLR, if an emergency order is issued under this section without a hearing, to set the time and place for a hearing to affirm, modify, or set aside the emergency order.

Sec. 1251.253. CEASE AND DESIST ORDERS. Authorizes the commission to issue

cease and desist orders.

Sec. 1251.254. MUNICIPAL REGULATION. (a) Authorizes a municipality, by ordinance, to adopt and enforce standards for roofing contractors that are consistent with the standards established under this chapter.

(b) Prohibits a municipality from imposing a license or registration fee on a roofing contractor licensed under this chapter.

(c) Authorizes the municipality to report a violation of this chapter to the commission. Requires the municipality, if it elects to report the violation, to do so not later than the 10th day after the date on which it discovers the violation.

(d) Provides that conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license under Section 1251.251.

Sec. 1251.255. ENFORCEMENT OF CONTRACTS. (a) Prohibits a person who performs roofing contracting without holding the appropriate license from collecting a fee or otherwise enforcing a contract for the roofing service performed. Requires the person performing the service, to enforce a contract for the performance of roofing contracting, to present proof that the person held a license at the time the contract was signed and the work was performed.

(b) Requires the TDLR director to adopt rules relating to the manner in which proof may be presented under this section.

Sec. 1251.256. OFFENSE; CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person knowingly or intentionally engages in roofing contracting without holding a license.

(b) Provides that an offense under this section is a Class C misdemeanor.

SECTION 2. (a) Requires TDLR to issue a roofing contracting license under Subchapter D, Chapter 1251, Occupations Code, as added by this Act, without an examination for the qualifying party under certain circumstances.

(b) Provides that the class of a license issued under this section is based on the classification of certification that is currently held by the contractor and requires it to correspond to certain classifications.

(c) Provides that a person who is issued a license under this section and the qualifying party for that license holder are subject to all other provisions of Chapter 1251, Occupations Code, as added by this Act, including provisions for the renewal of the roofing contractor license.

SECTION 3. (a) Requires TDLR to issue a license under Chapter 1251, Occupations Code, as added by this Act, to a qualifying party without requiring the qualifying party to pass the examination required under Section 1251.155, Occupations Code, as added by this Act, under certain circumstances.

(b) Requires a qualifying party who is issued a license under this section to pass the examination administered under Section 1251.155, Occupations Code, as added by this Act, not later than September 1, 2005.

SECTION 4. Requires the executive director, in making the initial appointments to the Roofing Contractors Advisory Board, to designate two members for terms expiring on February 1, 2005, two members for terms expiring on February 1, 2007, and two members for terms expiring on February 1, 2009. Provides that an initial board member appointed under Section 1251.103(1),

Occupations Code, as added by this Act, is not required to hold a license until September 1, 2004, but must be eligible to hold a license under Chapter 1251, Occupations Code, as added by this Act, as of the time of the initial appointment.

SECTION 5. (a) Effective date: September 1, 2003, except as provided by Subsection (b).

(b) Effective date: Section 1251.151 and Subchapters E and F, Chapter 1251, Occupations Code, as added by this Act, take effect September 1, 2004.