

By: Jackson

S.B. No. 279

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the continuation and functions of the Texas Department
3 of Licensing and Regulation, including certain functions
4 transferred to the department from the Texas Department of
5 Insurance and the Texas Commission on Environmental Quality and
6 including certain functions transferred from the department to the
7 Department of Public Safety of the State of Texas; providing
8 penalties.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

10 ARTICLE 1. TEXAS DEPARTMENT OF LICENSING AND REGULATION

11 SECTION 1.001. Section 51.002, Occupations Code, is amended
12 to read as follows:

13 Sec. 51.002. APPLICATION OF SUNSET ACT. The Texas
14 Commission of Licensing and Regulation and the Texas Department of
15 Licensing and Regulation are subject to Chapter 325, Government
16 Code (Texas Sunset Act). Unless continued in existence as provided
17 by that chapter, the commission and the department are abolished
18 September 1, 2015 [~~2003~~].

19 SECTION 1.002. Subchapter A, Chapter 51, Occupations Code,
20 is amended by adding Section 51.003 to read as follows:

21 Sec. 51.003. APPLICABILITY. This chapter applies to each
22 regulatory program administered by the department, including any
23 program under which a license is issued by the department.

24 SECTION 1.003. Subsection (a), Section 51.052, Occupations

1 Code, is amended to read as follows:

2 (a) The commission consists of seven [~~six~~] members
3 appointed by the governor with the advice and consent of the senate.

4 SECTION 1.004. Subsection (b), Section 51.053, Occupations
5 Code, is amended to read as follows:

6 (b) A person is not eligible for appointment as a member of
7 the commission if the person or the person's spouse:

8 (1) is regulated by the department;

9 (2) is employed by or participates in the management
10 of a business entity or other organization regulated by or
11 receiving funds from the department;

12 (3) owns or controls, directly or indirectly, more
13 than a 10 percent interest in a business entity or other
14 organization regulated by or receiving funds from the department;

15 (4) uses or receives a substantial amount of tangible
16 goods, services, or funds from the department, other than
17 compensation or reimbursement authorized by law for commission
18 membership, attendance, or expenses; or

19 ~~(5) [is an officer, employee, or paid consultant of a
20 trade association in a field regulated by the department,~~

21 ~~[(6)] is an employee of the department[, or~~

22 ~~[(7) is required to register as a lobbyist under
23 Chapter 305, Government Code, because of the person's activities
24 for compensation on behalf of a profession related to the operation
25 of the commission or department].~~

26 SECTION 1.005. Subchapter B, Chapter 51, Occupations Code,
27 is amended by adding Section 51.0535 to read as follows:

1 Sec. 51.0535. CONFLICT OF INTEREST. (a) In this section,
2 "Texas trade association" means a cooperative and voluntarily
3 joined statewide association of business or professional
4 competitors in this state designed to assist its members and its
5 industry or profession in dealing with mutual business or
6 professional problems and in promoting their common interest.

7 (b) A person may not be a member of the commission and may
8 not be a department employee employed in a "bona fide executive,
9 administrative, or professional capacity," as that phrase is used
10 for purposes of establishing an exemption to the overtime
11 provisions of the federal Fair Labor Standards Act of 1938 (29
12 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

13 (1) the person is an officer, employee, or paid
14 consultant of a Texas trade association in a field regulated by the
15 department; or

16 (2) the person's spouse is an officer, manager, or paid
17 consultant of a Texas trade association in a field regulated by the
18 department.

19 (c) A person may not be a member of the commission or act as
20 the general counsel to the commission or the department if the
21 person is required to register as a lobbyist under Chapter 305,
22 Government Code, because of the person's activities for
23 compensation on behalf of a profession related to the operation of
24 the department.

25 SECTION 1.006. Subchapter B, Chapter 51, Occupations Code,
26 is amended by adding Section 51.054 to read as follows:

27 Sec. 51.054. TRAINING. (a) A person who is appointed to

1 and qualifies for office as a member of the commission may not vote,
2 deliberate, or be counted as a member in attendance at a meeting of
3 the commission until the person completes a training program that
4 complies with this section.

5 (b) The training program must provide the person with
6 information regarding:

7 (1) the legislation that created the department and
8 the commission;

9 (2) the programs operated by the department;

10 (3) the role and functions of the department;

11 (4) the rules of the department, with an emphasis on
12 the rules that relate to disciplinary and investigatory authority;

13 (5) the current budget for the department;

14 (6) the results of the most recent formal audit of the
15 department;

16 (7) the requirements of:

17 (A) the open meetings law, Chapter 551,
18 Government Code;

19 (B) the public information law, Chapter 552,
20 Government Code;

21 (C) the administrative procedure law, Chapter
22 2001, Government Code; and

23 (D) other laws relating to public officials,
24 including conflict-of-interest laws; and

25 (8) any applicable ethics policies adopted by the
26 department or the Texas Ethics Commission.

27 (c) A person appointed to the commission is entitled to

1 reimbursement, as provided by the General Appropriations Act, for
2 the travel expenses incurred in attending the training program
3 regardless of whether the attendance at the program occurs before
4 or after the person qualifies for office.

5 SECTION 1.007. Subsection (a), Section 51.055, Occupations
6 Code, is amended to read as follows:

7 (a) Members of the commission serve staggered six-year
8 terms. The terms of one or two members expire on February 1 of each
9 odd-numbered year.

10 SECTION 1.008. Subsection (a), Section 51.056, Occupations
11 Code, is amended to read as follows:

12 (a) The governor shall designate a member of the commission
13 as the presiding officer of the commission to serve in that capacity
14 at the pleasure of the governor [~~commission shall elect one of its~~
15 ~~members as presiding officer. The presiding officer serves in that~~
16 ~~capacity for a period of two years~~].

17 SECTION 1.009. Subsections (a) and (c), Section 51.057,
18 Occupations Code, are amended to read as follows:

19 (a) It is a ground for removal from the commission that a
20 member:

21 (1) does not have at the time of taking office
22 [~~appointment~~] the qualifications required by Section 51.053 [~~for~~
23 ~~appointment to the commission~~];

24 (2) does not maintain during service on the commission
25 the qualifications required by Section 51.053 [~~for appointment to~~
26 ~~the commission~~];

27 (3) is ineligible for membership under [~~violates a~~

1 ~~prohibition established by~~ Section 51.0535 [~~51.053~~]; [~~or~~]

2 (4) cannot, because of illness or disability,
3 discharge the member's duties for a substantial part of the member's
4 term; or

5 (5) is absent from more than half of the regularly
6 scheduled commission meetings that the member is eligible to attend
7 during a calendar year without an excuse approved [~~unless the~~
8 ~~absence is excused~~] by a majority vote of the commission.

9 (c) If [~~a commission member or~~] the executive director has
10 knowledge that a potential ground for removal exists, the [~~member~~
11 ~~or~~] executive director shall notify the presiding officer of the
12 commission of the potential ground. The presiding officer shall
13 then notify the governor and the attorney general that a potential
14 ground for removal exists. If the potential ground for removal
15 involves the presiding officer, the executive director shall notify
16 the next highest ranking officer of the commission, who shall then
17 notify the governor and the attorney general that a potential
18 ground for removal exists.

19 SECTION 1.010. Section 51.105, Occupations Code, is amended
20 to read as follows:

21 Sec. 51.105. DIVISION OF RESPONSIBILITIES. The commission
22 shall develop and implement policies that clearly separate the
23 policy-making [~~define the respective~~] responsibilities of the
24 commission and the management responsibilities of [7] the executive
25 director [7] and the staff of the department.

26 SECTION 1.011. Subchapter C, Chapter 51, Occupations Code,
27 is amended by adding Section 51.106 to read as follows:

1 Sec. 51.106. INFORMATION ON STANDARDS OF CONDUCT. The
2 executive director or the executive director's designee shall
3 provide to members of the commission and to department employees,
4 as often as necessary, information regarding the requirements for
5 office or employment under this chapter, including information
6 regarding a person's responsibilities under applicable laws
7 relating to standards of conduct for state officers or employees.

8 SECTION 1.012. Section 51.108, Occupations Code, is amended
9 to read as follows:

10 Sec. 51.108. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The
11 executive director or the executive director's designee shall
12 prepare and maintain a written policy statement that implements a
13 program of [~~to assure implementation of an~~] equal employment
14 opportunity to ensure that [~~program under which~~] all personnel
15 decisions [~~transactions~~] are made without regard to race, color,
16 disability, sex, religion, age, or national origin.

17 (b) The policy statement must include:

18 (1) personnel policies, including policies relating
19 [~~related~~] to recruitment, evaluation, selection, [~~appointment,~~]
20 training, and promotion of personnel, that show the intent of the
21 department to avoid the unlawful employment practices described by
22 Chapter 21, Labor Code; and

23 (2) an analysis of the extent to which the composition
24 of the department's personnel is in accordance with state and
25 federal law and a description of reasonable methods to achieve
26 compliance with state and federal law [~~a comprehensive analysis of~~
27 ~~the department workforce that meets federal and state guidelines,~~

1 ~~[(3) procedures by which a determination can be made~~
2 ~~of significant underuse in the department workforce of all persons~~
3 ~~for whom federal or state guidelines encourage a more equitable~~
4 ~~balance; and~~

5 ~~[(4) reasonable methods to appropriately address~~
6 ~~those areas of significant underuse].~~

7 (c) The ~~[(b) A]~~ policy statement ~~[prepared under~~
8 ~~Subsection (a)]~~ must:

9 (1) ~~[cover an annual period,~~ be updated ~~[at least]~~
10 ~~annually;~~

11 (2) be reviewed by the state Commission on Human
12 Rights for compliance with Subsection (b)(1);~~[r]~~ and

13 (3) be filed with the governor's office ~~[governor].~~

14 SECTION 1.013. Subchapter C, Chapter 51, Occupations Code,
15 is amended by adding Section 51.109 to read as follows:

16 Sec. 51.109. STATE EMPLOYEE INCENTIVE PROGRAM. The
17 executive director or the executive director's designee shall
18 provide to department employees information and training on the
19 benefits and methods of participation in the state employee
20 incentive program.

21 SECTION 1.014. Sections 51.203 and 51.204, Occupations
22 Code, are amended to read as follows:

23 Sec. 51.203. RULES REGARDING PROGRAMS REGULATED BY
24 DEPARTMENT ~~[ADOPTED BY EXECUTIVE DIRECTOR].~~ The commission
25 ~~[executive director]~~ shall adopt rules as necessary to implement
26 each law establishing a program regulated by the department.

27 Sec. 51.204. RULES RESTRICTING ADVERTISING OR COMPETITIVE

1 BIDDING. (a) The commission [~~executive director~~] may not adopt
2 rules restricting advertising or competitive bidding by a license
3 holder except to prohibit false, misleading, or deceptive
4 practices.

5 (b) The commission [~~executive director~~] may not include in
6 rules to prohibit false, misleading, or deceptive practices by a
7 license holder a rule that:

- 8 (1) restricts the use of any advertising medium;
- 9 (2) restricts the license holder's personal appearance
10 or the use of the license holder's voice in an advertisement;
- 11 (3) relates to the size or duration of an
12 advertisement; or
- 13 (4) restricts the use of a trade name in advertising.

14 SECTION 1.015. Subchapter D, Chapter 51, Occupations Code,
15 is amended by adding Sections 51.207 and 51.208 to read as follows:

16 Sec. 51.207. USE OF TECHNOLOGY. The commission shall
17 develop and implement a policy requiring the executive director and
18 department employees to research and propose appropriate
19 technological solutions to improve the department's ability to
20 perform its functions. The technological solutions must:

21 (1) ensure that the public is able to easily find
22 information about the department on the Internet;

23 (2) ensure that persons who want to use the
24 department's services are able to:

25 (A) interact with the department through the
26 Internet; and

27 (B) access any service that can be provided

1 effectively through the Internet; and

2 (3) be cost-effective and developed through the
3 department's planning processes.

4 Sec. 51.208. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE
5 RESOLUTION PROCEDURES. (a) The commission shall develop and
6 implement a policy to encourage the use of:

7 (1) negotiated rulemaking procedures under Chapter
8 2008, Government Code, for the adoption of department rules; and

9 (2) appropriate alternative dispute resolution
10 procedures under Chapter 2009, Government Code, to assist in the
11 resolution of internal and external disputes under the department's
12 jurisdiction.

13 (b) The department's procedures relating to alternative
14 dispute resolution must conform, to the extent possible, to any
15 model guidelines issued by the State Office of Administrative
16 Hearings for the use of alternative dispute resolution by state
17 agencies.

18 (c) The commission shall designate a trained person to:

19 (1) coordinate the implementation of the policy
20 adopted under Subsection (a);

21 (2) serve as a resource for any training needed to
22 implement the procedures for negotiated rulemaking or alternative
23 dispute resolution; and

24 (3) collect data concerning the effectiveness of those
25 procedures, as implemented by the department.

26 SECTION 1.016. Section 51.252, Occupations Code, is amended
27 to read as follows:

1 Sec. 51.252. COMPLAINTS. (a) The executive director shall
2 establish methods by which consumers and service recipients are
3 notified of the name, mailing address, and telephone number of the
4 department for the purpose of directing complaints to the
5 department. The department shall provide to the person filing the
6 complaint and to each person who is a subject of the complaint
7 information about the department's policies and procedures
8 relating to complaint investigation and resolution.

9 (b) The department shall maintain a [~~keep an information~~]
10 file on [~~about~~] each written complaint filed with the department
11 [~~that the commission or executive director has authority to~~
12 ~~resolve~~]. The file must include:

13 (1) the name of the person who filed the complaint;

14 (2) the date the complaint is received by the
15 department;

16 (3) the subject matter of the complaint;

17 (4) the name of each person contacted in relation to
18 the complaint;

19 (5) a summary of the results of the review or
20 investigation of the complaint; and

21 (6) an explanation of the reason the file was closed,
22 if the department closed the file without taking action other than
23 to investigate the complaint.

24 (c) The [~~If a written complaint is filed that the commission~~
25 ~~or executive director has authority to resolve, the~~] department, at
26 least quarterly and until final disposition of the complaint, shall
27 notify the person filing [~~parties to~~] the complaint and each person

1 who is a subject of the complaint of the status of the investigation
2 ~~[complaint]~~ unless the notice would jeopardize an undercover
3 investigation.

4 (d) The commission shall adopt a procedure for documenting
5 complaints to the department from the time of the submission of the
6 initial complaint to the final disposition of the complaint. The
7 commission shall publish the procedure in the Texas Register.

8 SECTION 1.017. Section 51.302, Occupations Code, is amended
9 by adding Subsection (c) to read as follows:

10 (c) The commission shall by rule or by procedure published
11 in the Texas Register establish a written enforcement plan that
12 provides notice to license holders of the specific ranges of
13 penalties that apply to specific alleged violations and the
14 criteria by which the department determines the amount of a
15 proposed administrative penalty.

16 SECTION 1.018. Section 51.353, Occupations Code, is amended
17 to read as follows:

18 Sec. 51.353. ADMINISTRATIVE SANCTIONS. (a) The
19 commission shall revoke, suspend, or refuse to renew a license or
20 shall reprimand a license holder for a violation of this chapter,
21 ~~[executive director shall adopt rules relating to administrative~~
22 ~~sanctions that may be enforced against a license holder regulated~~
23 ~~by the department. If a license holder violates]~~ a law establishing
24 a regulatory program administered by the department, or a rule or
25 order of the commission ~~[or executive director, the executive~~
26 ~~director may:~~

27 ~~[(1) issue a written reprimand to the license holder,~~

1 ~~[(2) revoke or suspend the license holder's license,~~
2 ~~or~~

3 ~~[(3) place the license holder on probation if the~~
4 ~~person's license has been suspended].~~

5 (b) The commission may place on probation a person whose
6 license is suspended. If a license suspension is probated, the
7 commission ~~[executive director]~~ may require the person ~~[license~~
8 ~~holder]~~ to:

9 (1) report regularly to the department on matters that
10 are the basis of the probation;

11 (2) limit practice to the areas prescribed by the
12 commission ~~[executive director]~~; or

13 (3) continue or renew professional education ~~[in those~~
14 ~~areas that are the basis for the probation]~~ until the person
15 ~~[license holder]~~ attains a degree of skill satisfactory to the
16 commission in those areas that are the basis for the probation
17 ~~[executive director].~~

18 SECTION 1.019. Chapter 51, Occupations Code, is amended by
19 adding Subchapter H to read as follows:

20 SUBCHAPTER H. LICENSE REQUIREMENTS

21 Sec. 51.401. LICENSE EXPIRATION AND RENEWAL. (a) A person
22 who is otherwise eligible to renew a license may renew an unexpired
23 license by paying the required renewal fee to the department before
24 the expiration date of the license. A person whose license has
25 expired may not engage in activities that require a license until
26 the license has been renewed.

27 (b) A person whose license has been expired for 90 days or

1 less may renew the license by paying to the department a renewal fee
2 that is equal to 1-1/2 times the normally required renewal fee.

3 (c) A person whose license has been expired for more than 90
4 days but less than one year may renew the license by paying to the
5 department a renewal fee that is equal to two times the normally
6 required renewal fee.

7 (d) A person whose license has been expired for one year or
8 more may not renew the license. The person may obtain a new license
9 by complying with the requirements and procedures, including the
10 examination requirements, for obtaining an original license.

11 (e) A person who was licensed in this state, moved to
12 another state, and is currently licensed and has been in practice in
13 the other state for the two years preceding the date of application
14 may obtain a new license without reexamination. The person must pay
15 to the department a fee that is equal to two times the normally
16 required renewal fee for the license.

17 (f) Not later than the 30th day before the date a person's
18 license is scheduled to expire, the department shall send written
19 notice of the impending expiration to the person at the person's
20 last known address according to the records of the department.

21 Sec. 51.402. EXAMINATIONS. (a) Not later than the 30th
22 day after the date a person takes a license examination, the
23 department shall notify the person of the results of the
24 examination.

25 (b) If the examination is graded or reviewed by a testing
26 service:

27 (1) the department shall notify the person of the

1 results of the examination not later than the 14th day after the
2 date the department receives the results from the testing service;
3 and

4 (2) if notice of the examination results will be
5 delayed for longer than 90 days after the examination date, the
6 department shall notify the person of the reason for the delay
7 before the 90th day.

8 (c) The department may require a testing service to notify a
9 person of the results of the person's examination.

10 (d) If requested in writing by a person who fails a license
11 examination, the department shall furnish the person with an
12 analysis of the person's performance on the examination.

13 Sec. 51.403. EXAMINATION FEE REFUND. (a) The department
14 may refund a license examination fee to a person who is unable to
15 take the examination if the person:

16 (1) provides reasonable advance notice to the
17 department; or

18 (2) cannot take the examination because of an
19 emergency.

20 (b) The commission by rule shall define what constitutes
21 reasonable notice and an emergency under this section.

22 Sec. 51.404. ENDORSEMENT; RECIPROCITY. (a) The
23 commission may waive any prerequisite to obtaining a license for an
24 applicant after reviewing the applicant's credentials and
25 determining that the applicant holds a license issued by another
26 jurisdiction that has licensing requirements substantially
27 equivalent to those of this state.

1 (b) The commission may waive any prerequisite to obtaining a
2 license for an applicant who holds a license issued by another
3 jurisdiction with which this state has a reciprocity agreement.
4 The commission may make an agreement, subject to the approval of the
5 governor, with another state to allow for licensing by reciprocity.

6 Sec. 51.405. CONTINUING EDUCATION. The commission shall
7 recognize, prepare, or administer continuing education programs
8 for license holders. A license holder must participate in the
9 programs to the extent required by the commission to keep the
10 person's license.

11 SECTION 1.020. Section 51.205, Occupations Code, is
12 renumbered as Section 51.406, Occupations Code, and amended to read
13 as follows:

14 Sec. 51.406 [51.205]. STAGGERED [LICENSE EXPIRATION AND]
15 RENEWAL OF LICENSES. [(a)] The commission by rule [executive
16 director] may adopt a system under which licenses expire on various
17 dates during the year. For the year in which the license expiration
18 date is changed, the department shall prorate license fees on a
19 monthly basis so that each license holder pays only that portion of
20 the license fee that is allocable to the number of months during
21 which the license is valid. On renewal of the license on the new
22 expiration date, the total license renewal fee is payable [annually
23 and may provide for a renewal period that exceeds 12 months.

24 [(b) The executive director shall notify a person regulated
25 by the department of the impending expiration of the person's
26 license].

27 SECTION 1.021. Chapter 51, Occupations Code, is amended by

1 adding Subchapter I to read as follows:

2 SUBCHAPTER I. TELEPHONE INFORMATION SYSTEM

3 Sec. 51.451. DEFINITION. In this subchapter, "licensing
4 entity" means a department, commission, board, office, authority,
5 or other agency or governmental entity of this state that issues an
6 occupational license.

7 Sec. 51.452. TELEPHONE INFORMATION SYSTEM. The department
8 shall establish and operate a toll-free telephone information
9 system to provide assistance and referral services for persons who
10 inquire about a program regulated by a licensing entity.

11 SECTION 1.022. (a) The changes in law made by this article
12 in the prohibitions or qualifications applying to members of the
13 Texas Commission of Licensing and Regulation do not affect the
14 entitlement of a member serving on the commission immediately
15 before September 1, 2003, to continue to serve and function as a
16 member of the commission for the remainder of the member's term.
17 Those changes in law apply only to a member appointed on or after
18 September 1, 2003.

19 (b) Not later than November 1, 2003, the governor shall
20 appoint an additional member to serve on the Texas Commission of
21 Licensing and Regulation, as required by Subsection (a), Section
22 51.052, Occupations Code, as amended by this article. The new
23 member's term shall expire on February 1, 2007.

24 SECTION 1.023. Not later than September 1, 2004, the Texas
25 Department of Licensing and Regulation shall implement the
26 toll-free telephone information system required by Section 51.452,
27 Occupations Code, as added by this article.

1 SECTION 1.024. (a) In this section:

2 (1) "Department" means the Texas Department of
3 Licensing and Regulation.

4 (2) "Licensing entity" means a department,
5 commission, board, office, authority, or other agency or
6 governmental entity of this state that issues an occupational
7 license.

8 (3) "TexasOnline" means the project implemented under
9 Subchapter I, Chapter 2054, Government Code, as added by Chapter
10 342, Acts of the 77th Legislature, Regular Session, 2001.

11 (b) Not later than March 1, 2004, the department shall
12 identify licensing entities that do not use TexasOnline.

13 (c) Not later than September 1, 2004, the department shall
14 assist those entities to develop websites for, and to convert to,
15 TexasOnline.

16 (d) Licensing entities shall cooperate with the department
17 to implement this section.

18 SECTION 1.025. Not later than March 1, 2004, the Texas
19 Commission of Licensing and Regulation shall adopt the rules
20 required by Subsection (c), Section 51.302, Occupations Code, as
21 added by this article.

22 SECTION 1.026. Subsection (c), Section 51.053, Occupations
23 Code, is repealed.

24 SECTION 1.027. Section 51.252, Occupations Code, as amended
25 by this article, takes effect January 1, 2004.

26 ARTICLE 2. AIR CONDITIONING AND REFRIGERATION CONTRACTORS

27 SECTION 2.001. Section 1302.002, Occupations Code, is

1 amended by amending Subdivision (5) and adding Subdivision (11-a)
2 to read as follows:

3 (5) "Air conditioning and refrigeration maintenance
4 work" means all work, including repair work, required for the
5 continued normal performance of an environmental air conditioning
6 system, a process cooling or heating system, a commercial
7 refrigeration system, or commercial refrigeration equipment. The
8 term does not include:

9 (A) the total replacement of a system; or

10 (B) the installation or repair of a boiler or
11 pressure vessel that must be installed in accordance with rules
12 adopted by the commission [~~commissioner~~] under Chapter 755, Health
13 and Safety Code.

14 (11-a) "Executive director" means the executive
15 director of the department.

16 SECTION 2.002. The heading to Subchapter C, Chapter 1302,
17 Occupations Code, is amended to read as follows:

18 SUBCHAPTER C. [~~COMMISSIONER AND DEPARTMENT~~] POWERS AND DUTIES

19 SECTION 2.003. Section 1302.101, Occupations Code, is
20 amended to conform to Section 2, Chapter 790, Acts of the 77th
21 Legislature, Regular Session, 2001, and is further amended to read
22 as follows:

23 Sec. 1302.101. GENERAL POWERS AND DUTIES [~~OF COMMISSIONER~~].

24 (a) The commission [~~commissioner~~] shall[+]

25 [~~(1)~~] adopt rules for the practice of air conditioning
26 and refrigeration contracting that are at least as strict as the
27 standards provided by:

1 (1) [~~(A)~~] the Uniform Mechanical Code [~~published~~
2 ~~jointly by the International Conference of Building Officials and~~
3 ~~the International Association of Plumbing and Mechanical~~
4 ~~Officials, as that code exists at the time the rules are adopted];~~
5 and [~~or~~]

6 (2) [~~(B)~~] the International [~~Standard~~] Mechanical
7 Code.

8 (b) The executive director shall [~~published by the Southern~~
9 ~~Building Code Congress International, Inc., as that code exists at~~
10 ~~the time the rules are adopted;~~

11 [~~(2)~~] prescribe the design of an original and a
12 renewal license.

13 (c) The commission shall [~~and~~

14 [~~(3)~~] maintain a record of the commission's
15 [~~commissioner's~~] proceedings under this chapter.

16 (d) [~~(b)~~] The executive director [~~commissioner~~] may
17 authorize disbursements necessary to implement this chapter,
18 including disbursements for office expenses, equipment costs, and
19 other necessary facilities.

20 SECTION 2.004. Section 1302.103, Occupations Code, is
21 amended to read as follows:

22 Sec. 1302.103. RULES REGARDING USE AND DISPLAY OF LICENSE.
23 The commission [~~commissioner~~], with the advice of the advisory
24 board, shall adopt rules relating to the use, display, and
25 advertisement of a license.

26 SECTION 2.005. Section 1302.201, Occupations Code, is
27 amended to read as follows:

1 Sec. 1302.201. ADVISORY BOARD MEMBERSHIP. The air
2 conditioning and refrigeration contractors advisory board consists
3 of six members appointed by the presiding officer of the
4 commission, with the commission's approval, [~~governor with the~~
5 ~~advice and consent of the senate~~] and two ex officio nonvoting
6 members.

7 SECTION 2.006. Subsection (a), Section 1302.204,
8 Occupations Code, is amended to read as follows:

9 (a) The advisory board shall advise the commission
10 [~~commissioner~~] in adopting rules and in administering and enforcing
11 this chapter.

12 SECTION 2.007. Subsection (b), Section 1302.205,
13 Occupations Code, is amended to read as follows:

14 (b) If a vacancy occurs during an appointed member's term,
15 the presiding officer of the commission, with the commission's
16 approval, [~~governor~~] shall fill the vacancy for the remainder of
17 the unexpired term with a person who represents the same interests
18 as the predecessor.

19 SECTION 2.008. Section 1302.206, Occupations Code, is
20 amended to read as follows:

21 Sec. 1302.206. PRESIDING OFFICER. The presiding officer of
22 the commission, with the commission's approval, [~~governor~~] shall
23 designate one member of the advisory board to serve as presiding
24 officer of the board for two years.

25 SECTION 2.009. Section 1302.261, Occupations Code, is
26 amended to read as follows:

27 Sec. 1302.261. TEMPORARY LICENSE. The commission

1 ~~[commissioner]~~ by rule may provide for the issuance of a temporary
2 air conditioning and refrigeration contracting license to an
3 applicant who:

4 (1) submits to the executive director ~~[commissioner]~~
5 an application on a form prescribed by the executive director
6 ~~[commissioner]~~; and

7 (2) pays the required fees.

8 SECTION 2.010. Subsection (b), Section 1302.354,
9 Occupations Code, is amended to read as follows:

10 (b) The commission ~~[commissioner]~~ by rule shall adopt
11 requirements governing the registration and issuance of a
12 certificate of registration.

13 SECTION 2.011. Subsection (c), Section 1302.355,
14 Occupations Code, is amended to read as follows:

15 (c) The commission ~~[commissioner]~~ by rule shall establish
16 requirements for evidence that satisfies this section.

17 SECTION 2.012. The following laws are repealed:

18 (1) Subdivision (8), Section 1302.002, Occupations
19 Code;

20 (2) Section 1302.107, Occupations Code;

21 (3) Section 1302.152, Occupations Code;

22 (4) Section 1302.258, Occupations Code;

23 (5) Section 1302.259, Occupations Code; and

24 (6) Chapter 790, Acts of the 77th Legislature, Regular
25 Session, 2001.

26 SECTION 2.013. The changes in law made by this article
27 applying to members of the air conditioning and refrigeration

1 contractors advisory board do not affect the entitlement of a
2 member serving on the board immediately before September 1, 2003,
3 to continue to serve and function as a member of the board for the
4 remainder of the member's term. Those changes in law apply only to
5 a member appointed on or after September 1, 2003.

6 ARTICLE 3. ARCHITECTURAL BARRIERS

7 SECTION 3.001. Section 4, Article 9102, Revised Statutes,
8 is amended by adding Subdivision (6-a) to read as follows:

9 (6-a) "Executive director" means the executive
10 director of the department.

11 SECTION 3.002. Article 9102, Revised Statutes, is amended
12 by adding Section 4A to read as follows:

13 Sec. 4A. APPLICABILITY OF OTHER LAW. Section 51.404,
14 Occupations Code, does not apply to this article.

15 SECTION 3.003. Subsections (c) through (h) and (j), Section
16 5A, Article 9102, Revised Statutes, are amended to read as follows:

17 (c) An applicant for a certificate of registration must file
18 with the commission an application on a form prescribed by the
19 executive director [~~commissioner~~].

20 (d) To be eligible for a certificate of registration, an
21 applicant must satisfy any requirements adopted by the commission
22 [~~commissioner~~] by rule, including education and examination
23 requirements.

24 (e) The executive director [~~commissioner~~] may issue a
25 certificate of registration to perform review functions of the
26 commission, inspection functions of the commission, or both review
27 and inspection functions.

1 (f) The executive director [~~commissioner~~] may administer
2 separate examinations for applicants for certificates of
3 registration to perform review functions, inspection functions, or
4 both review and inspection functions. [~~Not later than the 30th day~~
5 ~~after the examination date, the commissioner shall notify each~~
6 ~~examinee of the results of the examination.~~]

7 (g) The executive director [~~commissioner~~] shall issue an
8 appropriate certificate of registration to an applicant who meets
9 the requirements for a certificate.

10 (h) The commission [~~commissioner~~] by rule shall specify the
11 term of a certificate of registration issued under this section.

12 (j) A certificate holder shall perform a review or
13 inspection function of the commission in a competent and
14 professional manner and in compliance with:

15 (1) standards and specifications adopted by the
16 commission under this article; and

17 (2) rules adopted by the commission [~~commissioner~~]
18 under this article.

19 SECTION 3.004. Section 7, Article 9102, Revised Statutes,
20 is amended to read as follows:

21 Sec. 7. ADVISORY COMMITTEE; REVIEW OF AND COMMENT ON RULES.

22 (a) The presiding officer of the commission, with the commission's
23 approval, shall appoint an advisory committee for the architectural
24 barriers program. The committee shall be composed of building
25 professionals and persons with disabilities who are familiar with
26 architectural barrier problems and solutions. The committee shall
27 be composed of at least eight members. Persons with disabilities

1 must make up a majority of the membership.

2 (b) A committee member serves at the will of the presiding
3 officer of the commission. A member may not receive compensation
4 for service on the committee but is entitled to reimbursement for
5 actual and necessary expenses incurred in performing functions as a
6 member.

7 (c) The presiding officer of the commission, with the
8 commission's approval, [committee] shall appoint ~~[elect]~~ a member
9 of the committee as chair for two years. The committee shall meet
10 at least twice each calendar year at the call of the committee chair
11 or at the call of the commission ~~[commissioner]~~.

12 (d) The committee periodically shall review the rules
13 relating to the architectural barriers program and recommend
14 changes in the rules to the commission ~~[and the commissioner]~~. The
15 commission shall submit all proposed changes to rules and
16 procedures that relate to the architectural barriers program to the
17 committee for review and comment before adoption or implementation
18 of the new or amended rule or procedure.

19 SECTION 3.005. Article 9102, Revised Statutes, is amended
20 by adding Section 9 to read as follows:

21 Sec. 9. COMPLAINTS. (a) A complaint made under Section
22 51.252, Occupations Code, that alleges that a building or facility
23 is not in compliance with the standards and specifications adopted
24 by the commission under this article is not eligible for final
25 disposition until the commission determines that:

26 (1) the building or facility has been brought into
27 compliance or cannot be brought into compliance; or

1 (2) the building or facility is exempt from compliance
2 by statute or rule.

3 (b) If the building or facility cannot be brought into
4 compliance or if the building or facility is exempt, the department
5 shall, before final disposition of the complaint, notify the person
6 filing the complaint that the building or facility cannot be
7 brought into compliance or provide a reference to any rule or law
8 that states an applicable exemption.

9 SECTION 3.006. The following laws are repealed:

10 (1) Subdivision (3), Section 4, Article 9102, Revised
11 Statutes; and

12 (2) Subsection (i), Section 5A, Article 9102, Revised
13 Statutes.

14 SECTION 3.007. The changes in law made by this article
15 applying to members of the advisory committee for the program for
16 the elimination of architectural barriers do not affect the
17 entitlement of a member serving on the committee immediately before
18 September 1, 2003, to continue to serve and function as a member of
19 the committee for the remainder of the member's term. Those changes
20 in law apply only to a member appointed on or after September 1,
21 2003.

22 ARTICLE 4. AUCTIONEERS

23 SECTION 4.001. Section 1802.001, Occupations Code, is
24 amended by adding Subdivision (8-a) to read as follows:

25 (8-a) "Executive director" means the executive
26 director of the department.

27 SECTION 4.002. Subsections (a), (b), and (d), Section

1 1802.059, Occupations Code, are amended to read as follows:

2 (a) An applicant for an auctioneer's license who is not a
3 resident of this state but is licensed as an auctioneer in another
4 state must submit to the executive director [~~commissioner~~]:

5 (1) a license application;

6 (2) a certified copy of the auctioneer's license
7 issued to the applicant by the state or political subdivision in
8 which the applicant resides; and

9 (3) proof that the state or political subdivision in
10 which the applicant is licensed has competency standards equivalent
11 to or stricter than those of this state.

12 (b) The executive director [~~commissioner~~] shall accept the
13 applicant's auctioneer's license submitted under Subsection (a)(2)
14 as proof of the applicant's professional competence and waive the
15 examination and training requirements of Section 1802.052 if the
16 state or political subdivision that issued the nonresident a
17 license extends similar recognition and courtesies to this state.

18 (d) A nonresident applicant must submit with the
19 application a written irrevocable consent to service of process.
20 The consent must be in the form and supported by additional
21 information that the commission [~~commissioner~~] by rule requires.
22 The consent must:

23 (1) provide that an action relating to any transaction
24 subject to this chapter may be commenced against the license holder
25 in the proper court of any county of this state in which the cause of
26 action may arise or in which the plaintiff may reside by service of
27 process on the executive director [~~commissioner~~] as the license

1 holder's agent; and

2 (2) include a statement stipulating and agreeing that
3 service provided by this section is as valid and binding as if
4 service had been made on the person according to the laws of this or
5 any other state.

6 SECTION 4.003. Section 1802.101, Occupations Code, is
7 amended to read as follows:

8 Sec. 1802.101. AUCTIONEER EDUCATION ADVISORY BOARD. The
9 advisory board shall advise the commission [~~commissioner~~] on
10 educational matters.

11 SECTION 4.004. Subsections (a) and (b), Section 1802.102,
12 Occupations Code, are amended to read as follows:

13 (a) The advisory board consists of five members appointed as
14 follows:

15 (1) three members who are licensed auctioneers
16 appointed by the presiding officer of the commission, with the
17 commission's approval [~~commissioner~~];

18 (2) the executive director of the Texas Department of
19 Economic Development or the director's designee; and

20 (3) the commissioner of education or the
21 commissioner's designee.

22 (b) In appointing advisory board members under Subsection
23 (a)(1), the presiding officer of the commission [~~commissioner~~] may
24 not appoint members who reside in contiguous senatorial districts.

25 SECTION 4.005. Subsection (a), Section 1802.103,
26 Occupations Code, is amended to read as follows:

27 (a) The members appointed under Section 1802.102(a)(1)

1 serve two-year terms that expire on September 1. If a vacancy
2 occurs during the term of such a member, the presiding officer of
3 the commission, with the commission's approval, [~~commissioner~~]
4 shall appoint a replacement to serve for the remainder of the term.

5 SECTION 4.006. Section 1802.104, Occupations Code, is
6 amended to read as follows:

7 Sec. 1802.104. PRESIDING OFFICER. The presiding officer of
8 the commission, with the commission's approval, shall appoint a
9 member of the advisory board to serve [~~shall designate one of its~~
10 ~~members~~] as presiding officer of the board. The presiding officer
11 serves for two years.

12 SECTION 4.007. Section 1802.109, Occupations Code, is
13 amended to read as follows:

14 Sec. 1802.109. AUCTIONEER EDUCATION PROGRAMS. (a) The
15 advisory board shall:

16 (1) evaluate educational programs, seminars, and
17 training projects; and

18 (2) make recommendations to the commission
19 [~~commissioner~~] on their usefulness and merit as continuing
20 education tools.

21 (b) On the recommendation of the advisory board, the
22 commission [~~commissioner~~] may fund or underwrite specific classes,
23 seminars, or events for the education and advancement of the
24 auctioneering profession in this state.

25 SECTION 4.008. Subsection (a), Section 1802.153,
26 Occupations Code, is amended to read as follows:

27 (a) In addition to any other fees required by this chapter,

1 an applicant entitled to receive a license under this chapter must
2 pay a fee [~~of \$100~~] before the executive director [~~commissioner~~]
3 issues the license.

4 SECTION 4.009. Section 1802.201, Occupations Code, is
5 amended to read as follows:

6 Sec. 1802.201. INVESTIGATION OF COMPLAINTS. The executive
7 director [~~commissioner~~] may, on the executive director's
8 [~~commissioner's~~] motion, and shall, on the written [~~and verified~~]
9 complaint of a person aggrieved by the actions of an auctioneer in
10 an auction, investigate an alleged violation of this chapter by a
11 licensed or unlicensed auctioneer or an applicant.

12 SECTION 4.010. Subsections (a) and (b), Section 1802.202,
13 Occupations Code, are amended to read as follows:

14 (a) A person who deals with an auctioneer licensed under
15 this chapter and who is aggrieved by an action of the auctioneer as
16 a result of a violation of a contract made with the auctioneer may
17 initiate a claim against the fund by[+]

18 [~~(1)~~] filing with the department a [~~sworn~~] complaint
19 against the auctioneer[+, and

20 [~~(2)~~ paying to the department a filing fee of \$50].

21 (b) The executive director [~~commissioner~~] may not pay a
22 claim against an auctioneer who was not licensed at the time of the
23 transaction on which the claim is based.

24 SECTION 4.011. Subsection (c), Section 1802.203,
25 Occupations Code, is amended to read as follows:

26 (c) After the hearing, the hearings examiner shall prepare a
27 proposal for decision for the commission [~~commissioner~~].

1 SECTION 4.012. Section 1802.204, Occupations Code, is
2 amended to read as follows:

3 Sec. 1802.204. APPEAL. A party may appeal a decision of the
4 commission [~~commissioner~~] in the manner provided for a contested
5 case under Chapter 2001, Government Code.

6 SECTION 4.013. Section 1802.207, Occupations Code, is
7 amended to read as follows:

8 Sec. 1802.207. REIMBURSEMENT; INTEREST. (a) If the
9 executive director [~~commissioner~~] pays a claim against an
10 auctioneer, the auctioneer shall:

11 (1) reimburse the fund immediately or agree in writing
12 to reimburse the fund on a schedule to be determined by rule of the
13 commission [~~commissioner~~]; and

14 (2) immediately pay the aggrieved party any amount due
15 to that party or agree in writing to pay the party on a schedule to
16 be determined by rule of the commission [~~commissioner~~].

17 (b) Payments made by an auctioneer to the fund or to an
18 aggrieved party under this section include interest accruing at the
19 rate of eight percent a year beginning on the date the executive
20 director [~~commissioner~~] pays the claim.

21 SECTION 4.014. Subsection (a), Section 1802.209,
22 Occupations Code, is amended to read as follows:

23 (a) This subchapter and Section 1802.252 do not limit the
24 commission's [~~commissioner's~~] authority to take disciplinary
25 action against a license holder for a violation of this chapter or a
26 rule adopted under this chapter.

27 SECTION 4.015. Section 1802.251, Occupations Code, is

1 amended to read as follows:

2 Sec. 1802.251. DENIAL OF APPLICATION; SUSPENSION OR
3 REVOCATION OF LICENSE. The commission [~~commissioner~~] may deny an
4 application for a license or suspend or revoke the license of any
5 auctioneer for:

6 (1) violating this chapter or a rule adopted under
7 this chapter;

8 (2) obtaining a license through false or fraudulent
9 representation;

10 (3) making a substantial misrepresentation in an
11 application for an auctioneer's license;

12 (4) engaging in a continued and flagrant course of
13 misrepresentation or making false promises through an agent,
14 advertising, or otherwise;

15 (5) failing to account for or remit, within a
16 reasonable time, money belonging to another that is in the
17 auctioneer's possession and commingling funds of another with the
18 auctioneer's funds or failing to keep the funds of another in an
19 escrow or trust account; or

20 (6) [~~being convicted in a court of this state or~~
21 ~~another state of a criminal offense involving moral turpitude or a~~
22 ~~felony, or~~

23 [~~(7)~~] violating the Business & Commerce Code in
24 conducting an auction.

25 SECTION 4.016. Section 1802.252, Occupations Code, is
26 amended to read as follows:

27 Sec. 1802.252. REVOCATION FOR CLAIM ON FUND. (a) The

1 commission [~~commissioner~~] may revoke a license issued under this
2 chapter if the executive director [~~commissioner~~] makes a payment
3 from the fund as the result of an action of the license holder.

4 (b) The commission [~~commissioner~~] may probate an order
5 revoking a license.

6 (c) An auctioneer is not eligible for a new license until
7 the auctioneer has repaid in full the amount paid from the fund on
8 the auctioneer's account, including interest, unless:

9 (1) a hearing is held; and

10 (2) the executive director [~~commissioner~~] issues a new
11 probated license.

12 SECTION 4.017. Section 1802.253, Occupations Code, is
13 amended to read as follows:

14 Sec. 1802.253. HEARING. (a) Before denying an application
15 for a license [~~or suspending or revoking a license~~], the commission
16 [~~commissioner~~] shall:

17 (1) set the matter for a hearing; and

18 (2) before the [~~30th day before the~~] hearing date,
19 notify the applicant [~~or license holder~~] in writing of:

20 (A) the charges alleged or the question to be
21 determined at the hearing; and

22 (B) the date and location of the hearing.

23 (b) At a hearing under this section, the applicant [~~or~~
24 ~~license holder~~] may:

25 (1) be present and be heard in person or by counsel;

26 and

27 (2) have an opportunity to offer evidence by oral

1 testimony, affidavit, or deposition.

2 (c) Written notice may be served by personal delivery to the
3 applicant [~~or license holder~~] or by certified mail to the last known
4 mailing address of the applicant [~~or license holder~~].

5 (d) If the applicant [~~or license holder~~] who is the subject
6 of the hearing is an associate auctioneer, the commission
7 [~~commissioner~~] shall provide written notice to the auctioneer who
8 employs the associate auctioneer or who has agreed to employ the
9 associate auctioneer by mailing the notice by certified mail to the
10 auctioneer's last known mailing address.

11 SECTION 4.018. Subsection (a), Section 1802.303,
12 Occupations Code, is amended to read as follows:

13 (a) A person commits an offense if the person violates a
14 provision of this chapter or a rule adopted by the commission
15 [~~commissioner~~] under this chapter for which a penalty is not
16 provided.

17 SECTION 4.019. The following laws are repealed:

- 18 (1) Subdivision (7), Section 1802.001, Occupations
19 Code;
20 (2) Section 1802.057, Occupations Code;
21 (3) Section 1802.061, Occupations Code; and
22 (4) Section 1802.254, Occupations Code.

23 SECTION 4.020. The changes in law made by this article
24 applying to members of the Auctioneer Education Advisory Board do
25 not affect the entitlement of a member serving on the board
26 immediately before September 1, 2003, to continue to serve and
27 function as a member of the board for the remainder of the member's

1 term. Those changes in law apply only to a member appointed on or
2 after September 1, 2003.

3 ARTICLE 5. BACKFLOW PREVENTION ASSEMBLY TESTERS

4 SECTION 5.001. Subsection (c), Section 341.034, Health and
5 Safety Code, is amended to read as follows:

6 (c) A person who repairs or tests the installation or
7 operation of backflow prevention assemblies must hold a license
8 issued by the Texas Department of Licensing and Regulation
9 [~~commission~~] under Chapter 51, Occupations [~~37, Water~~] Code.

10 SECTION 5.002. (a) On November 1, 2003:

11 (1) all functions and activities relating to
12 Subsection (c), Section 341.034, Health and Safety Code, performed
13 by the Texas Commission on Environmental Quality immediately before
14 that date are transferred to the Texas Department of Licensing and
15 Regulation;

16 (2) a rule or form adopted by the Texas Commission on
17 Environmental Quality that relates to Subsection (c), Section
18 341.034, Health and Safety Code, is a rule or form of the Texas
19 Department of Licensing and Regulation and remains in effect until
20 amended or replaced by that department;

21 (3) a license or other document issued by the Texas
22 Commission on Environmental Quality that relates to Subsection (c),
23 Section 341.034, Health and Safety Code, is considered a license or
24 other document issued by the Texas Department of Licensing and
25 Regulation and remains in effect until amended or replaced by that
26 department;

27 (4) a reference in law or an administrative rule to the

1 Texas Commission on Environmental Quality that relates to
2 Subsection (c), Section 341.034, Health and Safety Code, means the
3 Texas Department of Licensing and Regulation;

4 (5) a complaint, investigation, or other proceeding
5 before the Texas Commission on Environmental Quality that is
6 related to Subsection (c), Section 341.034, Health and Safety Code,
7 is transferred without change in status to the Texas Department of
8 Licensing and Regulation, and the Texas Department of Licensing and
9 Regulation assumes, as appropriate and without a change in status,
10 the position of the Texas Commission on Environmental Quality in an
11 action or proceeding to which the Texas Commission on Environmental
12 Quality is a party;

13 (6) all money, contracts, leases, property, and
14 obligations of the Texas Commission on Environmental Quality
15 related to Subsection (c), Section 341.034, Health and Safety Code,
16 are transferred to the Texas Department of Licensing and
17 Regulation;

18 (7) all property in the custody of the Texas
19 Commission on Environmental Quality related to Subsection (c),
20 Section 341.034, Health and Safety Code, is transferred to the
21 Texas Department of Licensing and Regulation; and

22 (8) the unexpended and unobligated balance of any
23 money appropriated by the legislature for the Texas Commission on
24 Environmental Quality related to Subsection (c), Section 341.034,
25 Health and Safety Code, is transferred to the Texas Department of
26 Licensing and Regulation.

27 (b) Before November 1, 2003, the Texas Commission on

1 Environmental Quality may agree with the Texas Department of
2 Licensing and Regulation to transfer any property of the Texas
3 Commission on Environmental Quality to the Texas Department of
4 Licensing and Regulation to implement the transfer required by this
5 article.

6 (c) In the period beginning on the effective date of this
7 Act and ending on November 1, 2003, the Texas Commission on
8 Environmental Quality shall continue to perform functions and
9 activities under Subsection (c), Section 341.034, Health and Safety
10 Code, as if that section had not been amended by this Act, and the
11 former law is continued in effect for that purpose.

12 ARTICLE 6. BOILERS

13 SECTION 6.001. Section 755.001, Health and Safety Code, is
14 amended by amending Subdivisions (5), (6), and (23) and adding
15 Subdivision (7-a) to read as follows:

16 (5) "Certificate of operation" means a certificate
17 issued by the executive director [~~commissioner~~] to allow the
18 operation of a boiler.

19 (6) "Commission" [~~"Commissioner"~~] means the Texas
20 Commission of Licensing and Regulation [~~commissioner of licensing~~
21 ~~and regulation~~].

22 (7-a) "Executive director" means the executive
23 director of the department.

24 (23) "Standard boiler" means a boiler that bears a
25 Texas stamp, the stamp of a nationally recognized engineering
26 professional society, or the stamp of any jurisdiction that has
27 adopted a standard of construction equivalent to the standard

1 required by the executive director [~~commissioner~~].

2 SECTION 6.002. Subsections (b) and (d), Section 755.011,
3 Health and Safety Code, are amended to read as follows:

4 (b) The board is composed of the following nine members
5 appointed by the presiding officer of the commission, with the
6 commission's approval [~~commissioner~~]:

7 (1) three members representing persons who own or use
8 boilers in this state;

9 (2) three members representing companies that insure
10 boilers in this state;

11 (3) one member representing boiler manufacturers or
12 installers;

13 (4) one member who is a mechanical engineer and a
14 member of the faculty of a recognized college of engineering in this
15 state; and

16 (5) one member representing a labor union.

17 (d) The executive director [~~commissioner~~] serves as an ex
18 officio board member.

19 SECTION 6.003. Section 755.013, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 755.013. PRESIDING OFFICER [~~CHAIRMAN~~]. The chief
22 inspector serves as presiding officer [~~chairman~~] of the board.

23 SECTION 6.004. Section 755.014, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 755.014. REMOVAL OF BOARD MEMBERS; VACANCY. (a) The
26 commission [~~commissioner~~] may remove a board member for
27 inefficiency or neglect of official duty.

1 (b) A board member's office becomes vacant on the
2 resignation, death, suspension, or incapacity of the member. The
3 presiding officer of the commission [~~commissioner~~] shall appoint,
4 in the same manner as the original appointment, a person to serve
5 for the remainder of the unexpired term.

6 SECTION 6.005. Section 755.016, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 755.016. MEETINGS. The board shall meet at least twice
9 each year at the call of the presiding officer [~~chairman~~] at a place
10 designated by the board.

11 SECTION 6.006. Section 755.017, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 755.017. POWERS AND DUTIES. The board shall advise the
14 commission [~~commissioner~~] in the adoption of definitions and rules
15 relating to the safe construction, installation, inspection,
16 operating limits, alteration, and repair of boilers and their
17 appurtenances.

18 SECTION 6.007. Subsection (a), Section 755.030, Health and
19 Safety Code, is amended to read as follows:

20 (a) In addition to the fees described by Section 51.202,
21 Occupations Code, the commission may authorize the collection of
22 fees for:

23 (1) boiler inspections, including fees for special
24 inspections; and

25 (2) other activities administered by the boiler
26 inspection section and authorized by rule of the commission
27 [~~executive director of the department~~].

1 SECTION 6.008. Section 755.032, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 755.032. RULES. (a) The commission [~~commissioner~~]
4 may adopt and enforce rules, in accordance with standard boiler
5 usage, for the construction, inspection, installation, use,
6 maintenance, repair, alteration, and operation of boilers.

7 (b) The executive director [~~commissioner~~] may exchange
8 information, including data on experience, with other authorities
9 that inspect boilers or their appurtenances, to obtain information
10 necessary to adopt rules.

11 (c) The executive director [~~commissioner~~] or a department
12 employee may not prescribe the make, brand, or kind of boilers or
13 any appurtenances on the boiler to purchase.

14 (d) The executive director [~~commissioner~~] or a department
15 employee may not prescribe the make, brand, or kind of boilers to
16 purchase.

17 SECTION 6.009. Section 755.033, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 755.033. INTERAGENCY INSPECTION AGREEMENTS. (a) The
20 executive director [~~commissioner~~] shall enter into interagency
21 agreements with the Texas Department of Health, the Texas
22 Commission on Fire Protection, and the Texas Department [~~State~~
23 ~~Board~~] of Insurance under which inspectors, marshals, or
24 investigators from those agencies who discover unsafe or
25 unregistered boilers in the course and scope of inspections
26 conducted as part of regulatory or safety programs administered by
27 those agencies are required to report the unsafe or unregistered

1 boilers to the executive director [~~commissioner~~].

2 (b) The executive director [~~commissioner~~] may enter into
3 analogous agreements with local fire marshals.

4 (c) The commission [~~commissioner~~] shall adopt rules
5 relating to the terms and conditions of an interagency agreement
6 entered into under this section.

7 SECTION 6.010. Subsections (b) and (d), Section 755.041,
8 Health and Safety Code, are amended to read as follows:

9 (b) On written request, an owner or operator who does not
10 comply with a preliminary order is entitled to a hearing before the
11 executive director [~~commissioner~~] to show cause for not enforcing
12 the preliminary order. If, after the hearing, the executive
13 director [~~commissioner~~] determines that the boiler is unsafe and
14 that the preliminary order should be enforced, or that other acts
15 are necessary to make the boiler safe, the executive director
16 [~~commissioner~~] may order or confirm the withholding of the
17 certificate of operation for that boiler, and may impose additional
18 requirements as necessary for the repair or alteration of the
19 boiler or the correction of the unsafe conditions.

20 (d) This section does not limit the executive director's
21 [~~commissioner's~~] authority under Section 755.028 or the
22 commission's authority under Section 755.032.

23 SECTION 6.011. Subsection (a), Section 755.043, Health and
24 Safety Code, is amended to read as follows:

25 (a) A person, firm, or corporation commits an offense if:

26 (1) the person, firm, or corporation owns a boiler in
27 this state, has the custody, management, use, or operation of a

1 boiler in this state, or is otherwise subject to this chapter or a
2 rule adopted under this chapter; and

3 (2) the person, firm, or corporation violates this
4 chapter, a rule adopted under this chapter, or an order issued by
5 the commission, the executive director, [~~commissioner~~] or a
6 regularly employed inspector authorized to enforce this chapter and
7 rules and orders.

8 SECTION 6.012. Section 755.045, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 755.045. NOTICE OF RULE OR ORDER REQUIRED BEFORE
11 PROSECUTION. A criminal action may not be maintained against any
12 person relating to the violation of a rule adopted or an order
13 issued under this chapter until the commission [~~commissioner~~] gives
14 notice of the rule or order.

15 SECTION 6.013. Section 755.046, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 755.046. AFFIDAVIT OF ORDERS. An affidavit is
18 admissible as evidence in any civil or criminal action involving an
19 order adopted by the commission or the executive director
20 [~~commissioner~~] and the publication of the order, without further
21 proof of the order's issuance or publication or of the contents of
22 the order, if the affidavit:

23 (1) is issued under the seal of the commission or the
24 executive director [~~commissioner~~];

25 (2) is executed by the commission, the executive
26 director [~~commissioner~~], the chief inspector, or a deputy
27 inspector;

- 1 (3) states the terms of the order;
2 (4) states that the order was issued and published;
3 and
4 (5) states that the order was in effect during the
5 period specified by the affidavit.

6 SECTION 6.014. The following laws are repealed:

7 (1) Subsections (c), (d), (e), and (h), Section
8 755.024, Health and Safety Code; and

9 (2) Section 755.031, Health and Safety Code.

10 SECTION 6.015. The changes in law made by this article
11 applying to members of the board of boiler rules do not affect the
12 entitlement of a member serving on the board immediately before
13 September 1, 2003, to continue to serve and function as a member of
14 the board for the remainder of the member's term. Those changes in
15 law apply only to a member appointed on or after September 1, 2003.

16 ARTICLE 7. CAREER COUNSELING SERVICES

17 SECTION 7.001. Section 2502.001, Occupations Code, is
18 amended by amending Subdivision (3) and adding Subdivision (4-a) to
19 read as follows:

20 (3) "Commission" [~~"Commissioner"~~] means the Texas
21 Commission of Licensing and Regulation [~~commissioner of licensing~~
22 ~~and regulation~~].

23 (4-a) "Executive director" means the executive
24 director of the department.

25 SECTION 7.002. Section 2502.056, Occupations Code, is
26 amended to read as follows:

27 Sec. 2502.056. RULES. The commission [~~commissioner~~] may

1 adopt rules relating to the administration and enforcement of the
2 certificate of authority program created under this subchapter.

3 SECTION 7.003. Subchapter B, Chapter 2502, Occupations
4 Code, is amended by adding Section 2502.058 to read as follows:

5 Sec. 2502.058. APPLICABILITY OF OTHER LAW. Section 51.404
6 does not apply to this chapter.

7 SECTION 7.004. Subsection (b), Section 2502.202,
8 Occupations Code, is amended to read as follows:

9 (b) Not later than 10 days [~~48 hours~~] after a career
10 counseling service receives a written complaint, the service shall
11 respond to the complaint. Not later than the 30th [~~10th~~] day after
12 the date the complaint is received, the service shall resolve the
13 complaint.

14 SECTION 7.005. Subsection (a), Section 2502.203,
15 Occupations Code, is amended to read as follows:

16 (a) If a career counseling service cannot resolve a
17 complaint within the period described by Section 2502.202, the
18 service shall:

19 (1) refer the complaint to a qualified independent
20 arbitration organization recognized by the department; and

21 (2) resolve the complaint not later than the 60th
22 [~~30th~~] day after the date the arbitration begins [~~complaint is~~
23 ~~referred for arbitration~~].

24 SECTION 7.006. Section 2502.252, Occupations Code, is
25 amended to read as follows:

26 Sec. 2502.252. COMPLAINT AND INVESTIGATION. (a) A person
27 [~~by sworn affidavit~~] may file with the executive director

1 ~~[commissioner]~~ a complaint alleging a violation of this chapter.

2 (b) On receipt of the complaint, the executive director
3 ~~[commissioner]~~ shall investigate the alleged violation and may:

4 (1) inspect any record relevant to the complaint; and

5 (2) subpoena the record and any necessary witness.

6 SECTION 7.007. Subsections (a) and (c), Section 2502.253,
7 Occupations Code, are amended to read as follows:

8 (a) If the executive director ~~[commissioner]~~ determines as
9 a result of an investigation that a violation of this chapter may
10 have occurred, the executive director ~~[commissioner]~~ shall hold a
11 hearing ~~[not later than the 45th day after the date the complaint~~
12 ~~was filed under Section 2502.252]~~.

13 (c) The executive director ~~[commissioner]~~ shall render a
14 decision on the alleged violation ~~[not later than the eighth day]~~
15 after ~~[the date]~~ the hearing is concluded.

16 SECTION 7.008. Section 2502.254, Occupations Code, is
17 amended to read as follows:

18 Sec. 2502.254. SANCTIONS. (a) If, after a hearing, the
19 commission ~~[commissioner]~~ determines that a career counseling
20 service has violated this chapter, the commission ~~[commissioner]~~
21 may, as appropriate:

22 (1) issue a warning to the service; or

23 (2) suspend or revoke the certificate of authority
24 issued to the service.

25 (b) If, after a hearing, the commission ~~[commissioner]~~
26 determines that a career counseling service has violated this
27 chapter, the executive director ~~[commissioner]~~ may award the

1 complainant an amount equal to the amount of the fee charged by the
2 service.

3 SECTION 7.009. Section 2502.255, Occupations Code, is
4 amended to read as follows:

5 Sec. 2502.255. REISSUANCE OF CERTIFICATE AFTER REVOCATION.
6 If the commission [~~commissioner~~] revokes the certificate of
7 authority of a career counseling service under Section 2502.254,
8 the service and any owner of that service may not apply for a new
9 certificate until after the third anniversary of the date the
10 certificate was revoked.

11 SECTION 7.010. Sections 2502.057 and 2502.101, Occupations
12 Code, are repealed.

13 ARTICLE 8. COMBATIVE SPORTS

14 SECTION 8.001. Section 2052.002, Occupations Code, is
15 amended by amending Subdivision (4) and adding Subdivision (8-a) to
16 read as follows:

17 (4) "Commission" [~~"Commissioner"~~] means the Texas
18 Commission of Licensing and Regulation [~~commissioner of licensing~~
19 ~~and regulation or the commissioner's designated representative~~].

20 (8-a) "Executive director" means the executive
21 director of the department.

22 SECTION 8.002. Subchapter A, Chapter 2052, Occupations
23 Code, is amended by adding Section 2052.003 to read as follows:

24 Sec. 2052.003. APPLICABILITY OF OTHER LAW. Section 51.401
25 does not apply to this chapter.

26 SECTION 8.003. The heading to Subchapter B, Chapter 2052,
27 Occupations Code, is amended to read as follows:

1 SUBCHAPTER B. POWERS AND DUTIES [~~OF DEPARTMENT AND COMMISSIONER~~]

2 SECTION 8.004. Section 2052.052, Occupations Code, is
3 amended to read as follows:

4 Sec. 2052.052. RULES. (a) The commission [~~commissioner~~]
5 shall adopt reasonable and necessary rules to administer this
6 chapter.

7 (b) The commission [~~commissioner~~] may adopt rules:

8 (1) governing professional kickboxing contests and
9 exhibitions; and

10 (2) establishing reasonable qualifications for an
11 applicant seeking a license from the department under this chapter.

12 SECTION 8.005. Section 2052.054, Occupations Code, is
13 amended by amending Subsection (a) and adding Subsection (c) to
14 read as follows:

15 (a) The commission [~~commissioner~~] may recognize, prepare,
16 or administer continuing education programs for persons licensed
17 under this chapter.

18 (c) Section 51.405 does not apply to this chapter.

19 SECTION 8.006. Section 2052.103, Occupations Code, is
20 amended to read as follows:

21 Sec. 2052.103. ELIMINATION TOURNAMENT BOXING PROMOTER
22 LICENSE APPLICATION REQUIREMENTS. (a) An applicant for an
23 elimination tournament boxing promoter's license under this
24 chapter must apply on a form furnished by the executive director
25 [~~commissioner~~].

26 (b) An application must be accompanied by an application fee
27 [~~of not more than \$1,000~~] and, if the applicant charges a fee for

1 admission to the elimination tournament or awards a trophy, prize,
2 including a prize of money, or other item of value of more than \$50
3 to a contestant winning the elimination tournament:

4 (1) a \$50,000 surety bond subject to approval by the
5 executive director [~~commissioner~~] and conditioned on the
6 applicant's payment of:

7 (A) the tax imposed under Section 2052.151; and

8 (B) a claim against the applicant as described by
9 Section 2052.109(a)(3); and

10 (2) proof of not less than \$10,000 accidental death or
11 injury insurance coverage for each contestant participating in the
12 elimination tournament.

13 SECTION 8.007. Section 2052.251, Occupations Code, is
14 amended to read as follows:

15 Sec. 2052.251. BOXING GLOVES. A boxing event contestant,
16 other than an elimination tournament contestant under Subchapter E,
17 shall wear eight-ounce boxing gloves, unless the commission
18 [~~commissioner~~] by rule requires or permits a contestant to wear
19 heavier gloves.

20 SECTION 8.008. The following laws are repealed:

21 (1) Section 2052.104, Occupations Code;

22 (2) Section 2052.112, Occupations Code; and

23 (3) Section 2052.301, Occupations Code.

24 ARTICLE 9. COURT INTERPRETERS

25 SECTION 9.001. Section 57.041, Government Code, is amended
26 by adding Subdivision (4-a) to read as follows:

27 (4-a) "Executive director" means the executive

1 director of the department.

2 SECTION 9.002. Subsections (a), (c), (e), and (g), Section
3 57.042, Government Code, are amended to read as follows:

4 (a) The licensed court interpreter advisory board is
5 established as an advisory board to the commission [~~department~~].
6 The board is composed of nine members appointed by the presiding
7 officer of the commission, with the commission's approval
8 [~~governor~~]. Members of the board serve staggered six-year terms,
9 with the terms of one-third of the members expiring on February 1 of
10 each odd-numbered year.

11 (c) The presiding officer of the commission, with the
12 commission's approval, [~~At the initial meeting of the board and at~~
13 ~~the first meeting after new members take office, the board~~] shall
14 select from the board [~~its~~] members a presiding officer of the board
15 to serve for two years.

16 (e) The presiding officer of the commission, with the
17 commission's approval, [~~commissioner~~] may remove a member of the
18 board for inefficiency or neglect of duty in office. If a vacancy
19 occurs on the board, the presiding officer of the commission, with
20 the commission's approval, [~~governor~~] shall appoint a member who
21 represents the same interests as the former member to serve the
22 unexpired term.

23 (g) The board shall advise the commission [~~commissioner~~]
24 regarding the adoption of rules and the design of a licensing
25 examination.

26 SECTION 9.003. Subsections (a) and (b), Section 57.043,
27 Government Code, are amended to read as follows:

1 (a) The executive director [~~commissioner~~] shall issue a
2 court interpreter license to an applicant who:

3 (1) can interpret for an individual who can hear but
4 who does not comprehend English or communicate in English;

5 (2) passes the appropriate examination prescribed by
6 the executive director [~~commissioner~~]; and

7 (3) possesses the other qualifications for the license
8 required by this subchapter or by rules adopted under this
9 subchapter.

10 (b) The commission [~~commissioner~~] shall[+]

11 [~~(1)~~] adopt rules relating to licensing under this
12 subchapter[+] and the executive director shall

13 [~~(2)~~] prescribe all forms required under this
14 subchapter.

15 SECTION 9.004. Section 57.048, Government Code, is amended
16 to read as follows:

17 Sec. 57.048. SUSPENSION AND REVOCATION OF LICENSES;
18 REISSUANCE. (a) After a hearing, the commission [~~commissioner~~]
19 shall suspend or revoke a court interpreter license on a finding
20 that the individual:

21 (1) made a material misstatement in an application for
22 a license;

23 (2) [~~wilfully~~] disregarded or violated this
24 subchapter or a rule adopted under this subchapter; or

25 (3) [~~has been convicted of a felony or of any crime in~~
26 ~~which an essential element of the offense is misstatement, fraud,~~
27 ~~or dishonesty, or~~

1 ~~(4)~~ engaged in dishonorable or unethical conduct
2 likely to deceive, defraud, or harm the public or a person for whom
3 the interpreter interprets.

4 (b) The executive director ~~[commissioner]~~ may reissue a
5 license to an individual whose license has been revoked if the
6 individual applies in writing to the department and shows good
7 cause to justify reissuance of the license.

8 SECTION 9.005. Subdivision (3), Section 57.041, Government
9 Code, is repealed.

10 SECTION 9.006. The changes in law made by this article
11 applying to members of the licensed court interpreter advisory
12 board do not affect the entitlement of a member serving on the board
13 immediately before September 1, 2003, to continue to serve and
14 function as a member of the board for the remainder of the member's
15 term. Those changes in law apply only to a member appointed on or
16 after September 1, 2003.

17 ARTICLE 10. CUSTOMER SERVICE INSPECTORS

18 SECTION 10.001. Subsection (d), Section 341.034, Health and
19 Safety Code, is amended to read as follows:

20 (d) A person who inspects homes and businesses to identify
21 potential or actual cross-connections or other contaminant hazards
22 in public water systems must hold a license issued by the Texas
23 Department of Licensing and Regulation ~~[commission]~~ under Chapter
24 51, Occupations ~~[37, Water]~~ Code, unless the person is licensed by
25 the Texas State Board of Plumbing Examiners as a plumbing inspector
26 or water supply protection specialist.

27 SECTION 10.002. (a) On November 1, 2003:

1 (1) all functions and activities relating to
2 Subsection (d), Section 341.034, Health and Safety Code, performed
3 by the Texas Commission on Environmental Quality immediately before
4 that date are transferred to the Texas Department of Licensing and
5 Regulation;

6 (2) a rule or form adopted by the Texas Commission on
7 Environmental Quality that relates to Subsection (d), Section
8 341.034, Health and Safety Code, is a rule or form of the Texas
9 Department of Licensing and Regulation and remains in effect until
10 amended or replaced by that department;

11 (3) a license or other document issued by the Texas
12 Commission on Environmental Quality that relates to Subsection (d),
13 Section 341.034, Health and Safety Code, is considered a license or
14 other document issued by the Texas Department of Licensing and
15 Regulation and remains in effect until amended or replaced by that
16 department;

17 (4) a reference in law or an administrative rule to the
18 Texas Commission on Environmental Quality that relates to
19 Subsection (d), Section 341.034, Health and Safety Code, means the
20 Texas Department of Licensing and Regulation;

21 (5) a complaint, investigation, or other proceeding
22 before the Texas Commission on Environmental Quality that is
23 related to Subsection (d), Section 341.034, Health and Safety Code,
24 is transferred without change in status to the Texas Department of
25 Licensing and Regulation, and the Texas Department of Licensing and
26 Regulation assumes, as appropriate and without a change in status,
27 the position of the Texas Commission on Environmental Quality in an

1 action or proceeding to which the Texas Commission on Environmental
2 Quality is a party;

3 (6) all money, contracts, leases, property, and
4 obligations of the Texas Commission on Environmental Quality
5 related to Subsection (d), Section 341.034, Health and Safety Code,
6 are transferred to the Texas Department of Licensing and
7 Regulation;

8 (7) all property in the custody of the Texas
9 Commission on Environmental Quality related to Subsection (d),
10 Section 341.034, Health and Safety Code, is transferred to the
11 Texas Department of Licensing and Regulation; and

12 (8) the unexpended and unobligated balance of any
13 money appropriated by the legislature for the Texas Commission on
14 Environmental Quality related to Subsection (d), Section 341.034,
15 Health and Safety Code, is transferred to the Texas Department of
16 Licensing and Regulation.

17 (b) Before November 1, 2003, the Texas Commission on
18 Environmental Quality may agree with the Texas Department of
19 Licensing and Regulation to transfer any property of the Texas
20 Commission on Environmental Quality to the Texas Department of
21 Licensing and Regulation to implement the transfer required by this
22 article.

23 (c) In the period beginning on the effective date of this
24 Act and ending on November 1, 2003, the Texas Commission on
25 Environmental Quality shall continue to perform functions and
26 activities under Subsection (d), Section 341.034, Health and Safety
27 Code, as if that section had not been amended by this Act, and the

1 former law is continued in effect for that purpose.

2 ARTICLE 11. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

3 SECTION 11.001. Subchapter B, Chapter 754, Health and
4 Safety Code, is amended to read as follows:

5 SUBCHAPTER B. INSPECTION, ~~AND~~ CERTIFICATION, AND REGISTRATION

6 Sec. 754.011. DEFINITIONS. In this subchapter:

7 (1) "Acceptance inspection" means an inspection
8 performed at the completion of the initial installation or
9 alteration of equipment and in accordance with the applicable ASME
10 Code A17.1.

11 (2) "Accident" means an event involving equipment that
12 results in death or serious bodily injury to a person.

13 (3) "Alteration" means a change in or modernization of
14 existing equipment. The term does not include maintenance, repair,
15 replacement, or a cosmetic change that does not affect the
16 operational safety of the equipment or diminish the safety of the
17 equipment below the level required by the ASME Code A17.1, ASME Code
18 A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, at the time
19 of alteration.

20 (4) "Annual inspection" means an inspection of
21 equipment performed in a 12-month period in accordance with the
22 applicable ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or
23 ASCE Code 21. The term includes an acceptance inspection performed
24 within that period.

25 (5) "ASCE Code 21" means the American Society of Civil
26 Engineers Code 21 for people movers operated by cables.

27 (6) "ASME Code A17.1" means the American Society of

1 Mechanical Engineers Safety Code for Elevators and Escalators
2 A17.1.

3 (6-a) "Executive director" means the executive
4 director of the department.

5 (7) [~~(2)~~] "ASME Code A17.3" means the 2002 American
6 Society of Mechanical Engineers Safety Code for Elevators and
7 Escalators A17.3.

8 (8) "ASME Code A18.1" means the American Society of
9 Mechanical Engineers Safety Code for Platform Lifts and Stairway
10 Chairlifts A18.1.

11 (9) [~~(3)~~] "Board" means the elevator advisory board.

12 (10) [~~(4)~~] "Commission" means the Texas Commission of
13 Licensing and Regulation.

14 (11) [~~(5)~~] "Commissioner" means the commissioner of
15 licensing and regulation.

16 (12) "Contractor" means a person engaged in the
17 installation, repair, or maintenance of equipment. The term does
18 not include an employee of a contractor or a person engaged in
19 cleaning or any other work performed on equipment that does not
20 affect the operational safety of the equipment or diminish the
21 safety of the equipment below the level required by the ASME Code
22 A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as
23 applicable.

24 (13) [~~(6)~~] "Department" means the Texas Department of
25 Licensing and Regulation.

26 (14) "Equipment" means an elevator, escalator,
27 chairlift, platform lift, automated people mover operated by

1 cables, or moving sidewalk, or related equipment.

2 (15) "Industrial facility" means a facility to which
3 access is primarily limited to employees or contractors working in
4 that facility.

5 (16) [(7)] "Qualified historic building or facility"
6 means a building or facility that is:

7 (A) listed in or eligible for listing in the
8 National Register of Historic Places; or

9 (B) designated as a Recorded Texas Historic
10 Landmark or State Archeological Landmark.

11 (17) [(8)] "Related equipment" means:

12 (A) automatic equipment that is used to move a
13 person in a manner that is similar to that of an elevator, ~~an~~ [or]
14 escalator, a chairlift, a platform lift, an automated people mover
15 operated by cables, or ~~and includes~~ a moving sidewalk; and

16 (B) hoistways, pits, and machine rooms for
17 equipment.

18 (18) "Serious bodily injury" means a major impairment
19 to bodily function or serious dysfunction of any bodily organ or
20 part requiring medical attention.

21 (19) "Unit of equipment" means one elevator,
22 escalator, chairlift, platform lift, automated people mover
23 operated by cables, or moving sidewalk, or related equipment.

24 Sec. 754.0111. EXEMPTION. (a) This subchapter does not
25 apply to ~~[an elevator, escalator, or related]~~ equipment in a
26 private building for a labor union, trade association, private
27 club, or charitable organization that has two or fewer floors.

1 (b) This subchapter does not apply to an elevator located in
2 a single-family dwelling, except as provided by Section 754.0141.

3 Sec. 754.012. ELEVATOR ADVISORY BOARD. (a) The elevator
4 advisory board is composed of nine members appointed by the
5 presiding officer of the commission, with the commission's
6 approval, [commissioner] as follows:

7 (1) a representative of the insurance industry or a
8 certified elevator inspector;

9 (2) a representative of [~~elevator, escalator, and~~
10 ~~related~~] equipment constructors;

11 (3) a representative of owners or managers of a
12 building [~~buildings~~] having fewer than six stories and having [~~an~~
13 ~~elevator, an escalator, or related~~] equipment;

14 (4) a representative of owners or managers of a
15 building [~~buildings~~] having six stories or more and having [~~an~~
16 ~~elevator, an escalator, or related~~] equipment;

17 (5) a representative of independent [~~elevator,~~
18 ~~escalator, and related~~] equipment maintenance companies;

19 (6) a representative of [~~elevator, escalator, and~~
20 ~~related~~] equipment manufacturers;

21 (7) a licensed or registered engineer or architect
22 [~~representative of professional engineers or architects~~];

23 (8) a public member; and

24 (9) a public member with a physical disability.

25 (b) Board members serve at the will of the commission
26 [~~commissioner~~].

27 (c) The presiding officer of the commission, with the

1 commission's approval, [commissioner] shall appoint a presiding
2 officer of the board to serve for two years.

3 (d) The board shall meet at least twice each calendar year.

4 (e) A board member serves without compensation but is
5 entitled to reimbursement for travel as provided for in the General
6 Appropriations Act [~~and other necessary expenses incurred in~~
7 ~~performing duties under this subchapter~~].

8 Sec. 754.013. BOARD DUTIES. To protect public safety and to
9 identify and correct potential hazards, the board shall advise the
10 commission [~~commissioner~~] on:

11 (1) the adoption of appropriate standards for the
12 installation, alteration, operation, and inspection of [~~elevators,~~
13 ~~escalators, and related~~] equipment;

14 (2) the status of [~~elevators, escalators, and related~~]
15 equipment used by the public in this state; [~~and~~]

16 (3) sources of information relating to equipment
17 safety;

18 (4) public awareness programs related to elevator
19 safety, including programs for sellers and buyers of single-family
20 dwelling with elevators, chairlifts, or platform lifts; and

21 (5) any other matter considered relevant by the
22 commission [~~commissioner~~].

23 Sec. 754.014. STANDARDS ADOPTED BY COMMISSION
24 [~~COMMISSIONER~~]. (a) The commission [~~commissioner~~] shall adopt
25 standards for the installation, maintenance, alteration,
26 operation, and inspection of [~~elevators, escalators, and related~~]
27 equipment used by the public in:

1 (1) buildings owned or operated by the state, a
2 state-owned institution or agency, or a political subdivision of
3 the state; and

4 (2) buildings that contain [~~an elevator, an escalator,~~
5 ~~or related~~] equipment that is open to the general public, including
6 a hotel, motel, apartment house, boardinghouse, church, office
7 building, shopping center, or other commercial establishment.

8 (b) Standards adopted by the commission [~~commissioner~~] may
9 not contain requirements in addition to the requirements in the
10 ASME Code A17.1, [~~or~~] ASME Code A17.3, ASME Code A18.1, or ASCE Code
11 21. The standards must allow alteration of existing equipment if
12 the alteration does not diminish the safety of the equipment below
13 the level required by this subchapter at the time of alteration.

14 (c) Standards adopted by the commission [~~commissioner~~] must
15 require [~~elevators, escalators, and related~~] equipment to comply
16 with the installation requirements of the [~~following, whichever is~~
17 ~~the least restrictive.~~

18 [~~(1) the~~] ASME Code A17.1, ASME Code A18.1, or ASCE
19 Code 21 that was in effect and applicable on the date of
20 installation of the [~~elevators, escalators, and related~~]
21 equipment[~~, or~~

22 [~~(2) an applicable municipal ordinance governing the~~
23 ~~installation of elevators, escalators, and related equipment that~~
24 ~~was in effect on the date of installation].~~

25 (d) Standards adopted by the commission [~~commissioner~~] must
26 require [~~elevators, escalators, and related~~] equipment to comply
27 with the installation requirements of the [~~1994~~] ASME Code A17.3

1 that contains minimum safety standards for all [~~elevators,~~
2 ~~escalators, and related~~] equipment, regardless of the date of
3 installation.

4 (e) The executive director [~~On written request, the~~
5 ~~commissioner~~] shall grant a delay for compliance with the
6 applicable ASME Code A17.1, [~~or the 1994~~] ASME Code A17.3, or ASME
7 Code A18.1 until a specified time if compliance is not readily
8 achievable, as that phrase is defined in the Americans with
9 Disabilities Act (42 U.S.C. Section 12101 et seq.), or regulations
10 adopted under that Act. The accumulated total time of all delays
11 may not exceed three years, except as provided by Subsection (f) or
12 as allowed in the discretion of the executive director.

13 (f) The executive director [~~On written request, the~~
14 ~~commissioner~~] shall grant a delay until September 1, 2005, for
15 compliance with the requirements for door restrictors or
16 firefighter's service in the [~~1994~~] ASME Code A17.3 if those
17 requirements were not included in the ASME Code A17.1 that was in
18 effect on the date of installation [~~of the elevator, escalator, or~~
19 ~~related equipment~~] and the [~~that~~] equipment was not subsequently
20 installed [~~by an owner of the elevator, escalator, or related~~
21 ~~equipment~~].

22 (g) The executive director [~~commissioner~~] may grant a
23 waiver of compliance from an applicable code requirement [~~with the~~
24 ~~applicable ASME Code A17.1 or the 1994 ASME Code A17.3~~] if the
25 executive director [~~commissioner~~] finds that:

26 (1) the building in which the [~~elevator, escalator, or~~
27 ~~related~~] equipment is located is a qualified historic building or

1 facility or the noncompliance is due to structural components of
2 the building; ~~and~~

3 (2) noncompliance will not constitute a significant
4 threat to passenger safety; and

5 (3) noncompliance, with adequate alternative
6 safeguards, will not constitute a significant threat to worker
7 safety.

8 (h) The executive director shall grant a waiver of
9 compliance if the noncompliance resulted from compliance with a
10 municipal equipment construction code at the time of the original
11 installation and the noncompliance does not pose imminent and
12 significant danger. The executive director ~~[commissioner]~~ may
13 grant a waiver of compliance with the firefighter's service
14 provisions of the ASME Code A17.1 or the ~~[1994]~~ ASME Code A17.3 in
15 an elevator that exclusively serves a vehicle parking garage in a
16 building that:

- 17 (1) is used only for parking;
18 (2) is constructed of noncombustible materials; and
19 (3) is not greater than 75 feet in height.

20 (i) This subchapter does not apply to ~~[an elevator, an~~
21 ~~escalator, or related]~~ equipment in an industrial facility, or in a
22 grain silo, radio antenna, bridge tower, underground facility, or
23 dam, to which access is limited primarily ~~[principally]~~ to
24 employees of or working in that facility or structure.

25 (j) ~~[The commissioner may charge a reasonable fee as set by~~
26 ~~the commission for an application for waiver or delay.]~~ One
27 application for a waiver or delay may contain all requests related

1 to a unit of equipment [~~particular building~~]. A delay may not be
2 granted indefinitely but must be granted for [~~to~~] a specified time
3 not to exceed three years.

4 (k) For purposes of this section, the date of installation
5 or alteration of equipment is the date that the owner of the real
6 property entered into a contract for the installation or alteration
7 of the [~~purchase of the elevators, escalators, or related~~]
8 equipment. If that date cannot be established, the date of
9 installation or alteration is the date of issuance of the municipal
10 building permit under which the [~~elevators, escalators, or related~~]
11 equipment was installed or altered [~~constructed~~] or, if a municipal
12 building permit was not issued, the date that electrical
13 consumption began for the construction of the building in which the
14 [~~elevators, escalators, or related~~] equipment was installed.

15 Sec. 754.0141. STANDARDS FOR EQUIPMENT IN SINGLE-FAMILY
16 DWELLINGS; REQUIRED INFORMATION. (a) Elevators, chairlifts, or
17 platform lifts installed in a single-family dwelling on or after
18 January 1, 2004, must comply with the ASME Code A17.1 or A18.1, as
19 applicable, and must be inspected by a QEI-1 certified inspector
20 after the installation is complete. The inspector shall provide
21 the dwelling owner a copy of the inspection report.

22 (b) The commission shall, before January 1, 2004, adopt
23 rules containing minimum safety standards that must be used by
24 QEI-1 certified inspectors when inspecting elevators, chairlifts,
25 and platform lifts installed in single-family dwellings.

26 (c) A municipality may withhold a certificate of occupancy
27 for a dwelling or for the installation of the elevator or chairlift

1 until the owner provides a copy of the QEI-1 inspection report to
2 the municipality.

3 (d) A contractor is not required to report to the department
4 any information concerning equipment in a single-family dwelling or
5 the contractor's work on the equipment.

6 (e) On completing installation of equipment in a
7 single-family dwelling, a contractor shall provide the dwelling
8 owner with relevant information, in writing, about use, safety, and
9 maintenance of the equipment, including the advisability of having
10 the equipment periodically and timely inspected by a QEI-1
11 certified inspector.

12 (f) An inspection by a QEI-1 certified inspector of
13 equipment in a single-family dwelling may be performed only at the
14 request and with the consent of the owner. The owner of a
15 single-family dwelling is not subject to Section 754.022, 754.023,
16 or 754.024.

17 Sec. 754.015. RULES. (a) The commission [~~commissioner~~] by
18 rule shall provide for:

19 (1) an annual [~~the~~] inspection and certification of the
20 [~~once each calendar year of elevators, escalators, and related~~]
21 equipment covered by standards adopted under this subchapter;

22 (2) [~~the~~] enforcement of those standards;

23 (3) registration [~~the certification~~] of qualified
24 [~~persons as~~] inspectors and contractors [~~for the purposes of this~~
25 ~~subchapter~~]; [~~and~~]

26 (4) the form of [~~the~~] inspection documents, contractor
27 reports, [~~report~~] and certificates [~~certificate~~] of compliance;

1 (5) notification to building owners, architects, and
2 other building industry professionals regarding the necessity of
3 annually inspecting equipment;

4 (6) approval of continuing education programs for
5 registered QEI-1 certified inspectors; and

6 (7) standards of conduct for individuals who are
7 registered under this subchapter.

8 (b) The commission [~~commissioner~~] by rule may not [~~require~~
9 ~~that~~]:

10 (1) require inspections of equipment to [~~inspection~~]
11 be made more often than every 12 months, except as provided by
12 Subsection (c) [~~once per year of elevators, escalators, and related~~
13 ~~equipment~~];

14 (2) require persons to post a bond or furnish
15 insurance or to have minimum experience or education as a condition
16 of certification or registration; [~~and~~]

17 (3) require building owners to submit to the
18 department proposed plans for equipment installation or
19 alteration; or

20 (4) prohibit a QEI-1 certified inspector who is
21 registered with the department from inspecting equipment.

22 (c) The commission by rule may require a reinspection or
23 recertification of equipment if the equipment has been altered and
24 poses a significant threat to passenger or worker safety or if an
25 annual inspection report indicates an existing violation has
26 continued longer than permitted in a delay granted by the executive
27 director.

1 (d) The executive director may charge a reasonable fee as
2 set by the commission for:

3 (1) registering or renewing registration of an
4 inspector;

5 (2) registering or renewing registration of a
6 contractor;

7 (3) applying for a certificate of compliance;

8 (4) filing an inspection report as required by Section
9 754.019(a)(3), 30 days or more after the date the report is due, for
10 each day the report remains not filed after the date the report is
11 due;

12 (5) applying for a waiver or delay; and

13 (6) attending a continuing education program
14 sponsored by the department for registered QEI-1 inspectors
15 [inspection reports or certificates of compliance be placed in
16 locations other than one provided in Section 754.019(4)].

17 Sec. 754.016. INSPECTION REPORTS [~~REPORT~~] AND CERTIFICATES
18 [~~CERTIFICATE~~] OF COMPLIANCE. (a) Inspection reports [~~An~~
19 ~~inspection report~~] and certificates [~~a certificate~~] of compliance
20 required under this subchapter must cover all [~~elevators,~~
21 ~~escalators, and related~~] equipment in a building or structure
22 appurtenant to the building, including a parking facility, that are
23 owned by the same person or persons. [~~There shall be only one~~
24 ~~inspection report and one certificate of compliance for each~~
25 ~~building.~~]

26 (b) An inspector shall date and sign an inspection report
27 and shall issue the report to the building owner not later than the

1 10th calendar day after the date of inspection. [~~The inspection~~
2 ~~report shall be on forms designated by the commissioner.~~]

3 (c) The executive director [~~commissioner~~] shall date and
4 sign a certificate of compliance and shall issue the certificate to
5 the building owner. The certificate of compliance shall state:

6 (1) that the [~~elevators, escalators, and related~~]
7 equipment has [~~have~~] been inspected by a certified inspector and
8 found by the inspector to be in compliance, except for any delays or
9 waivers granted by the executive director [~~commissioner~~] and stated
10 in the certificate;

11 (2) the date of the last inspection and the due date
12 for the next inspection; and

13 (3) contact information at the department to report a
14 violation of this subchapter.

15 (d) The commission by rule shall:

16 (1) specify what information must be contained in a
17 certificate of compliance;

18 (2) describe the procedure by which a certificate of
19 compliance is issued;

20 (3) require that a certificate of compliance related
21 to an elevator be posted in a publicly visible area of the building;
22 and

23 (4) determine what constitutes a "publicly visible
24 area" under Subdivision (3).

25 Sec. 754.017. CERTIFIED INSPECTORS. (a) In order to
26 inspect equipment, an individual must:

27 (1) be registered [~~An inspector must register~~] with

1 the department;

2 (2) attend educational programs approved by the
3 department;

4 (3) [and] be certified as a QEI-1 [an ASME-QEI-1]
5 inspector by an organization accredited by the American Society of
6 Mechanical Engineers; and

7 (4) pay all applicable fees. [Any certification
8 charges or fees shall be paid by the inspector.]

9 (b) ~~[The commissioner may not by rule prohibit an ASME-QEI-1~~
10 ~~certified inspector who is registered with the department from~~
11 ~~inspecting under this subchapter an elevator, an escalator, or~~
12 ~~related equipment.]~~ A person assisting a certified inspector and
13 working under the direct, on-site supervision of the inspector is
14 not required to be ~~[ASME-QEI-1]~~ certified.

15 (c) A registration expires on the first anniversary of the
16 date of issuance.

17 (d) A certified inspector may not be required to attend more
18 than seven hours of continuing education during each licensing
19 period. [The commissioner may charge a \$15 fee to certified
20 inspectors for registering with the department.]

21 Sec. 754.0171. CONTRACTOR REGISTRATION. (a) A person may
22 not install, repair, or maintain equipment without registering as a
23 contractor with the department as required by this subchapter.

24 (b) A contractor shall submit an application for
25 registration and pay appropriate fees to the department. The
26 registration application form may require information concerning
27 the background, experience, or identity of the applicant.

1 (c) A registration expires on the first anniversary of the
2 date of issuance.

3 (d) A person registering as a contractor under this
4 subchapter shall submit to the department an initial report, not
5 later than the 60th day following the application date, containing:

6 (1) the street address of each building or location at
7 which the person performed installation, repair, alteration, or
8 maintenance of equipment for the previous two years; and

9 (2) the name and mailing address of the building
10 owner.

11 (e) After the initial report required by Subsection (d), a
12 contractor registered as required by this subchapter shall submit
13 to the department a quarterly report containing:

14 (1) the street address of each building or location at
15 which the contractor performed installation, repair, alteration,
16 or maintenance of equipment not reported in the contractor's
17 initial report to the department under Subsection (d); and

18 (2) the name and mailing address of the building
19 owner.

20 (f) Installation, repair, alteration, and maintenance
21 standards for contractors must be consistent with ASME Code A17.1,
22 ASME Code A17.3, ASME Code A18.1, and ASCE Code 21.

23 Sec. 754.0172. INSPECTION FEE. ~~[(a) A person inspecting~~
24 ~~an elevator, an escalator, or related equipment under this~~
25 ~~subchapter may not charge more than \$65 per elevator cab or per~~
26 ~~escalator for each inspection.~~

27 ~~[(b)]~~ The amount charged for an inspection or the

1 performance of an inspection of equipment under this subchapter may
2 not be contingent on the existence of a maintenance contract
3 between the person performing the inspection and any other person.

4 Sec. 754.018. POWERS OF MUNICIPALITIES. Subject to Section
5 754.014(h), if [~~If~~] a municipality operates a program for the
6 installation, maintenance, alteration, inspection, or [~~and~~]
7 certification of [~~elevators, escalators, and related~~] equipment,
8 this subchapter shall not apply to the [~~elevators, escalators, and~~
9 ~~related~~] equipment in that municipality, provided that the
10 standards of installation, maintenance, alteration, inspection,
11 and certification are at least equivalent to [~~no less stringent~~
12 ~~than~~] those contained in this subchapter.

13 Sec. 754.019. DUTIES OF REAL PROPERTY OWNERS. (a) The
14 owner of real property on which [~~an elevator, an escalator, or~~
15 ~~related~~] equipment covered by this subchapter is located shall:

16 (1) have the [~~elevator, escalator, or related~~]
17 equipment inspected annually by a [~~an ASME-QEI-1~~] certified
18 inspector [~~in accordance with the commissioner's rules~~];

19 (2) obtain an inspection report from the inspector
20 evidencing that all [~~elevators, escalators, and related~~] equipment
21 in a building on the real property was [~~were~~] inspected in
22 accordance with this subchapter and rules adopted under this
23 subchapter;

24 (3) file with the executive director [~~commissioner a~~
25 ~~copy of~~] each inspection report, and all applicable fees, [~~and a \$20~~
26 ~~filing fee for each report, plus \$5 for each elevator, escalator, or~~
27 ~~related equipment~~] not later than the 60th day after the date on

1 which an inspection is made under this subchapter;

2 (4) display the certificate of compliance:

3 (A) in a publicly visible area of the building,
4 as determined by commission rule under Section 754.016, [~~the~~
5 ~~elevator mechanical room~~] if the certificate relates to an
6 elevator;

7 (B) in the escalator box if the certificate
8 relates to an escalator; or

9 (C) in a place designated by the executive
10 director [~~commissioner~~] if the certificate relates to [~~related~~]
11 equipment other than an elevator or escalator; and

12 (5) display the inspection report at the locations
13 designated in Subdivision (4) until a certificate of compliance is
14 issued [~~by the commissioner~~].

15 (b) When an inspection report is filed [~~with the~~
16 ~~commissioner~~], the owner shall submit to the executive director, as
17 applicable [~~commissioner~~]:

18 (1) verification that any deficiencies in the
19 inspector's report have been remedied or that a bona fide contract
20 to remedy the deficiencies has been entered into; or

21 (2) any application for delay or waiver of an
22 applicable standard.

23 (c) [~~An inspection must be made not later than 18 months~~
24 ~~after the previous calendar year's inspection. This subsection~~
25 ~~does not affect the requirement that elevators, escalators, or~~
26 ~~related equipment be inspected at least once each calendar year.~~

27 [~~(d)~~] For the purpose of determining timely filing under

1 Subsection (a)(3) and Section 754.016(b), an inspection report and
2 filing fees [~~fee~~] are considered filed on the earlier of:

3 (1) the date of personal delivery;

4 (2) the date of postmark [~~mailing~~] by United States
5 mail if properly addressed to the executive director; or

6 (3) the date of deposit with a commercial courier
7 service, if properly addressed to the executive director
8 [~~commissioner~~].

9 (d) [~~(e) If the inspection report and fee required by~~
10 ~~Subsection (a)(3) are not timely filed, the commissioner may charge~~
11 ~~the owner of the real property on which the elevator, escalator, or~~
12 ~~related equipment is located an additional \$100 fee for late~~
13 ~~filing.~~

14 [~~(f) The commissioner may not require that an inspection~~
15 ~~report or certificate of compliance be placed inside or immediately~~
16 ~~outside an elevator cab or escalator or in the lobby or hallways of~~
17 ~~a building.~~

18 [~~(g)~~] A fee may not be charged or collected for a
19 certificate of compliance for an institution of higher education as
20 defined in Section 61.003, Education Code.

21 (e) An owner shall report to the department each accident
22 involving equipment not later than 72 hours following the accident.

23 Sec. 754.020. CHIEF ELEVATOR INSPECTOR [~~DEPOSIT OF FEES~~].
24 The executive director may appoint a chief elevator inspector to
25 administer the equipment inspection and registration program. The
26 chief elevator inspector:

27 (1) may not have a financial or commercial interest in

1 the manufacture, maintenance, repair, inspection, installation, or
2 sale of equipment; and

3 (2) must possess a QEI-1 certification or obtain the
4 certification within six months after becoming chief inspector
5 ~~[Fees collected under this subchapter shall be deposited to the~~
6 ~~credit of an account in the general revenue fund that may be used by~~
7 ~~the commissioner only to administer and enforce this subchapter and~~
8 ~~to reimburse expenses of board members provided by this~~
9 ~~subchapter].~~

10 Sec. 754.021. LIST OF REGISTERED INSPECTORS AND CONTRACTORS [~~+~~
11 ~~PERSONNEL~~]. The executive director shall [~~commissioner may~~]:

12 (1) compile a list of [~~ASME-QEI-1~~] certified
13 inspectors and contractors who are registered with the department
14 [~~to perform an inspection under this subchapter~~]; and

15 (2) employ personnel who are [~~as~~] necessary to enforce
16 this subchapter.

17 Sec. 754.022. NOTICE OF NONCOMPLIANCE. If the department
18 [~~commissioner~~] learns of a situation of noncompliance under Section
19 754.019, the department [~~commissioner~~] shall send notice by
20 certified mail of the noncompliance and the actions required to
21 remedy the noncompliance to the record owner of the real property on
22 which the equipment that is the subject of the noncompliance is
23 located.

24 Sec. 754.023. INVESTIGATION; REGISTRATION [~~LICENSE~~]
25 PROCEEDINGS; INJUNCTION; EMERGENCY ORDERS. (a) If there is good
26 cause for the executive director [~~commissioner~~] to believe that [~~an~~
27 ~~elevator, an escalator, or related~~] equipment on real property

1 poses an imminent and significant danger [~~is dangerous~~] or that an
2 accident involving [~~an elevator, an escalator, or related~~]
3 equipment occurred on the property and serious bodily injury or
4 property damage resulted, the executive director [~~the~~
5 ~~commissioner~~] may enter the property during regular business hours
6 after notice to the owner, operator, or person in charge of the
7 property to inspect the [~~elevator, escalator, or related~~] equipment
8 or investigate the danger or accident at no cost to the owner.

9 (b) The executive director [~~commissioner~~] may enter real
10 property during regular business hours after notice to the owner,
11 operator, or person in charge of the property to verify, at no cost
12 to the owner, whether an inspection report or certificate of
13 compliance has been displayed as required under Section 754.019(a).

14 (c) The commission [~~commissioner~~] may deny, suspend, or
15 revoke a [~~the~~] registration under this subchapter and may assess an
16 administrative penalty [~~of any ASME-QEI-1 certified inspector~~]
17 for:

18 (1) obtaining registration with the executive
19 director [~~commissioner~~] by fraud or false representation;

20 (2) falsifying a [~~any inspection~~] report submitted to
21 the executive director [~~commissioner~~]; or

22 (3) violating this subchapter or a rule adopted under
23 this subchapter.

24 (d) Proceedings for the denial, suspension, or revocation
25 of a registration and appeals from those proceedings are governed
26 by Chapter 2001, Government Code.

27 (e) The executive director [~~commissioner~~] is entitled to

1 appropriate injunctive relief to prevent a violation or threatened
2 violation of this subchapter or a rule adopted under this
3 subchapter.

4 (f) [(e)] The executive director [~~commissioner~~] may bring
5 suit in a district court in Travis County or in the county in which
6 the violation or threatened violation occurs. If requested, the
7 attorney general shall represent the executive director
8 [~~commissioner~~] in the suit.

9 (g) The executive director may issue an emergency order as
10 necessary to enforce this subchapter if the executive director
11 determines that an emergency exists requiring immediate action to
12 protect the public health and safety.

13 (h) The executive director may issue an emergency order with
14 simultaneous notice and without hearing or with the notice and
15 opportunity for hearing practicable under the circumstances.

16 (i) If an emergency order is issued under this section
17 without a hearing, the executive director shall set the time and
18 place for a hearing to affirm, modify, or set aside the emergency
19 order not later than the 10th day after the date the order was
20 issued.

21 (j) An emergency order may direct a building owner or
22 manager to disconnect power to or lock out equipment if:

23 (1) the department determines imminent and
24 significant danger to passenger safety exists if action is not
25 taken immediately and reasonable effort has been made for voluntary
26 compliance by notification to the building owner or manager of the
27 danger before the issuance of an emergency order; or

1 (2) an annual inspection has not been performed in
2 more than two years and:

3 (A) the department gives the building owner or
4 manager, or the agent of the building owner or manager, 60 days'
5 written notice by certified mail directing the equipment to be
6 inspected according to this subchapter; and

7 (B) after the expiration of the notice period
8 under Paragraph (A), the department gives the building owner or
9 manager, or the agent of the building owner or manager, written
10 notice by certified mail stating that an order to disconnect power
11 or lock out equipment will be made after the seventh day after the
12 date notice is delivered.

13 (k) If an emergency order to disconnect power or lock out
14 equipment is issued, the building owner or manager may have the
15 power reconnected or the equipment unlocked only if:

16 (1) a registered inspector or contractor or a
17 department representative has filed a written form with the
18 department verifying the imminent and significant danger has been
19 removed by repair, replacement, or other means; and

20 (2) the building owner, before the reconnection of
21 power or unlocking of equipment, reimburses the department for all
22 expenses incurred relating to the disconnection of power or
23 lockout.

24 (1) The executive director or the executive director's
25 designee may allow delayed payment if the building owner or manager
26 commits in writing to pay the department for the expenses required
27 by Subsection (k) not later than the 10th day after the date power

1 is reconnected or equipment is unlocked.

2 (m) If an emergency order to disconnect power or lock out
3 equipment is issued and the building owner later notifies the
4 department that the imminent and significant danger no longer
5 exists, the executive director or the executive director's designee
6 shall, after the requirements of Subsection (k) are satisfied,
7 promptly issue written permission to reconnect power or unlock the
8 equipment and notify the owner.

9 Sec. 754.024. CRIMINAL PENALTY. (a) A person commits an
10 offense if the person receives notice of noncompliance under
11 Section 754.022 and the person has not remedied the noncompliance
12 or entered into a bona fide contract to remedy the noncompliance
13 before the 61st day after the date on which the notice is received.

14 (b) An offense under this section is a Class C misdemeanor.

15 (c) Each day of an offense under Subsection (a) constitutes
16 a separate offense.

17 Sec. 754.025. APPLICATION OF CERTAIN LAW. (a) Chapter 53,
18 Occupations Code, applies to a registration under this subchapter.

19 (b) Sections 51.401 and 51.404, Occupations Code, do not
20 apply to this subchapter.

21 SECTION 11.002. Not later than March 1, 2004, the Texas
22 Commission of Licensing and Regulation shall adopt the rules
23 required by Section 754.016 and Subsection (a), Section 754.019,
24 Health and Safety Code, as amended by this article.

25 SECTION 11.003. The changes in law made by this article
26 apply only to an inspection report or certificate of compliance
27 issued on or after the effective date of this article. An

1 inspection report or certificate issued before the effective date
2 of this article is covered by the law in effect when the report or
3 certificate was issued and is valid until the renewal date of that
4 report or certificate under the terms of the former law, and the
5 former law is continued in effect for that purpose. On renewal, an
6 inspection report or certificate is subject to Chapter 754, Health
7 and Safety Code, as amended by this article.

8 SECTION 11.004. (a) This article takes effect
9 September 1, 2003, except that:

10 (1) a contractor is not required to be registered
11 under Section 754.0171, Health and Safety Code, as amended by this
12 article, before January 1, 2004; and

13 (2) an escalator constructed before September 1,
14 2003, is not required to comply with step/skirt index requirements
15 imposed under the 2002 American Society of Mechanical Engineers
16 Safety Code for Elevators and Escalators A17.3 before September 1,
17 2009.

18 (b) A member of the elevator advisory board serving on the
19 effective date of this article continues to serve until removed by
20 the governor or until the member's successor is appointed by the
21 governor.

22 ARTICLE 12. INDUSTRIALIZED HOUSING AND BUILDINGS

23 SECTION 12.001. Section 1202.001, Occupations Code, is
24 amended by amending Subdivision (2) and adding Subdivision (4-a) to
25 read as follows:

26 (2) "Construction site office building" means a
27 commercial structure that is:

1 (A) not open to the public; and

2 (B) used as an office at a commercial site by a
3 person constructing a building, road, bridge, utility, or other
4 infrastructure or improvement to real property [~~"Commissioner"~~
5 ~~means the commissioner of licensing and regulation~~].

6 (4-a) "Executive director" means the executive
7 director of the department.

8 SECTION 12.002. Section 1202.003, Occupations Code, is
9 amended by amending Subsection (a) and adding Subsection (d) to
10 read as follows:

11 (a) An industrialized building is a commercial structure
12 that is:

13 (1) constructed in one or more modules or constructed
14 using one or more modular components built at a location other than
15 the commercial [~~permanent~~] site; and

16 (2) designed to be used as a commercial building when
17 the module or the modular component is transported to the
18 commercial [~~permanent~~] site and erected or installed [~~on a~~
19 ~~permanent foundation system~~].

20 (d) An industrialized building includes a permanent
21 commercial structure and a commercial structure designed to be
22 transported from one commercial site to another commercial site.

23 SECTION 12.003. Section 1202.101, Occupations Code, is
24 amended to read as follows:

25 Sec. 1202.101. RULES; ORDERS. (a) The commission
26 [~~commissioner~~] shall adopt rules and issue orders as necessary to:

27 (1) ensure compliance with the purposes of this

1 chapter; and

2 (2) provide for uniform enforcement of this chapter.

3 (b) The commission [~~commissioner~~] shall adopt rules as
4 appropriate to implement the council's actions, decisions,
5 interpretations, and instructions.

6 SECTION 12.004. Section 1202.102, Occupations Code, is
7 amended to read as follows:

8 Sec. 1202.102. RULES PROVIDING FOR REGISTRATION AND
9 REGULATION. The commission [~~commissioner~~] by rule shall provide
10 for registration and regulation of manufacturers or builders of
11 industrialized housing or buildings.

12 SECTION 12.005. Subsection (a), Section 1202.104,
13 Occupations Code, is amended to read as follows:

14 (a) The commission shall set fees, in amounts sufficient to
15 cover the costs of the inspections described by this chapter and the
16 administration of this chapter, for:

17 (1) the registration of manufacturers or builders of
18 industrialized housing or buildings;

19 (2) the inspection of industrialized housing or
20 buildings [~~at the manufacturing facility~~]; and

21 (3) the issuance of decals or insignia required under
22 Section 1202.204.

23 SECTION 12.006. Subchapter C, Chapter 1202, Occupations
24 Code, is amended by adding Section 1202.106 to read as follows:

25 Sec. 1202.106. APPLICABILITY OF OTHER LAW. Sections 51.401
26 and 51.404 do not apply to this chapter.

27 SECTION 12.007. Subchapter D, Chapter 1202, Occupations

1 Code, is amended by adding Section 1202.1535 to read as follows:

2 Sec. 1202.1535. EFFECT OF BUILDING CODE AMENDMENT. (a) An
3 industrialized building that bears an approved decal or insignia
4 indicating that the building complies with the mandatory building
5 codes and that has not been modified or altered is considered to be
6 in compliance with a new mandatory building code adopted by the
7 council or an amendment to a code approved by the council under
8 Section 1202.152 or 1202.153.

9 (b) The owner of an industrialized building that bears an
10 approved decal or insignia indicating the building complies with
11 the mandatory building codes and that is modified or altered after
12 the date the council adopts a new mandatory building code or the
13 council approves a building code amendment must ensure:

14 (1) the entire building complies with the mandatory
15 building code or building code amendment if the cost of the
16 modification or alteration to the building is at least 50 percent of
17 the value of the modules or modular components used in the
18 construction of the building; or

19 (2) the modified or altered portion of the building
20 complies with the mandatory building code or building code
21 amendment if the cost of the modification or alteration is less than
22 50 percent of the value of the modules or modular components.

23 SECTION 12.008. Section 1202.154, Occupations Code, is
24 amended to read as follows:

25 Sec. 1202.154. DESIGN REVIEW. To ensure compliance with
26 the mandatory building [~~construction~~] codes, the department or
27 approved design review agency shall review all designs, plans, and

1 specifications of industrialized housing and buildings in
2 accordance with council interpretations and instructions.

3 SECTION 12.009. Subsection (b), Section 1202.156,
4 Occupations Code, is amended to read as follows:

5 (b) With reference to the standards and requirements of the
6 mandatory building [~~construction~~] codes, the council shall
7 determine, from an engineering performance standpoint, all
8 questions concerning:

9 (1) code equivalency; or

10 (2) alternative materials or methods of construction.

11 SECTION 12.010. Section 1202.202, Occupations Code, is
12 amended to read as follows:

13 Sec. 1202.202. DEPARTMENT [~~IN-PLANT~~] INSPECTIONS. (a) To
14 ensure compliance with the mandatory building codes or approved
15 designs, plans, and specifications, the department shall inspect
16 the construction of industrialized housing and buildings [~~at the~~
17 ~~manufacturing facility~~]. The executive director [~~commissioner~~]
18 may designate approved third-party inspectors to perform the
19 inspections subject to the rules of the commission [~~commissioner~~].

20 (b) Local building officials may witness department
21 [~~in-plant~~] inspections to enable the local officials to make
22 recommendations on inspection procedures to the council.

23 SECTION 12.011. Section 1202.203, Occupations Code, is
24 amended by amending Subsection (a) and adding Subsection (c) to
25 read as follows:

26 (a) A municipal building official shall inspect all
27 construction involving [~~at the permanent site of~~] industrialized

1 housing and buildings to be located in the municipality to ensure
2 compliance with designs, plans, and specifications, including
3 inspection of:

- 4 (1) the construction of the foundation system; and
5 (2) the erection and installation of the modules or
6 modular components on the [~~permanent~~] foundation.

7 (c) An inspection under Subsection (a) shall be conducted:

8 (1) at the permanent site, if the inspection is of
9 industrialized housing; and

10 (2) at the commercial site, if the inspection is of
11 industrialized buildings.

12 SECTION 12.012. Section 1202.204, Occupations Code, is
13 amended to read as follows:

14 Sec. 1202.204. RULES PROVIDING FOR DECALS OR INSIGNIA.

15 (a) The commission [~~commissioner~~] by rule shall provide for the
16 placement of decals or insignia on each transportable modular
17 section or modular component to indicate compliance with the
18 mandatory building [~~construction~~] codes.

19 (b) The commission by rule shall exempt a construction site
20 office building from the requirements of this section.

21 SECTION 12.013. Section 1202.205, Occupations Code, is
22 amended to read as follows:

23 Sec. 1202.205. RECIPROCITY. (a) The commission

24 [~~commissioner~~] by rule may authorize an inspection of
25 industrialized housing or buildings constructed in another state to
26 be performed by an inspector of the equivalent regulatory agency of
27 the other state.

1 (b) The commission [~~commissioner~~] by rule may authorize an
2 inspection of industrialized housing or buildings constructed in
3 this state for use in another state.

4 (c) The commission [~~commissioner~~] shall enter into a
5 reciprocity agreement with the equivalent regulatory agency of the
6 other state as necessary to implement this section.

7 SECTION 12.014. Section 1202.252, Occupations Code, is
8 amended to read as follows:

9 Sec. 1202.252. MUNICIPAL REGULATION OF INDUSTRIALIZED
10 HOUSING AND BUILDINGS. (a) A municipality that regulates the
11 on-site construction or installation of industrialized housing and
12 buildings may:

13 (1) require and review, for compliance with mandatory
14 building [~~construction~~] codes, a complete set of designs, plans,
15 and specifications bearing the council's stamp of approval for each
16 installation of industrialized housing or buildings in the
17 municipality;

18 (2) require that all applicable local permits and
19 licenses be obtained before construction begins on a building site;

20 (3) require, in accordance with commission
21 [~~commissioner~~] rules, that all modules or modular components bear
22 an approved decal or insignia indicating inspection by the
23 department [~~at the manufacturing facility~~]; and

24 (4) establish procedures for the inspection of:

25 (A) the erection and installation of
26 industrialized housing or buildings to be located in the
27 municipality, to ensure compliance with mandatory building

1 ~~[construction]~~ codes and commission ~~[commissioner]~~ rules; and

2 (B) all foundation and other on-site
3 construction, to ensure compliance with approved designs, plans,
4 and specifications.

5 (b) Procedures described by Subsection (a)(4) may require:

6 (1) before occupancy, a final inspection or test in
7 accordance with mandatory building ~~[construction]~~ codes; and

8 (2) correction of any deficiency identified by the
9 test or discovered in the final inspection.

10 SECTION 12.015. Subsection (b), Section 1202.301,
11 Occupations Code, is amended to read as follows:

12 (b) A person may not construct, sell or offer to sell, lease
13 or offer to lease, or transport over a street or highway of this
14 state any industrialized housing or building, or modular section or
15 component of a modular section, in violation of this chapter or a
16 rule of the commission or order of the commission or executive
17 director ~~[commissioner]~~.

18 SECTION 12.016. Section 1202.302, Occupations Code, is
19 amended to read as follows:

20 Sec. 1202.302. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.
21 In addition to imposing sanctions allowed under Section 51.353, the
22 commission ~~[The commissioner]~~ may deny, permanently revoke, or
23 suspend for a definite period and specified location or geographic
24 area a certificate of registration if the commission ~~[commissioner]~~
25 finds that the applicant or registrant:

26 (1) provided false information on an application or
27 other document filed with the department;

1 (2) failed to pay a fee or file a report required by
2 the department for the administration or enforcement of this
3 chapter;

4 (3) engaged in a false, misleading, or deceptive act
5 or practice as described by Subchapter E, Chapter 17, Business &
6 Commerce Code; or

7 (4) violated:

8 (A) this chapter;

9 (B) a rule adopted by the commission or order
10 issued by the commission or the executive director [~~commissioner~~]
11 under this chapter; or

12 (C) a decision, action, or interpretation of the
13 council.

14 SECTION 12.017. Subsection (b), Section 1202.351,
15 Occupations Code, is amended to read as follows:

16 (b) A person commits an offense if the person [~~knowingly and~~
17 ~~wilfully~~] violates this chapter or a published rule of the
18 commission or order of the commission or the executive director
19 [~~commissioner~~].

20 SECTION 12.018. The following laws are repealed:

21 (1) Subdivision (2), Section 1202.001, Occupations
22 Code; and

23 (2) Section 1202.103, Occupations Code.

24 ARTICLE 13. PERSONNEL EMPLOYMENT SERVICES

25 SECTION 13.001. Section 2501.001, Occupations Code, is
26 amended by amending Subdivision (2) and adding Subdivisions (3-a)
27 and (4-a) to read as follows:

1 (2) "Commission" [~~"Commissioner"~~] means the Texas
2 Commission of Licensing and Regulation [~~commissioner of licensing~~
3 ~~and regulation~~].

4 (3-a) "Department" means the Texas Department of
5 Licensing and Regulation.

6 (4-a) "Executive director" means the executive
7 director of the department.

8 SECTION 13.002. Section 2501.152, Occupations Code, is
9 amended to read as follows:

10 Sec. 2501.152. COMPLAINT AND INVESTIGATION. (a) A person
11 [~~by sworn affidavit~~] may file with the executive director
12 [~~commissioner~~] a complaint alleging a violation of Section
13 2501.102.

14 (b) On receipt of a complaint, the executive director
15 [~~commissioner~~] shall investigate the alleged violation and may:

- 16 (1) inspect any records relevant to the complaint; and
17 (2) subpoena those records and any necessary
18 witnesses.

19 SECTION 13.003. Subsections (a) and (c), Section 2501.153,
20 Occupations Code, are amended to read as follows:

21 (a) If the executive director [~~commissioner~~] determines as
22 a result of an investigation that a violation of Section 2501.102
23 may have occurred, the commission [~~commissioner~~] shall hold a
24 hearing [~~not later than the 45th day after the date the complaint~~
25 ~~was filed under Section 2501.152~~].

26 (c) The commission [~~commissioner~~] shall render a decision
27 on the alleged violation [~~not later than the eighth day~~] after [~~the~~

1 ~~date~~] the hearing is concluded.

2 SECTION 13.004. Section 2501.154, Occupations Code, is
3 amended to read as follows:

4 Sec. 2501.154. SANCTIONS. (a) If, after a hearing, the
5 commission [~~commissioner~~] determines that a personnel service has
6 violated Section 2501.102, the commission [~~commissioner~~] may, as
7 appropriate:

- 8 (1) issue a warning to the personnel service; or
9 (2) suspend or revoke the certificate of authority
10 issued to the personnel service.

11 (b) If, after a hearing, the commission [~~commissioner~~]
12 determines that a personnel service has violated Section 2501.102,
13 the commission [~~commissioner~~] may award the complainant an amount
14 equal to the amount of the fee charged by the personnel service.

15 SECTION 13.005. Sections 2501.058 and 2501.155,
16 Occupations Code, are repealed.

17 ARTICLE 14. PROPERTY TAX CONSULTANTS

18 SECTION 14.001. Section 1152.001, Occupations Code, is
19 amended by adding Subdivision (3-a) to read as follows:

20 (3-a) "Executive director" means the executive
21 director of the department.

22 SECTION 14.002. The heading to Subchapter B, Chapter 1152,
23 Occupations Code, is amended to read as follows:

24 SUBCHAPTER B. DUTIES OF COMMISSION, EXECUTIVE DIRECTOR,
25 [COMMISSIONER] AND DEPARTMENT

26 SECTION 14.003. Section 1152.051, Occupations Code, is
27 amended to read as follows:

1 Sec. 1152.051. STANDARDS OF CONDUCT FOR REGISTRANTS. The
2 commission [~~commissioner~~] by rule shall establish standards of
3 practice, conduct, and ethics for registrants.

4 SECTION 14.004. Subsections (a) and (b), Section 1152.102,
5 Occupations Code, are amended to read as follows:

6 (a) The council is composed of six members appointed by the
7 presiding officer of the commission, with the commission's
8 approval.

9 (b) The presiding officer of the commission may appoint not
10 more than two members who are qualified for an exemption under
11 Section 1152.002(a)(3).

12 SECTION 14.005. Subsection (b), Section 1152.104,
13 Occupations Code, is amended to read as follows:

14 (b) If a vacancy occurs during a member's term, the
15 presiding officer of the commission, with the commission's
16 approval, [commissioner] shall appoint to fill the unexpired part
17 of the term a replacement who meets the qualifications of the
18 vacated office.

19 SECTION 14.006. Section 1152.105, Occupations Code, is
20 amended to read as follows:

21 Sec. 1152.105. PRESIDING OFFICER. The presiding officer of
22 the commission, with the commission's approval, [Before March 1 of
23 each year, the council] shall appoint [elect] a member of the
24 council to serve as presiding officer of the council for two years
25 [until the last day of February of the following year].

26 SECTION 14.007. Section 1152.108, Occupations Code, is
27 amended to read as follows:

1 Sec. 1152.108. COUNCIL POWERS. The council shall:

2 (1) recommend to the commission [~~commissioner~~]
3 standards of practice, conduct, and ethics for registrants to be
4 adopted under this chapter;

5 (2) recommend to the commission amounts for the fees
6 it may set under this chapter;

7 (3) recommend to the commission [~~commissioner~~]
8 contents for the senior property tax consultant registration
9 examination and standards of acceptable performance;

10 (4) assist and advise the commission [~~commissioner~~] in
11 recognizing continuing education programs and educational courses
12 for registrants; and

13 (5) advise the commission [~~commissioner~~] in
14 establishing educational requirements for initial applicants.

15 SECTION 14.008. Subsection (a), Section 1152.155,
16 Occupations Code, is amended to read as follows:

17 (a) To be eligible for registration, an applicant must:

18 (1) be at least 18 years of age;
19 (2) hold a high school diploma or its equivalent;
20 (3) pay the fees required by the commission;
21 (4) have a place of business in this state or designate
22 a resident of this state as the applicant's agent for service of
23 process; and

24 (5) meet any additional qualifications required by
25 this chapter or by the commission [~~commissioner~~] under this chapter
26 or Chapter 51.

27 SECTION 14.009. Section 1152.160, Occupations Code, is

1 amended to read as follows:

2 Sec. 1152.160. SENIOR PROPERTY TAX CONSULTANT REGISTRATION
3 EXAMINATION. (a) The executive director [~~commissioner~~] shall:

4 (1) adopt an examination for registration as a senior
5 property tax consultant; and

6 (2) establish the standards for passing the
7 examination.

8 (b) The department shall offer the examination at times and
9 places designated by the executive director [~~commissioner~~].

10 (c) To be eligible to take the examination, an applicant
11 must pay to the department an examination fee. [~~The commissioner by
12 rule may establish conditions for refunding the examination fee to
13 an applicant who does not take the examination.~~]

14 (d) The examination must:

15 (1) test the applicant's knowledge of:

16 (A) property taxation;

17 (B) the property tax system;

18 (C) property tax administration;

19 (D) ethical standards; and

20 (E) general principles of appraisal, accounting,
21 and law as they relate to property tax consulting services; and

22 (2) be graded according to rules adopted by the
23 commission [~~commissioner~~].

24 SECTION 14.010. Section 1152.201, Occupations Code, is
25 amended to read as follows:

26 Sec. 1152.201. TERM OF CERTIFICATE OF REGISTRATION. Except
27 as otherwise provided by the commission, a certificate of

1 registration expires on the first [~~second~~] anniversary of the date
2 of issuance.

3 SECTION 14.011. Subsection (a), Section 1152.202,
4 Occupations Code, is amended to read as follows:

5 (a) The executive director [~~commissioner~~] shall issue to an
6 eligible registrant a certificate of renewal of registration on the
7 timely receipt of the required renewal fee. [~~The certificate~~
8 ~~expires on the second anniversary of the date of issuance.~~]

9 SECTION 14.012. Section 1152.204, Occupations Code, is
10 amended to read as follows:

11 Sec. 1152.204. RECOGNITION OF EDUCATIONAL PROGRAMS AND
12 COURSES. (a) The commission [~~commissioner~~] by rule shall
13 recognize appropriate continuing education programs for
14 registrants.

15 (b) The commission [~~commissioner~~] shall recognize a
16 continuing education course, including a course on the legal issues
17 and law related to property tax consulting services, that is:

18 (1) approved by the Texas Real Estate Commission or
19 the Texas Appraiser Licensing and Certification Board; and

20 (2) completed by a registrant who also holds:

21 (A) an active real estate broker license or an
22 active real estate salesperson license under Chapter 1101; or

23 (B) an active real estate appraiser license or
24 certificate under Chapter 1103.

25 (c) The commission [~~commissioner~~] may recognize an
26 educational program or course:

27 (1) related to property tax consulting services; and

1 (2) offered or sponsored by a public provider or a
2 recognized private provider, including:

3 (A) the comptroller;

4 (B) the State Bar of Texas;

5 (C) the Texas Real Estate Commission;

6 (D) an institution of higher education that meets
7 program and accreditation standards comparable to those for public
8 institutions of higher education as determined by the Texas Higher
9 Education Coordinating Board; or

10 (E) a nonprofit and voluntary trade association,
11 institute, or organization:

12 (i) whose membership consists primarily of
13 persons who represent property owners in property tax or
14 transactional tax matters;

15 (ii) that has written experience and
16 examination requirements for membership or for granting
17 professional designation to its members; and

18 (iii) that subscribes to a code of
19 professional conduct or ethics.

20 (d) The commission [~~commissioner~~] may recognize a private
21 provider of an educational program or course if the provider:

22 (1) applies to the department on a printed form
23 prescribed by the executive director [~~commissioner~~]; and

24 (2) pays in the amounts set by the commission:

25 (A) a nonrefundable application fee; and

26 (B) an educational provider's fee.

27 (e) The department shall refund the educational provider's

1 fee if the commission [~~commissioner~~] does not recognize the
2 provider's educational program or course.

3 SECTION 14.013. Section 1152.251, Occupations Code, is
4 amended to read as follows:

5 Sec. 1152.251. DISCIPLINARY POWERS OF COMMISSION
6 [~~COMMISSIONER~~]. After a hearing, the commission [~~commissioner~~] may
7 deny a certificate of registration and may impose an administrative
8 sanction or penalty and seek injunctive relief and a civil penalty
9 against a registrant as provided by Chapter 51 for:

10 (1) a violation of this chapter or a rule applicable to
11 the registrant adopted by the commission [~~commissioner~~] under this
12 chapter;

13 (2) gross incompetency in the performance of property
14 tax consulting services;

15 (3) dishonesty or fraud committed while performing
16 property tax consulting services; or

17 (4) a violation of the standards of ethics adopted by
18 the commission [~~commissioner~~].

19 SECTION 14.014. The following laws are repealed:

20 (1) Subdivision (2), Section 1152.001, Occupations
21 Code;

22 (2) Section 1152.161, Occupations Code;

23 (3) Section 1152.163, Occupations Code;

24 (4) Subsections (b) and (c), Section 1152.202,
25 Occupations Code; and

26 (5) effective March 1, 2004, Section 1152.203,
27 Occupations Code.

1 SECTION 14.015. The change in law made by this article to
2 Section 1152.201, Occupations Code, applies only to a certificate
3 of registration issued or renewed on or after the effective date of
4 this Act. A certificate of registration issued or renewed before
5 the effective date of this Act is governed by that section as it
6 existed immediately before the effective date of this Act, and that
7 law is continued in effect for that purpose.

8 SECTION 14.016. The changes in law made by this article
9 applying to members of the Property Tax Consultants Advisory
10 Council do not affect the entitlement of a member serving on the
11 council immediately before September 1, 2003, to continue to serve
12 and function as a member of the council for the remainder of the
13 member's term. Those changes in law apply only to a member
14 appointed on or after September 1, 2003.

15 ARTICLE 15. SERVICE CONTRACT PROVIDERS

16 SECTION 15.001. Section 1304.002, Occupations Code, is
17 amended by adding Subdivision (5-a) to read as follows:

18 (5-a) "Executive director" means the executive
19 director of the department.

20 SECTION 15.002. Section 1304.051, Occupations Code, is
21 amended to read as follows:

22 Sec. 1304.051. SERVICE CONTRACT PROVIDERS ADVISORY BOARD.

23 (a) The Service Contract Providers Advisory Board consists of six
24 members appointed by the presiding officer of the commission, with
25 the commission's approval, [~~commissioner~~] and one ex officio
26 nonvoting member.

27 (b) Of the appointed members:

1 (1) two must be officers, directors, or employees of a
2 provider of service contracts that have been approved by the
3 executive director [~~commissioner~~];

4 (2) two must be officers, directors, or employees of a
5 retail outlet or other entity in this state that provides to
6 consumers service contracts approved by the executive director
7 [~~commissioner~~] for sale to consumers;

8 (3) one must be an officer, director, or employee of an
9 entity authorized by the Texas Department of Insurance to sell
10 reimbursement insurance policies; and

11 (4) one must be a resident of this state who holds, as
12 a consumer, a service contract that is in force in this state on the
13 date of the member's appointment and was issued by a provider
14 registered under this chapter.

15 (c) The executive director [~~commissioner~~] or the executive
16 director's [~~commissioner's~~] designee serves as an ex officio
17 nonvoting member of the advisory board.

18 SECTION 15.003. Subsection (a), Section 1304.052,
19 Occupations Code, is amended to read as follows:

20 (a) The advisory board shall advise the commission
21 [~~commissioner~~] in adopting rules and in administering and enforcing
22 this chapter.

23 SECTION 15.004. Subsection (b), Section 1304.053,
24 Occupations Code, is amended to read as follows:

25 (b) If a vacancy occurs during an appointed member's term,
26 the presiding officer of the commission [~~commissioner~~] shall fill
27 the vacancy for the remainder of the unexpired term with a person

1 who represents the same interests as the predecessor.

2 SECTION 15.005. Section 1304.054, Occupations Code, is
3 amended to read as follows:

4 Sec. 1304.054. PRESIDING OFFICER. The presiding officer of
5 the commission, with the commission's approval, [commissioner]
6 shall designate one member of the advisory board to serve as
7 presiding officer of the board for two years.

8 SECTION 15.006. Subsections (a) and (b), Section 1304.103,
9 Occupations Code, are amended to read as follows:

10 (a) The executive director [commissioner] shall develop a
11 tiered schedule of annual registration fees under which a
12 provider's registration fee is based on the number of service
13 contracts the provider sold in this state during the preceding
14 12-month period.

15 (b) The commission shall set the amounts of the fees to
16 cover the costs of administering this chapter. [~~The maximum fee may~~
17 ~~not exceed \$2,000.~~]

18 SECTION 15.007. Subchapter C, Chapter 1304, Occupations
19 Code, is amended by adding Section 1304.105 to read as follows:

20 Sec. 1304.105. RENEWAL. The commission shall adopt rules
21 regarding the renewal of a registration issued under this chapter.

22 SECTION 15.008. Subsections (a), (b), (c), and (e), Section
23 1304.151, Occupations Code, are amended to read as follows:

24 (a) To ensure the faithful performance of a provider's
25 obligations to its service contract holders, each provider must:

26 (1) insure the provider's service contracts under a
27 reimbursement insurance policy issued by an insurer authorized to

1 transact insurance in this state or by a surplus lines insurer
2 eligible to place coverage in this state under Chapter 981 [~~Article~~
3 ~~1.14-2~~], Insurance Code;

4 (2) maintain a funded reserve account covering the
5 provider's obligations under its service contracts that are issued
6 and outstanding in this state and place in trust with the executive
7 director [~~commissioner~~] a financial security deposit consisting
8 of:

9 (A) a surety bond issued by an authorized surety;

10 (B) securities of the type eligible for deposit
11 by an authorized insurer in this state;

12 (C) a statutory deposit of cash or cash
13 equivalents;

14 (D) a letter of credit issued by a qualified
15 financial institution; or

16 (E) another form of security prescribed by rules
17 adopted by the commission [~~commissioner~~]; or

18 (3) maintain, or have a parent company that maintains,
19 a net worth or stockholders' equity of at least \$100 million.

20 (b) If the provider ensures its obligations under
21 Subsection (a)(2), the amount maintained in the reserve account may
22 not be less than an amount equal to 40 percent of the gross
23 consideration the provider received from consumers from the sale of
24 all service contracts issued and outstanding in this state, minus
25 any claims paid. The executive director [~~commissioner~~] may review
26 and examine the reserve account. The amount of the security deposit
27 may not be less than the greater of:

1 (1) \$25,000; or

2 (2) an amount equal to five percent of the gross
3 consideration the provider received from consumers from the sale of
4 all service contracts issued and outstanding in this state, minus
5 any claims paid.

6 (c) If the provider ensures its obligations under
7 Subsection (a)(3), the provider must give to the executive director
8 [~~commissioner~~] on request:

9 (1) a copy of the provider's or the provider's parent
10 company's most recent Form 10-K or Form 20-F filed with the
11 Securities and Exchange Commission within the preceding calendar
12 year; or

13 (2) if the provider or the provider's parent company
14 does not file with the Securities and Exchange Commission, a copy of
15 the provider's or the provider's parent company's audited financial
16 statements showing a net worth of the provider or its parent company
17 of at least \$100 million.

18 (e) The executive director [~~commissioner~~] may not require a
19 provider to meet any additional financial security requirement.

20 SECTION 15.009. Subsection (a), Section 1304.201,
21 Occupations Code, is amended to read as follows:

22 (a) On a finding that a ground for disciplinary action
23 exists under this chapter, the commission [~~commissioner~~] may impose
24 an administrative sanction, including an administrative penalty,
25 as provided by Chapter 51.

26 SECTION 15.010. The following laws are repealed:

27 (1) Subdivision (3), Section 1304.002, Occupations

1 Code; and

2 (2) Subsection (b), Section 1304.201, Occupations
3 Code.

4 SECTION 15.011. The changes in law made by this article
5 applying to members of the Service Contract Providers Advisory
6 Board do not affect the entitlement of a member serving on the board
7 immediately before September 1, 2003, to continue to serve and
8 function as a member of the board for the remainder of the member's
9 term. Those changes in law apply only to a member appointed on or
10 after September 1, 2003.

11 ARTICLE 16. STAFF LEASING SERVICES

12 SECTION 16.001. Section 91.001, Labor Code, is amended by
13 adding Subdivision (8-a) to read as follows:

14 (8-a) "Executive director" means the executive
15 director of the department.

16 SECTION 16.002. Subsections (a) and (b), Section 91.002,
17 Labor Code, are amended to read as follows:

18 (a) The commission [~~commissioner~~] shall adopt rules as
19 necessary to administer this chapter.

20 (b) Each person who offers staff leasing services is subject
21 to this chapter and the rules adopted by the commission
22 [~~commissioner~~].

23 SECTION 16.003. Subchapter A, Chapter 91, Labor Code, is
24 amended by adding Section 91.008 to read as follows:

25 Sec. 91.008. APPLICABILITY OF CONTINUING EDUCATION LAW.
26 Section 51.405, Occupations Code, does not apply to this chapter.

27 SECTION 16.004. Subsection (b), Section 91.016, Labor Code,

1 is amended to read as follows:

2 (b) A license issued or renewed by the department under this
3 chapter is valid for one year [~~two years~~] from the date of the
4 issuance or renewal. The department shall renew a license on
5 receipt of a complete renewal application form and payment of the
6 license renewal fee.

7 SECTION 16.005. Subsection (a), Section 91.017, Labor Code,
8 is amended to read as follows:

9 (a) Each applicant for an original or renewal staff leasing
10 services company license shall pay to the department before the
11 issuance of the license or license renewal a fee set by the
12 commission by rule [~~in an amount not to exceed \$6,000 for the~~
13 ~~two-year license period~~].

14 SECTION 16.006. Subsections (b) and (d), Section 91.018,
15 Labor Code, are amended to read as follows:

16 (b) A license holder may change the license holder's
17 licensed name at any time by notifying the department and paying a
18 fee for each change of name. The commission by rule shall set the
19 fee for a name change [~~in an amount not to exceed \$50~~]. A license
20 holder may change the license holder's name on renewal of the
21 license without the payment of the name change fee.

22 (d) A license holder may amend the name specified in its
23 license to add a trade name, trademark, service mark, or parent
24 company name. An amendment made under this subsection must comply
25 with the requirements imposed under Subsection (a). The department
26 may charge a fee [~~not to exceed \$50~~] for processing of such an
27 amendment.

1 SECTION 16.007. Subsection (a), Section 91.019, Labor Code,
2 is amended to read as follows:

3 (a) The commission [~~commissioner~~] by rule shall provide for
4 the issuance of a limited license to a person who seeks to offer
5 limited staff leasing services in this state.

6 SECTION 16.008. Section 91.020, Labor Code, is amended to
7 read as follows:

8 Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. [~~(a)~~] The
9 department may take disciplinary action against a license holder on
10 any of the following grounds:

11 (1) [~~being convicted or having a controlling person of~~
12 ~~the license holder who is convicted of:~~

13 [~~(A) bribery, fraud, or intentional or material~~
14 ~~misrepresentation in obtaining, attempting to obtain, or renewing a~~
15 ~~license;~~

16 [~~(B) a crime that relates to the operation of a~~
17 ~~staff leasing service or the ability of the license holder or any~~
18 ~~controlling person of the license holder to operate a staff leasing~~
19 ~~service;~~

20 [~~(C) a crime that relates to the classification,~~
21 ~~misclassification, or under-reporting of employees under Subtitle~~
22 ~~A, Title 5;~~

23 [~~(D) a crime that relates to the establishment or~~
24 ~~maintenance of a self-insurance program, whether health insurance,~~
25 ~~workers' compensation insurance, or other insurance; or~~

26 [~~(E) a crime that relates to fraud, deceit, or~~
27 ~~misconduct in the operation of a staff leasing service;~~

1 ~~(2)~~ engaging in staff leasing services or offering
2 to engage in the provision of staff leasing services without a
3 license;

4 (2) ~~(3)~~ transferring or attempting to transfer a
5 license issued under this chapter;

6 (3) ~~(4)~~ violating this chapter or any order or rule
7 issued by the executive director ~~[department]~~ or commission
8 ~~[commissioner]~~ under this chapter;

9 (4) ~~(5)~~ failing after the 31st day after the date on
10 which a felony conviction of a controlling person is final to notify
11 the department in writing of the conviction;

12 (5) ~~(6)~~ failing to cooperate with an investigation,
13 examination, or audit of the license holder's records conducted by
14 the license holder's insurance company or the insurance company's
15 designee, as allowed by the insurance contract or as authorized by
16 law by the Texas Department of Insurance;

17 (6) ~~(7)~~ failing after the 31st day after the
18 effective date of a change in ownership, principal business
19 address, or the address of accounts and records to notify the
20 department and the Texas Department of Insurance of the change;

21 (7) ~~(8)~~ failing to correct any tax filings or
22 payment deficiencies within a reasonable time as determined by the
23 executive director ~~[commissioner]~~;

24 (8) ~~(9)~~ refusing, after reasonable notice, to meet
25 reasonable health and safety requirements within the license
26 holder's control and made known to the license holder by a federal
27 or state agency;

1 (9) [~~(10)~~] being delinquent in the payment of the
2 license holder's insurance premiums other than those subject to a
3 legitimate dispute;

4 (10) [~~(11)~~] being delinquent in the payment of any
5 employee benefit plan premiums or contributions other than those
6 subject to a legitimate dispute;

7 (11) [~~(12)~~] knowingly making a material
8 misrepresentation to an insurance company or to the department or
9 other governmental agency;

10 (12) [~~(13)~~] failing to maintain the net worth
11 requirements required under Section 91.014; or

12 (13) [~~(14)~~] using staff leasing services to avert or
13 avoid an existing collective bargaining agreement.

14 ~~[(b) For purposes of this section, "conviction" includes a~~
15 ~~plea of nolo contendere or a finding of guilt, regardless of~~
16 ~~adjudication.]~~

17 SECTION 16.009. Subsection (c), Section 91.041, Labor Code,
18 is amended to read as follows:

19 (c) The commission [~~commissioner~~] by rule may require a
20 license holder to file other reports that are reasonably necessary
21 for the implementation of this chapter.

22 SECTION 16.010. The following laws are repealed:

23 (1) Subdivision (5), Section 91.001, Labor Code; and

24 (2) Section 91.021, Labor Code.

25 SECTION 16.011. The change in law made by this article to
26 Subsection (b), Section 91.016, Labor Code, applies only to a
27 license issued or renewed on or after January 1, 2004. A license

1 issued or renewed before January 1, 2004, is governed by that
2 subsection as it existed immediately before that date, and that law
3 is continued in effect for that purpose.

4 ARTICLE 17. TALENT AGENCIES

5 SECTION 17.001. Section 2105.001, Occupations Code, is
6 amended by amending Subdivision (2) and adding Subdivision (3-a) to
7 read as follows:

8 (2) "Commission" [~~"Commissioner"~~] means the Texas
9 Commission of Licensing and Regulation [~~commissioner of licensing~~
10 ~~and regulation~~].

11 (3-a) "Executive director" means the executive
12 director of the department.

13 SECTION 17.002. Section 2105.002, Occupations Code, is
14 amended to read as follows:

15 Sec. 2105.002. POWERS AND DUTIES [~~OF DEPARTMENT~~]. (a) The
16 executive director [~~department~~] shall[+]

17 [~~(1)~~] prescribe application forms for original and
18 renewal certificates of registration.

19 (b) The commission shall:[+]

20 (1) [~~(2)~~] set application and registration fees in
21 amounts that are reasonable and necessary to defray the costs of
22 administering this chapter; and

23 (2) [~~(3)~~] adopt rules as necessary to implement this
24 chapter.

25 (c) [~~(b)~~] The commission [~~department~~] may[+]

26 [~~(1)~~] adopt rules as necessary to administer the
27 registration program created under this chapter.

1 (d) The department may~~[, and~~
2 ~~[(2)]~~ take other action as necessary to enforce this
3 chapter.

4 SECTION 17.003. Subchapter A, Chapter 2105, Occupations
5 Code, is amended by adding Section 2105.003 to read as follows:

6 Sec. 2105.003. APPLICABILITY OF OTHER LAW. Section 51.405
7 does not apply to this chapter.

8 SECTION 17.004. Section 2105.053, Occupations Code, is
9 amended to read as follows:

10 Sec. 2105.053. REGISTRATION FEE. The department may charge
11 a talent agency a reasonable fee ~~[not to exceed \$100]~~ to cover the
12 cost of filing a registration statement or an update of a
13 registration statement.

14 SECTION 17.005. Section 2105.104, Occupations Code, is
15 amended to read as follows:

16 Sec. 2105.104. AGENCY RECORDS. A certificate holder shall
17 maintain records relating to the operation of the talent agency as
18 required by commission ~~[department]~~ rule.

19 SECTION 17.006. Subsection (b), Section 2105.105,
20 Occupations Code, is amended to read as follows:

21 (b) Funds deposited under this section may be disbursed only
22 as prescribed by commission ~~[department]~~ rule.

23 SECTION 17.007. The following laws are repealed:

24 (1) Subsections (b) and (c), Section 2105.055,
25 Occupations Code;

26 (2) Subsections (a), (b), and (c), Section 2105.056,
27 Occupations Code; and

1 (3) Section 2105.252, Occupations Code.

2 ARTICLE 18. TEMPORARY COMMON WORKER EMPLOYERS

3 SECTION 18.001. Section 92.002, Labor Code, is amended by
4 adding Subdivision (4-a) to read as follows:

5 (4-a) "Executive director" means the executive
6 director of the department.

7 SECTION 18.002. Subchapter A, Chapter 92, Labor Code, is
8 amended by adding Section 92.004 to read as follows:

9 Sec. 92.004. APPLICABILITY OF OTHER LAW. Section 51.405,
10 Occupations Code, does not apply to this chapter.

11 SECTION 18.003. Subsection (c), Section 92.022, Labor Code,
12 is amended to read as follows:

13 (c) Information received by the commission [~~commissioner~~]
14 or department under this section is privileged and confidential and
15 is for the exclusive use of the commission [~~commissioner~~] or
16 department. The information may not be disclosed to any other
17 person except on the entry of a court order requiring disclosure or
18 on the written consent of a person under investigation who is the
19 subject of the records.

20 SECTION 18.004. The following laws are repealed:

21 (1) Subdivision (2), Section 92.002, Labor Code; and

22 (2) Subsections (b) and (c), Section 92.015, Labor
23 Code.

24 ARTICLE 19. TRANSPORTATION SERVICE PROVIDERS

25 SECTION 19.001. Subdivision (2), Section 2401.001,
26 Occupations Code, is amended to read as follows:

27 (2) "Department" means the [~~Texas~~] Department of

1 Public Safety [~~Licensing and Regulation~~].

2 SECTION 19.002. The heading to Subchapter B, Chapter 2401,
3 Occupations Code, is amended to read as follows:

4 SUBCHAPTER B. POWERS AND DUTIES [~~OF COMMISSION, COMMISSIONER, AND~~
5 ~~DEPARTMENT~~]

6 SECTION 19.003. Section 2401.052, Occupations Code, is
7 amended to read as follows:

8 Sec. 2401.052. EXAMINATION OR AUDIT. (a) To administer
9 this chapter, the department may:

10 (1) examine:

11 (A) a record maintained under Section 2401.152;

12 or

13 (B) a record or object the department determines
14 is necessary to conduct a complete examination; or

15 (2) question under oath any person who[+]

16 [~~(A)~~] is associated with the business of a
17 transportation service provider [~~, or~~

18 [~~(B) claims the person was negatively affected by~~
19 ~~a violation of this chapter committed by a transportation service~~
20 ~~provider~~].

21 (b) The department may periodically audit the business
22 records of a transportation service provider [~~registered under this~~
23 ~~chapter~~].

24 SECTION 19.004. Section 2401.251, Occupations Code, is
25 amended to read as follows:

26 Sec. 2401.251. CIVIL PENALTY. A transportation service
27 provider who knowingly violates this chapter [~~or a rule adopted~~

1 ~~under this chapter~~] is liable for a civil penalty of not less than
2 \$100 or more than \$500 for each violation.

3 SECTION 19.005. Section 2401.253, Occupations Code, is
4 amended to read as follows:

5 Sec. 2401.253. AUTHORITY TO INVESTIGATE AND FILE COMPLAINT.

6 (a) The department [~~commissioner, with the assistance of the Texas~~
7 ~~Department of Public Safety,~~] may investigate a violation of this
8 chapter [~~or a rule adopted under this chapter~~].

9 (b) Any [~~The commissioner or any~~] law enforcement agency may
10 file a complaint with:

- 11 (1) the district attorney of Travis County; or
12 (2) the prosecuting attorney of the county in which a
13 violation is alleged to have occurred.

14 SECTION 19.006. The following laws are repealed:

- 15 (1) Subdivision (1), Section 2401.001, Occupations
16 Code;
17 (2) Section 2401.051, Occupations Code;
18 (3) Section 2401.053, Occupations Code;
19 (4) Section 2401.054, Occupations Code;
20 (5) Subchapter C, Chapter 2401, Occupations Code;
21 (6) Section 2401.151, Occupations Code; and
22 (7) Subchapter E, Chapter 2401, Occupations Code.

23 SECTION 19.007. (a) On November 1, 2003:

- 24 (1) all functions and activities relating to Chapter
25 2401, Occupations Code, performed by the Texas Department of
26 Licensing and Regulation immediately before that date are
27 transferred to the Department of Public Safety of the State of

1 Texas;

2 (2) a reference in law or an administrative rule to the
3 Texas Department of Licensing and Regulation that relates to
4 Chapter 2401, Occupations Code, means the Department of Public
5 Safety;

6 (3) a complaint, investigation, or other proceeding
7 before the Texas Department of Licensing and Regulation that is
8 related to Chapter 2401, Occupations Code, is transferred without
9 change in status to the Department of Public Safety, and the
10 Department of Public Safety assumes, as appropriate and without a
11 change in status, the position of the Texas Department of Licensing
12 and Regulation in an action or proceeding to which the Texas
13 Department of Licensing and Regulation is a party;

14 (4) all money, contracts, leases, property, and
15 obligations of the Texas Department of Licensing and Regulation
16 related to Chapter 2401, Occupations Code, are transferred to the
17 Department of Public Safety;

18 (5) all property in the custody of the Texas
19 Department of Licensing and Regulation related to Chapter 2401,
20 Occupations Code, is transferred to the Department of Public
21 Safety; and

22 (6) the unexpended and unobligated balance of any
23 money appropriated by the legislature for the Texas Department of
24 Licensing and Regulation related to Chapter 2401, Occupations Code,
25 is transferred to the Department of Public Safety.

26 (b) An offense or other violation related to Chapter 2401,
27 Occupations Code, committed before the effective date of this Act

1 is covered by the law as it existed on the date on which the offense
2 or other violation was committed, and the former law is continued in
3 effect for that purpose.

4 (c) Before November 1, 2003, the Texas Department of
5 Licensing and Regulation may agree with the Department of Public
6 Safety of the State of Texas to transfer any property of the Texas
7 Department of Licensing and Regulation to the Department of Public
8 Safety to implement the transfer required by this article.

9 (d) In the period beginning on the effective date of this
10 Act and ending on November 1, 2003, the Texas Department of
11 Licensing and Regulation shall continue to perform functions and
12 activities under Chapter 2401, Occupations Code, as if that chapter
13 had not been amended by this Act, and the former law is continued in
14 effect for that purpose.

15 ARTICLE 20. UNDERGROUND STORAGE TANK OPERATORS

16 SECTION 20.001. Section 26.451, Water Code, is amended by
17 adding Subdivision (3-a) to read as follows:

18 (3-a) "Department" means the Texas Department of
19 Licensing and Regulation.

20 SECTION 20.002. Subsections (a) and (b), Section 26.452,
21 Water Code, are amended to read as follows:

22 (a) A person who offers to undertake, represents that the
23 person is able to undertake, or undertakes to install, repair, or
24 remove an underground storage tank must hold a registration issued
25 by the department [~~commission~~] under Chapter 51, Occupations Code
26 [~~37~~]. If the person is a partnership or joint venture, it need not
27 register in its own name if each partner or joint venture is

1 registered.

2 (b) An underground storage tank contractor must have an
3 on-site supervisor who is licensed by the department [~~commission~~]
4 under Chapter 51, Occupations Code, [~~37~~] at the site at all times
5 during the critical junctures of the installation, repair, or
6 removal.

7 SECTION 20.003. Subsection (a), Section 26.456, Water Code,
8 is amended to read as follows:

9 (a) A person supervising the installation, repair, or
10 removal of an underground storage tank must hold a license issued by
11 the department [~~commission~~] under Chapter 51, Occupations Code
12 [~~37~~].

13 SECTION 20.004. (a) On November 1, 2003:

14 (1) all functions and activities relating to
15 Subchapter K, Chapter 26, Water Code, performed by the Texas
16 Commission on Environmental Quality immediately before that date
17 are transferred to the Texas Department of Licensing and
18 Regulation;

19 (2) a rule or form adopted by the Texas Commission on
20 Environmental Quality that relates to Subchapter K, Chapter 26,
21 Water Code, is a rule or form of the Texas Department of Licensing
22 and Regulation and remains in effect until amended or replaced by
23 that department;

24 (3) a license or other document issued by the Texas
25 Commission on Environmental Quality that relates to Subchapter K,
26 Chapter 26, Water Code, is considered a license or other document
27 issued by the Texas Department of Licensing and Regulation and

1 remains in effect until amended or replaced by that department;

2 (4) a reference in law or an administrative rule to the
3 Texas Commission on Environmental Quality that relates to
4 Subchapter K, Chapter 26, Water Code, means the Texas Department of
5 Licensing and Regulation;

6 (5) a complaint, investigation, or other proceeding
7 before the Texas Commission on Environmental Quality that is
8 related to Subchapter K, Chapter 26, Water Code, is transferred
9 without change in status to the Texas Department of Licensing and
10 Regulation, and the Texas Department of Licensing and Regulation
11 assumes, as appropriate and without a change in status, the
12 position of the Texas Commission on Environmental Quality in an
13 action or proceeding to which the Texas Commission on Environmental
14 Quality is a party;

15 (6) all money, contracts, leases, property, and
16 obligations of the Texas Commission on Environmental Quality
17 related to Subchapter K, Chapter 26, Water Code, are transferred to
18 the Texas Department of Licensing and Regulation;

19 (7) all property in the custody of the Texas
20 Commission on Environmental Quality related to Subchapter K,
21 Chapter 26, Water Code, is transferred to the Texas Department of
22 Licensing and Regulation; and

23 (8) the unexpended and unobligated balance of any
24 money appropriated by the legislature for the Texas Commission on
25 Environmental Quality related to Subchapter K, Chapter 26, Water
26 Code, is transferred to the Texas Department of Licensing and
27 Regulation.

1 (b) Before November 1, 2003, the Texas Commission on
2 Environmental Quality may agree with the Texas Department of
3 Licensing and Regulation to transfer any property of the Texas
4 Commission on Environmental Quality to the Texas Department of
5 Licensing and Regulation to implement the transfer required by this
6 article.

7 (c) In the period beginning on the effective date of this
8 Act and ending on November 1, 2003, the Texas Commission on
9 Environmental Quality shall continue to perform functions and
10 activities under Subchapter K, Chapter 26, Water Code, as if that
11 subchapter had not been amended by this Act, and the former law is
12 continued in effect for that purpose.

13 ARTICLE 21. VEHICLE PROTECTION PRODUCT WARRANTORS

14 SECTION 21.001. Section 2, Article 9035, Revised Statutes,
15 is amended by adding Subdivision (4-a) to read as follows:

16 (4-a) "Executive director" means the executive
17 director of the department.

18 SECTION 21.002. Article 9035, Revised Statutes, is amended
19 by adding Section 3A to read as follows:

20 Sec. 3A. APPLICABILITY OF OTHER LAW. Section 51.405,
21 Occupations Code, does not apply to this article.

22 SECTION 21.003. Section 4, Article 9035, Revised Statutes,
23 is amended to read as follows:

24 Sec. 4. POWERS AND DUTIES [~~OF COMMISSIONER~~]. (a) The
25 commission [~~commissioner~~] may adopt rules as necessary to implement
26 this article.

27 (b) The executive director [~~commissioner~~] may conduct

1 investigations of warrantors or other persons as reasonably
2 necessary to enforce this article and to protect consumers in this
3 state. On request of the executive director [~~commissioner~~], a
4 warrantor shall make the warrantor's records maintained under
5 Section 10 of this article regarding vehicle protection products
6 sold by the warrantor available to the department as necessary to
7 enable the department to reasonably determine compliance with this
8 article.

9 SECTION 21.004. Subsections (a) through (g), Section 5,
10 Article 9035, Revised Statutes, are amended to read as follows:

11 (a) The Vehicle Protection Product Warrantor Advisory Board
12 is an advisory body to the commission [~~department~~]. The advisory
13 board shall advise[+]

14 [~~(1)~~] the commission [~~commissioner~~] on adopting
15 rules, [~~and~~] enforcing and administering this article, [+]

16 [~~(2) the commission on~~] setting fees.

17 (b) The advisory board consists of six members appointed by
18 the presiding officer of the commission, with the commission's
19 approval, [~~commissioner~~] as follows:

20 (1) two members who are officers, directors, or
21 employees of a warrantor who has been approved or expects to be
22 approved by the department;

23 (2) two members who are officers, directors, or
24 employees of a retail outlet or other entity located in this state
25 that sells vehicle protection products and is approved or expected
26 to be approved by the department; and

27 (3) two members who are residents of this state and, at

1 the time of appointment, are consumers of vehicle protection
2 products issued by warrantors registered or expected to be
3 registered under this article.

4 (c) Members of the advisory board serve staggered six-year
5 terms, with the terms of two members expiring on February 1 of each
6 odd-numbered year. [~~The commissioner shall appoint the initial six
7 board members to terms of six years or less in order to create
8 staggered terms for the subsequent members of the advisory board.~~]

9 (d) The presiding officer of the commission, with the
10 commission's approval, [commissioner] shall designate one member
11 of the advisory board to serve as presiding officer of the board for
12 two years.

13 (e) The executive director [commissioner] or the executive
14 director's [commissioner's] designee serves as an ex officio
15 nonvoting member of the advisory board.

16 (f) The presiding officer of the commission, with the
17 commission's approval, [commissioner] shall fill any vacancy on the
18 advisory board by appointing an individual who meets the
19 qualifications for the vacant advisory board position to serve the
20 remainder of the unexpired term.

21 (g) The advisory board shall meet at least every six months
22 and may meet at other times at the call of the presiding officer of
23 the board or the presiding officer of the commission
24 [commissioner]. The advisory board shall meet at a location in this
25 state designated by the [~~advisory~~] board.

26 SECTION 21.005. Subsections (c) and (d), Section 6, Article
27 9035, Revised Statutes, are amended to read as follows:

1 (c) Each registered warrantor shall pay an annual
2 registration fee [~~not to exceed \$2,500~~] as set by the commission to
3 cover the costs of administering this article. The department
4 shall develop a tiered fee structure under which registration fees
5 are assessed on warrantors based on the number of vehicle
6 protection products sold within this state in the 12 months
7 preceding the date of registration. The information submitted to
8 the department under this section regarding the number of vehicle
9 protection products sold by a warrantor may only be used by the
10 department in determining the tiered fee structure. Information
11 concerning the number of vehicle protection products sold by a
12 warrantor submitted under this section is a trade secret and
13 subject to Section 552.110, Government Code.

14 (d) The commission [~~commissioner~~] shall adopt rules
15 providing for the renewal of a warrantor's registration.

16 SECTION 21.006. Subsection (e), Section 10, Article 9035,
17 Revised Statutes, is amended to read as follows:

18 (e) The commission [~~commissioner~~] shall adopt rules
19 governing how a warrantor shall protect nonpublic personal
20 information provided by a consumer to the warrantor.

21 SECTION 21.007. Subsections (a) and (c), Section 16,
22 Article 9035, Revised Statutes, are amended to read as follows:

23 (a) The executive director [~~commissioner~~] may bring an
24 action against a warrantor for injunctive relief under Section
25 51.352, Occupations Code, for a threatened or existing violation of
26 this article or of the [~~commissioner's~~] orders or rules adopted
27 under this article.

1 (c) For purposes of this section [~~and Section 15 of this~~
2 ~~article~~], violations are of a similar nature if the violations
3 consist of the same or a similar course of conduct, action, or
4 practice, regardless of the number of times the conduct, act, or
5 practice determined to be a violation of this article occurred.

6 SECTION 21.008. The following laws are repealed:

7 (1) Subdivision (2), Section 2, Article 9035, Revised
8 Statutes; and

9 (2) Section 15, Article 9035, Revised Statutes.

10 SECTION 21.009. The changes in law made by this article
11 applying to members of the Vehicle Protection Product Warrantor
12 Advisory Board do not affect the entitlement of a member serving on
13 the board immediately before September 1, 2003, to continue to
14 serve and function as a member of the board for the remainder of the
15 member's term. Those changes in law apply only to a member
16 appointed on or after September 1, 2003.

17 ARTICLE 22. WATER WELL DRILLERS

18 SECTION 22.001. Section 1901.001, Occupations Code, is
19 amended by adding Subdivisions (7-a) and (7-b) to read as follows:

20 (7-a) "Executive director" means the executive
21 director of the department.

22 (7-b) "Groundwater conservation district" means a
23 district to which Chapter 36, Water Code, applies.

24 SECTION 22.002. Section 1901.051, Occupations Code, is
25 amended to read as follows:

26 Sec. 1901.051. LICENSING. (a) The department, with the
27 advice of the council, shall prepare licensing examinations.

1 **(b)** ~~The department shall~~ ~~[and]~~ evaluate the qualifications
2 of license applicants.

3 **(c)** ~~[(b)]~~ The **executive director** ~~[commissioner]~~ shall issue
4 licenses to applicants who qualify.

5 SECTION 22.003. Section 1901.052, Occupations Code, is
6 amended to read as follows:

7 Sec. 1901.052. RULES. (a) The **commission** ~~[commissioner,~~
8 ~~with advice and comment from the Texas Natural Resource~~
9 ~~Conservation Commission,]~~ shall adopt rules as necessary to enforce
10 this chapter, including rules governing:

11 (1) license applications;

12 (2) qualifications of applicants;

13 (3) standards of conduct for drillers, including
14 standards for marking well drilling rigs and equipment; and

15 (4) procedures and practices before the department.

16 (b) The **commission** ~~[commissioner]~~ may not adopt a rule under
17 this chapter that:

18 (1) regulates the installation or repair of well pumps
19 and equipment by:

20 (A) a person on property the person owns or
21 controls for the person's own use;

22 (B) an employee of a person described by
23 Paragraph (A); or

24 (C) a person who is not hired or compensated and
25 who acts on behalf of a person described by Paragraph (A); or

26 (2) requires a person who owns or controls property or
27 possesses a well to complete, repair, or retrofit the well to any

1 standard other than a standard in effect at the time the well was
2 originally completed unless the well is found to be a threat to
3 public health and safety or to water quality.

4 SECTION 22.004. Subsection (a), Section 1901.101,
5 Occupations Code, is amended to read as follows:

6 (a) The Texas Water Well Drillers Advisory Council consists
7 of nine members appointed by the presiding officer of the
8 commission, with the commission's approval, [department] as
9 follows:

10 (1) six members who are drillers experienced in the
11 well drilling business and familiar with well drilling, completion,
12 and plugging methods and techniques; and

13 (2) three public members.

14 SECTION 22.005. Section 1901.105, Occupations Code, is
15 amended to read as follows:

16 Sec. 1901.105. PRESIDING OFFICER. The presiding officer of
17 the commission, with the commission's approval, [council] shall
18 appoint [elect] a member of the council to serve as presiding
19 officer of the council for two years [by a majority vote at the
20 first meeting each year].

21 SECTION 22.006. Subsections (a) and (d), Section 1901.109,
22 Occupations Code, are amended to read as follows:

23 (a) The council may propose rules for adoption by the
24 commission [commissioner] relating to the regulation of drillers
25 registered under this chapter.

26 (d) The council shall assist the commission [department] in
27 evaluating continuing education programs.

1 SECTION 22.007. Subsection (b), Section 1901.152,
2 Occupations Code, is amended to read as follows:

3 (b) An applicant must pay to the department an [~~a~~
4 ~~nonrefundable~~] examination fee at the time the application is
5 submitted.

6 SECTION 22.008. Section 1901.162, Occupations Code, is
7 amended to read as follows:

8 Sec. 1901.162. WAIVER FOR APPLICANT LICENSED IN ANOTHER
9 STATE. The commission [~~commissioner~~] may adopt rules allowing
10 waiver of a license requirement for an applicant who is licensed in
11 another state that has license requirements substantially
12 equivalent to those of this state.

13 SECTION 22.009. Subsection (a), Section 1901.251,
14 Occupations Code, is amended to read as follows:

15 (a) Each driller who drills, deepens, or otherwise alters a
16 water well in this state shall make and keep a legible and accurate
17 well log in accordance with rules adopted by the commission and on
18 forms prescribed by the executive director [~~commissioner~~]. The
19 well log shall be recorded at the time of drilling, deepening, or
20 otherwise altering the well and must contain:

21 (1) the depth, thickness, and character of the strata
22 penetrated;

23 (2) the location of water-bearing strata;

24 (3) the depth, size, and character of casing
25 installed; and

26 (4) any other information required by rules adopted by
27 the commission [~~commissioner~~].

1 SECTION 22.010. Subsection (b), Section 1901.252,
2 Occupations Code, is amended to read as follows:

3 (b) The commission [~~commissioner~~] shall adopt rules
4 specifying the manner for marking a rig.

5 SECTION 22.011. Section 1901.253, Occupations Code, is
6 amended to read as follows:

7 Sec. 1901.253. COMPLETING WATER WELL. A driller shall
8 complete a well under standards and procedures adopted by the
9 commission [~~commissioner~~].

10 SECTION 22.012. Subsection (b), Section 1901.254,
11 Occupations Code, is amended to read as follows:

12 (b) The driller shall ensure that the well is plugged,
13 repaired, or properly completed under standards and procedures
14 adopted by the commission [~~commissioner~~].

15 SECTION 22.013. Section 1901.255, Occupations Code, is
16 amended by amending Subsections (c) and (d) and adding Subsection
17 (e) to read as follows:

18 (c) Not later than the 180th day after the date a landowner
19 or other person who possesses an abandoned or deteriorated well
20 learns of its condition, the landowner or other person shall have
21 the well plugged or capped under standards and procedures adopted
22 by the commission [~~commissioner~~].

23 (d) Not later than the 30th day after the date the well is
24 plugged, a [A] driller, licensed pump installer, or well owner who
25 plugs an abandoned or deteriorated well shall submit a plugging
26 report to:

27 (1) the board of directors of the groundwater

1 conservation district in which the well is located, if the well is
2 located in the boundaries of a groundwater conservation district;
3 and

4 (2) the executive director [~~commissioner not later~~
5 ~~than the 30th day after the date the well is plugged~~].

6 (e) The department or the groundwater conservation district
7 in which the well is located shall furnish plugging report forms on
8 request. The executive director shall prescribe the content of the
9 forms.

10 SECTION 22.014. Subchapter F, Chapter 1901, Occupations
11 Code, is amended by adding Section 1901.256 to read as follows:

12 Sec. 1901.256. ENFORCEMENT BY GROUNDWATER CONSERVATION
13 DISTRICT. (a) This section applies only to a violation related to
14 a well located in the boundaries of the groundwater conservation
15 district seeking to bring an action under this section.

16 (b) A groundwater conservation district shall enforce
17 compliance with Section 1901.255 related to wells located in the
18 boundaries of the district.

19 (c) A groundwater conservation district may bring an action
20 to enjoin a person from violating Section 1901.255.

21 (d) A groundwater conservation district may enforce by
22 injunction or other appropriate remedy in a court any rule,
23 decision, determination, or order adopted or entered under this
24 chapter that is related to Section 1901.255.

25 (e) A groundwater conservation district may bring an action
26 to recover a civil penalty under Section 1901.401 for a violation of
27 this chapter or a rule adopted under this chapter related to Section

1 1901.255.

2 (f) The groundwater conservation district may bring the
3 action in the county in which:

4 (1) the offending activity occurred; or

5 (2) the person engaging in the activity resides.

6 SECTION 22.015. Subchapter F, Chapter 1901, Occupations
7 Code, is amended by adding Section 1901.257 to read as follows:

8 Sec. 1901.257. MEMORANDUM OF UNDERSTANDING REGARDING
9 ABANDONED WELLS. (a) In this section, "abandoned well" and
10 "deteriorated well" have the meanings assigned by Section 1901.255.

11 (b) The Texas Commission on Environmental Quality and the
12 department shall by rule adopt or revise a joint memorandum of
13 understanding to coordinate the efforts of the department,
14 groundwater conservation districts, and the field offices of the
15 Texas Commission on Environmental Quality relating to
16 investigative procedures for referrals of complaints regarding
17 abandoned and deteriorated wells.

18 (c) Each groundwater conservation district in which an
19 abandoned or deteriorated well is located shall join the memorandum
20 of understanding adopted under Subsection (b).

21 SECTION 22.016. Section 1901.301, Occupations Code, is
22 amended to read as follows:

23 Sec. 1901.301. GROUNDS FOR DISCIPLINARY ACTION. The
24 commission [~~commissioner~~] may discipline a person under Section
25 51.353 for a violation of this chapter or a rule adopted under this
26 chapter, including:

27 (1) an intentional misstatement or misrepresentation

1 of a fact on an application or well log or to a person for whom a
2 well is being drilled, deepened, or otherwise altered;

3 (2) the failure to keep, deliver, or send a well log as
4 required by Section 1901.251;

5 (3) the failure to advise a person for whom a well is
6 being drilled that:

7 (A) injurious water has been encountered;

8 (B) the water is a pollution hazard; and

9 (C) the well must be immediately plugged in an
10 acceptable manner; or

11 (4) the failure to complete a well in accordance with
12 standards and procedures adopted by the commission [~~commissioner~~].

13 SECTION 22.017. The following laws are repealed:

14 (1) Subdivision (2), Section 1901.001, Occupations
15 Code;

16 (2) Subsection (e), Section 1901.109, Occupations
17 Code;

18 (3) Subsection (b), Section 1901.155, Occupations
19 Code;

20 (4) Section 1901.156, Occupations Code;

21 (5) Section 1901.157, Occupations Code;

22 (6) Section 1901.160, Occupations Code;

23 (7) Section 1901.205, Occupations Code;

24 (8) Section 1901.302, Occupations Code;

25 (9) Section 1901.303, Occupations Code;

26 (10) Section 1901.304, Occupations Code; and

27 (11) Subchapter H, Chapter 1901, Occupations Code.

1 SECTION 22.018. The changes in law made to Section
2 1901.255, Occupations Code, by this article do not affect the
3 status of a complaint, investigation, or other proceeding that
4 commenced before September 1, 2003. A groundwater conservation
5 district, as appropriate and without a change in status, assumes
6 the position of the executive director of the Texas Department of
7 Licensing and Regulation in an action or proceeding relating to a
8 well located in the boundaries of that groundwater conservation
9 district.

10 SECTION 22.019. The changes in law made by this article
11 applying to members of the Texas Water Well Drillers Advisory
12 Council do not affect the entitlement of a member serving on the
13 council immediately before September 1, 2003, to continue to serve
14 and function as a member of the council for the remainder of the
15 member's term. Those changes in law apply only to a member
16 appointed on or after September 1, 2003.

17 ARTICLE 23. WATER WELL PUMP INSTALLERS

18 SECTION 23.001. Section 1902.001, Occupations Code, is
19 amended by adding Subdivision (4-a) to read as follows:

20 (4-a) "Executive director" means the executive
21 director of the department.

22 SECTION 23.002. Section 1902.051, Occupations Code, is
23 amended to read as follows:

24 Sec. 1902.051. LICENSING. (a) The department, with the
25 advice of the council, shall prepare licensing examinations.

26 (b) The department shall ~~and~~ evaluate the qualifications
27 of license applicants.

1 (c) [~~(b)~~] The executive director [~~commissioner~~] shall issue
2 licenses to applicants who qualify.

3 SECTION 23.003. Section 1902.052, Occupations Code, is
4 amended to read as follows:

5 Sec. 1902.052. RULES. (a) The commission [~~commissioner~~]
6 shall adopt rules as necessary to enforce this chapter.

7 (b) The commission [~~commissioner~~] may not adopt a rule under
8 this chapter that:

9 (1) regulates the installation or repair of well pumps
10 and equipment by:

11 (A) a person on property the person owns or
12 controls for the person's own use;

13 (B) an employee of a person described by
14 Paragraph (A); or

15 (C) a person who is not hired or compensated and
16 who acts on behalf of a person described by Paragraph (A); or

17 (2) requires a person who owns or controls property or
18 possesses a well to complete, repair, or retrofit the well to any
19 standard other than a standard in effect at the time the well was
20 originally completed unless the well is found to be a threat to
21 public health and safety or to water quality.

22 SECTION 23.004. Subsection (b), Section 1902.152,
23 Occupations Code, is amended to read as follows:

24 (b) An applicant must pay to the department an [~~a~~
25 ~~non-refundable~~] examination fee at the time the application is
26 submitted.

27 SECTION 23.005. Section 1902.162, Occupations Code, is

1 amended to read as follows:

2 Sec. 1902.162. WAIVER FOR APPLICANT LICENSED IN ANOTHER
3 STATE. The commission [~~commissioner~~] may adopt rules allowing
4 waiver of a license requirement for an applicant who is licensed in
5 another state that has license requirements substantially
6 equivalent to those of this state.

7 SECTION 23.006. Section 1902.251, Occupations Code, is
8 amended to read as follows:

9 Sec. 1902.251. INSTALLING AND REPAIRING PUMPS. An
10 installer shall install or repair pumps under standards and
11 procedures adopted by the commission [~~commissioner~~] with the advice
12 of the council.

13 SECTION 23.007. Subsection (b), Section 1902.252,
14 Occupations Code, is amended to read as follows:

15 (b) To avoid injury or pollution, the installer shall repair
16 or properly complete the well under standards and procedures
17 adopted by the commission [~~commissioner~~].

18 SECTION 23.008. The following laws are repealed:

19 (1) Subdivision (2), Section 1902.001, Occupations
20 Code;

21 (2) Section 1902.101, Occupations Code;

22 (3) Subsection (b), Section 1902.155, Occupations
23 Code;

24 (4) Section 1902.156, Occupations Code;

25 (5) Section 1902.157, Occupations Code;

26 (6) Section 1902.160, Occupations Code;

27 (7) Section 1902.204, Occupations Code; and

1 (8) Subchapters G and H, Chapter 1902, Occupations
2 Code.

3 ARTICLE 24. WEATHER MODIFICATION

4 SECTION 24.001. Section 1.01, Chapter 376, Acts of the 77th
5 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
6 Civil Statutes), is amended by amending Subdivision (1) and adding
7 Subdivision (2-a) to read as follows:

8 (1) "Commission" [~~"Commissioner"~~] has the meaning
9 assigned by Section 51.001, Occupations Code.

10 (2-a) "Executive director" means the executive
11 director of the department.

12 SECTION 24.002. Article 1, Chapter 376, Acts of the 77th
13 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
14 Civil Statutes), is amended by adding Section 1.02 to read as
15 follows:

16 Sec. 1.02. APPLICABILITY OF OTHER LAW. Sections 51.404 and
17 51.405, Occupations Code, do not apply to this article.

18 SECTION 24.003. Section 1.11, Chapter 376, Acts of the 77th
19 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
20 Civil Statutes), is amended to read as follows:

21 Sec. 1.11. RULES. The commission [~~department~~] may adopt
22 rules necessary to:

23 (1) exercise the powers and perform the duties under
24 this article;

25 (2) establish procedures and conditions for the
26 issuance of licenses and permits under this article; and

27 (3) establish standards and instructions to govern the

1 carrying out of research or projects in weather modification and
2 control that the commission [~~department~~] considers necessary or
3 desirable to minimize danger to health or property.

4 SECTION 24.004. Section 1.13, Chapter 376, Acts of the 77th
5 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
6 Civil Statutes), is amended to read as follows:

7 Sec. 1.13. ADVISORY COMMITTEES. The commission
8 [~~department~~] may establish advisory committees to advise the
9 commission [~~department~~] and to make recommendations to the
10 commission [~~department~~] concerning legislation, policies,
11 administration, research, and other matters related to the
12 department's duties, powers, or functions under this article. If
13 the commission establishes an advisory committee under this
14 section, the presiding officer of the commission, with the
15 commission's approval, shall appoint a member of the committee to
16 serve as the presiding officer of the committee for a two-year term.

17 SECTION 24.005. Section 1.16, Chapter 376, Acts of the 77th
18 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
19 Civil Statutes), is amended to read as follows:

20 Sec. 1.16. INTERSTATE COMPACTS. The commission
21 [~~commissioner~~] may represent the state in matters pertaining to
22 plans, procedures, or negotiations for interstate compacts
23 relating to weather modification and control.

24 SECTION 24.006. Subsection (b), Section 1.18, Chapter 376,
25 Acts of the 77th Legislature, Regular Session, 2001 (Article 165c,
26 Vernon's Texas Civil Statutes), is amended to read as follows:

27 (b) The department with approval of the commission

1 ~~[commissioner]~~ may conduct and may contract for research and
2 development activities relating to the purposes of this section.

3 SECTION 24.007. Section 1.31, Chapter 376, Acts of the 77th
4 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
5 Civil Statutes), is amended to read as follows:

6 Sec. 1.31. LICENSE AND PERMIT REQUIRED. Except as provided
7 by rule of the commission ~~[department]~~ under Section 1.32 of this
8 article, a person may not engage in activities for weather
9 modification and control:

10 (1) without a weather modification license and weather
11 modification permit issued by the department; or

12 (2) in violation of any term or condition of the
13 license or permit.

14 SECTION 24.008. Section 1.32, Chapter 376, Acts of the 77th
15 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
16 Civil Statutes), is amended to read as follows:

17 Sec. 1.32. EXEMPTIONS. (a) The commission ~~[department]~~ by
18 rule, to the extent it considers exemptions practical, shall
19 provide for exempting the following activities from the license and
20 permit requirements of this article:

21 (1) research, development, and experiments conducted
22 by state and federal agencies, institutions of higher learning, and
23 bona fide nonprofit research organizations;

24 (2) laboratory research and experiments;

25 (3) activities of an emergent nature for protection
26 against fire, frost, sleet, or fog; and

27 (4) activities normally conducted for purposes other

1 than inducing, increasing, decreasing, or preventing precipitation
2 or hail.

3 (b) The commission [~~department~~] by rule may modify or revoke
4 an exemption.

5 SECTION 24.009. Subsection (v), Section 1.41, Chapter 376,
6 Acts of the 77th Legislature, Regular Session, 2001 (Article 165c,
7 Vernon's Texas Civil Statutes), is amended to read as follows:

8 (v) The commission [~~department~~] by rule shall define hail
9 suppression as used in this section, using the most current
10 scientifically accepted technological concepts.

11 SECTION 24.010. Section 1.64, Chapter 376, Acts of the 77th
12 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
13 Civil Statutes), is amended to read as follows:

14 Sec. 1.64. PROCEDURES. The commission [~~department~~] by rule
15 shall establish procedures for public notice and any public hearing
16 under this subchapter.

17 SECTION 24.011. Section 1.65, Chapter 376, Acts of the 77th
18 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
19 Civil Statutes), is amended to read as follows:

20 Sec. 1.65. HEARINGS. A hearing under this article
21 [~~subchapter~~] shall be conducted in accordance with the hearing
22 rules adopted by the commission [~~department~~] and the applicable
23 provisions of Chapter 51, Occupations Code, and Chapter 2001,
24 Government Code.

25 SECTION 24.012. Section 1.66, Chapter 376, Acts of the 77th
26 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
27 Civil Statutes), is amended to read as follows:

1 Sec. 1.66. CONSENT. If a permit holder or license holder
2 requests or consents to the revocation or suspension of the permit
3 or license, the commission [~~commissioner~~] may revoke or suspend the
4 permit or license without a hearing.

5 SECTION 24.013. The following laws are repealed:

6 (1) Section 1.34, Chapter 376, Acts of the 77th
7 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
8 Civil Statutes);

9 (2) Section 1.38, Chapter 376, Acts of the 77th
10 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
11 Civil Statutes); and

12 (3) Section 1.68, Chapter 376, Acts of the 77th
13 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
14 Civil Statutes).

15 ARTICLE 25. CONFORMING AMENDMENTS RELATED TO CERTAIN PROGRAMS
16 TRANSFERRED FROM THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

17 SECTION 25.001. The heading to Chapter 37, Water Code, is
18 amended to read as follows:

19 CHAPTER 37. OCCUPATIONAL LICENSING AND REGISTRATION PROGRAMS
20 ADMINISTERED BY TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

21 SECTION 25.002. Section 37.002, Water Code, is amended to
22 read as follows:

23 Sec. 37.002. RULES. The commission shall adopt any rules
24 necessary to:

25 (1) establish occupational licenses and registrations
26 prescribed by Sections 26.0301 and ~~[7]~~ 26.3573 [~~7~~, ~~26.452~~, ~~26.456~~, and
27 ~~34.007~~] of this code and Sections 341.033, 341.034(a), (b), and (e)

1 ~~[341.034]~~, 361.027, and 366.071, Health and Safety Code;

2 (2) establish classes and terms of occupational
3 licenses and registrations; and

4 (3) administer the provisions of this chapter and
5 other laws governing occupational licenses and registrations under
6 the commission's jurisdiction.

7 SECTION 25.003. Section 37.003, Water Code, is amended to
8 read as follows:

9 Sec. 37.003. LICENSE OR REGISTRATION REQUIRED. A person
10 may not engage in a business, occupation, or profession described
11 by Section 26.0301 or ~~[,]~~ 26.3573 ~~[, 26.452, 26.456, or 34.007]~~ of
12 this code or Section 341.033, 341.034(a), (b), or (e) ~~[341.034]~~,
13 361.027, 366.014, or 366.071, Health and Safety Code, unless the
14 person holds the appropriate license or registration issued by the
15 commission.

16 SECTION 25.004. Subtitle F, Title 2, Water Code, is amended
17 by adding Chapter 38 to read as follows:

18 CHAPTER 38. OCCUPATIONAL LICENSING PROGRAMS ADMINISTERED BY TEXAS

19 DEPARTMENT OF LICENSING AND REGULATION

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 38.001. DEFINITIONS. In this chapter, terms have the
22 meanings assigned by Section 51.001, Occupations Code.

23 [Sections 38.002-38.050 reserved for expansion]

24 SUBCHAPTER B. POWERS AND DUTIES

25 Sec. 38.051. ADMINISTRATION. The department shall
26 administer this chapter.

27 Sec. 38.052. RULES. The commission shall adopt any rules

1 necessary to:

2 (1) establish occupational licenses prescribed by
3 Sections 26.452 and 26.456 of this code and Sections 341.034(c) and
4 (d), Health and Safety Code; and

5 (2) establish classes and terms of occupational
6 licenses.

7 Sec. 38.053. CONTRACTS. The department may contract with
8 persons to provide services required by this chapter. The
9 department may authorize contractors to collect reasonable fees for
10 the services provided.

11 Sec. 38.054. COMPLIANCE INFORMATION. In administering this
12 chapter, the department may require a person to provide information
13 about any other occupational license held by the person, including:

- 14 (1) the state in which the license was issued;
15 (2) the current status of the license; and
16 (3) whether the license was ever denied, suspended,
17 revoked, surrendered, or withdrawn.

18 Sec. 38.055. ROSTER OF LICENSE HOLDERS. The department
19 shall maintain and make available to the public a roster of persons
20 who hold licenses issued under this chapter.

21 [Sections 38.056-38.100 reserved for expansion]

22 SUBCHAPTER C. LICENSE REQUIREMENTS

23 Sec. 38.101. LICENSE REQUIRED. A person may not engage in a
24 business, occupation, or profession described by Section 26.452 or
25 26.456 of this code or Section 341.034(c) or (d), Health and Safety
26 Code, unless the person holds the appropriate license.

27 Sec. 38.102. QUALIFICATIONS. The commission may establish

1 qualifications for each license issued under this chapter.

2 Sec. 38.103. ISSUANCE AND DENIAL OF LICENSES. (a) The
3 commission shall establish requirements and uniform procedures for
4 issuing licenses under this chapter.

5 (b) After notice and hearing, the commission may deny an
6 application for a license by an applicant who:

7 (1) has a record in the preceding five years of
8 continuing violations of statutes or rules adopted under statutes;

9 (2) has engaged in fraud or deceit in obtaining or
10 applying for a license;

11 (3) has demonstrated gross negligence, incompetence,
12 or misconduct in the performance of activities authorized by a
13 license;

14 (4) made an intentional misstatement or
15 misrepresentation of fact in information required to be maintained
16 or submitted to the commission by the license holder;

17 (5) failed to keep and transmit records as required by
18 a statute or a rule adopted under a statute; or

19 (6) at the time the application is submitted, is
20 indebted to the state for a fee, penalty, or tax imposed by a
21 statute or a rule adopted under a statute.

22 Sec. 38.104. RENEWAL OF LICENSE. The commission shall
23 establish requirements and uniform procedures for renewing
24 licenses.

25 Sec. 38.105. LICENSING EXAMINATIONS. (a) The department
26 shall prescribe the content of licensing examinations. The
27 department shall base the examinations on laws, rules, job duties,

1 and standards relating to licenses issued under this chapter.

2 (b) The department shall determine the location and
3 frequency of examinations.

4 (c) The department shall ensure that an otherwise qualified
5 person with a physical, mental, or developmental disability is
6 provided with a reasonable opportunity to take a licensing
7 examination.

8 ARTICLE 26. FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES

9 SECTION 26.001. Subtitle B, Title 5, Occupations Code, is
10 amended by adding Chapter 953 to read as follows:

11 CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT
12 COMPANIES

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 953.001. DEFINITIONS. In this chapter:

15 (1) "Administrator" means the person responsible for
16 the administration of a legal service contract. The term includes a
17 person responsible for any filing required by this chapter.

18 (2) "Company" means a person who:

19 (A) is contractually obligated to a legal service
20 contract holder under the terms of a legal service contract;

21 (B) enters into a contract with a contracting
22 attorney to provide or obtain covered legal services for a legal
23 service contract holder; and

24 (C) operates as a for-profit legal service
25 contract company.

26 (3) "Contracting attorney" means an attorney who has
27 entered into a contract with a company to provide or obtain covered

1 legal services for a legal service contract holder.

2 (4) "Department" means the Texas Department of
3 Licensing and Regulation.

4 (5) "Executive director" means the executive director
5 of the Texas Department of Licensing and Regulation or the
6 executive director's designee.

7 (6) "Financial security" means a surety bond, a
8 certificate of deposit, or any other item approved by the executive
9 director.

10 (7) "Legal service contract" means an agreement:

11 (A) that is entered into for a separately stated
12 consideration; and

13 (B) under which a company obtains legal services
14 for a legal service contract holder through a contracting attorney.

15 (8) "Legal service contract holder" means the person
16 who purchases or otherwise holds a legal service contract or who is
17 covered under a group legal service contract.

18 (9) "Person" means an individual or a partnership,
19 company, corporation, association, or other private group.

20 (10) "Sales representative" means a person who sells
21 or solicits legal service contracts to a person on behalf of a
22 company.

23 Sec. 953.002. EXEMPTIONS. This chapter does not apply to:

24 (1) a nonprofit legal services corporation under
25 Chapter 961, Insurance Code;

26 (2) an automobile club supplying services under
27 Chapter 722, Transportation Code;

1 (3) a prepaid legal services program under Chapter
2 951;

3 (4) a lawyer referral service under Chapter 952;

4 (5) a retainer contract between an attorney and a
5 client, and similar contracts made with a group of clients involved
6 in the same or closely related legal matters; or

7 (6) a contingency fee contract between an attorney and
8 a client.

9 Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. The acts
10 of marketing, selling, offering for sale, issuing, making,
11 proposing to make, and administering a legal service contract that
12 is regulated by this chapter are exempt from the Insurance Code and
13 other laws of this state regulating the business of insurance.

14 Sec. 953.004. PREPAID LEGAL SERVICE CONTRACT PROGRAMS.

15 (a) An insurer who issues or renews prepaid legal service
16 contracts under Article 5.13-1, Insurance Code, shall notify the
17 commissioner of insurance in writing not later than the 60th day
18 before transferring regulation of the insurer's legal service
19 contracts from the Texas Department of Insurance to the Texas
20 Department of Licensing and Regulation. An insurer that complies
21 with this section is exempt from the requirements of:

22 (1) Articles 21.49-2, 21.49-2A, 21.49-2B, 21.49-2D,
23 and 21.49-2E, Insurance Code; and

24 (2) Chapter 827, Insurance Code.

25 (b) The exemptions described by Subsection (a) begin on the
26 date the commissioner of insurance receives the notice under
27 Subsection (a) and apply until the insurer registers with the

1 department as required by Section 953.052.

2 Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR.

3 (a) The executive director may investigate a company,
4 administrator, sales representative, or other person as necessary
5 to enforce this chapter and protect legal service contract holders
6 in this state.

7 (b) On request of the executive director, a company or sales
8 representative shall make the records relevant to the regulation of
9 legal service contracts in this state available to the executive
10 director as necessary to enable the executive director to
11 reasonably determine compliance with this chapter.

12 (c) After contacting the company that has contracted with
13 the contracting attorney, the executive director may refer a
14 complaint received by the department concerning the performance of
15 a contracting attorney to:

16 (1) the State Bar of Texas;

17 (2) the appropriate licensing agency of another
18 jurisdiction, if applicable; or

19 (3) any person designated by law to receive complaints
20 from the public concerning the performance of an attorney.

21 (d) The commission may adopt rules as necessary to implement
22 this chapter.

23 [Sections 953.006-953.050 reserved for expansion]

24 SUBCHAPTER B. REGISTRATION REQUIREMENTS

25 Sec. 953.051. REGISTRATION REQUIRED. (a) A person may not
26 operate as a company or sales representative of legal service
27 contracts sold in this state unless the person is registered with

1 the department. A company's contract may only be sold by a sales
2 representative who is registered with the department.

3 (b) A person who collects commissions for the sale of legal
4 service contracts but who does not actively sell or solicit legal
5 service contracts is not required to register under this
6 subchapter.

7 Sec. 953.052. APPLICATION FOR REGISTRATION. (a) An
8 applicant for registration must submit an application to the
9 department. The application must be in the form prescribed by the
10 executive director.

11 (b) An application for registration as a company must
12 include evidence satisfactory to the executive director of
13 compliance with the applicable financial security requirements
14 prescribed by Subchapter C.

15 (c) An application for registration as a sales
16 representative must include a list of the companies for which the
17 sales representative will sell or solicit legal service contracts.

18 Sec. 953.053. FEES. (a) The executive director shall
19 develop a tiered fee schedule of annual registration fees under
20 which a company's registration fee is based on the number of legal
21 service contracts the company sold in this state during the
22 preceding 12-month period. The executive director shall set the
23 amounts of the fees required by this subsection to cover the costs
24 of administering this chapter.

25 (b) In addition to the annual registration fee required by
26 Subsection (a), the executive director shall collect from each
27 company a fee equal to 1.7 percent of the annual price of each legal

1 service contract the company sells in this state. The executive
2 director shall establish a schedule and procedure for collecting
3 this fee.

4 (c) To be registered, a company must pay the appropriate
5 fees required by this section.

6 Sec. 953.054. INFORMATION CONCERNING NUMBER OF LEGAL
7 SERVICE CONTRACTS SOLD. Information concerning the number of legal
8 service contracts sold by a company that is submitted under Section
9 953.053 is a trade secret to which Section 552.110, Government
10 Code, applies.

11 Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES
12 REPRESENTATIVES. (a) The executive director may deny an
13 application from a sales representative who:

14 (1) made a material misrepresentation or fraudulent
15 statement in the application;

16 (2) has had a license revoked under the Insurance
17 Code;

18 (3) has had a license suspended or revoked under
19 Section 82.062, Government Code; or

20 (4) fails to pay the fee required under Subsection
21 (b).

22 (b) Each registered sales representative shall pay an
23 annual registration fee in the amount set by the executive director
24 to cover the costs of administering this chapter.

25 Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION.
26 The commission may adopt rules regarding the procedures and fees a
27 company or sales representative must follow and pay when requesting

1 a modification to the company's or sales representative's
2 registration information that is on file with the department.

3 Sec. 953.057. RENEWAL OF REGISTRATION. The commission
4 shall adopt rules for the renewal of a company's or sales
5 representative's registration, including a rule that addresses
6 late renewals.

7 [Sections 953.058-953.100 reserved for expansion]

8 SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE
9 CONTRACT COMPANIES

10 Sec. 953.101. FINANCIAL SECURITY REQUIREMENTS. (a) To
11 ensure the faithful performance of a company's obligations to its
12 legal service contract holders, each company must deposit and
13 maintain a form of financial security with the executive director.
14 The financial security deposited with the director must maintain at
15 all times the following market values:

16 (1) a company generating \$300,000 or less in annual
17 gross revenue in this state from the sale of legal service contracts
18 in the preceding year shall deposit at least \$50,000 with the
19 executive director;

20 (2) a company generating more than \$300,000 but less
21 than \$750,000 in annual gross revenue in this state from the sale of
22 legal service contracts in the preceding year shall deposit at
23 least \$75,000 with the executive director; and

24 (3) a company generating \$750,000 or more in annual
25 gross revenue in this state from the sale of legal service contracts
26 in the preceding year shall deposit at least \$100,000 with the
27 executive director.

1 (b) For purposes of Subsection (a), if a company that had no
2 gross revenue in this state from the sale of legal service contracts
3 in the preceding year previously generated revenue from the sale of
4 prepaid legal service contracts under Article 5.13-1, Insurance
5 Code, the company shall deposit an amount of financial security
6 based on the revenue generated from the sale of prepaid legal
7 service contracts under the Insurance Code in the preceding year.

8 (c) The department is responsible for the safeguarding of
9 financial security deposited with the executive director under this
10 section. Financial security is not subject to taxation and is to be
11 used exclusively to guarantee the company's performance of its
12 obligations to its legal service contract holders.

13 (d) The executive director may order an increase in the
14 amount of financial security required of a company under this
15 section if the executive director finds that there has been a
16 substantial change in the company, including an increase in the
17 amount of fees the company is charging consumers or an increase in
18 the company's annual gross revenue.

19 (e) Not later than the 30th day after the date the executive
20 director orders a financial security increase under Subsection (d),
21 the company may request a hearing on the issue. The executive
22 director shall hold a hearing not later than the 30th day after the
23 date a company requests a hearing.

24 (f) Failure of a company to meet the financial security
25 requirements in this section not later than the 30th day after the
26 date the executive director issues a final decision in the event of
27 a hearing or the 30th day after the date the period for submitting a

1 request for a hearing expires constitutes a ground for revocation
2 of the company's registration.

3 Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY.

4 (a) If a company's financial security under Section 953.101 is
5 issued or written for a specified term, not later than the 90th day
6 before the date the term expires, the company shall:

7 (1) replace the financial security; or

8 (2) notify the executive director of the company's
9 intention to renew the financial security.

10 (b) If, not later than the 60th day before the date the term
11 of a company's financial security expires, the executive director
12 does not receive satisfactory notification of a company's renewal
13 or replacement of the financial security, the executive director
14 may draw on the company's financial security to the extent
15 necessary to ensure that the company's obligations to its legal
16 service contract holders are met in accordance with this chapter.

17 Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY.

18 The executive director shall maintain a company's financial
19 security deposit so long as the company continues to do business in
20 this state. When a company ceases to do business in this state and
21 furnishes the executive director with satisfactory proof that the
22 company has discharged or otherwise adequately met all obligations
23 to its legal service contract holders in this state, the executive
24 director shall release the deposited financial security to the
25 company.

26 Sec. 953.104. SUIT ON FINANCIAL SECURITY. (a) The state,
27 on behalf of a legal service contract holder injured because of a

1 company's violation of this chapter, may bring a suit for payment
2 from the company's financial security deposit held by the executive
3 director.

4 (b) The state is the only party that may bring suit for
5 payment from a company's financial security deposit held by the
6 executive director. This chapter does not create a private right of
7 action.

8 (c) The state may only seek damages for the cost of the legal
9 services the company failed to provide to a legal service contract
10 holder under the terms of the legal service contract.

11 (d) The court shall determine the amount the executive
12 director shall pay the consumer from the company's financial
13 security deposit held by the executive director.

14 Sec. 953.105. ADDITIONAL FINANCIAL SECURITY REQUIREMENTS.

15 (a) In addition to the financial security requirements
16 established by this subchapter, the executive director shall
17 annually review:

18 (1) the audited financial statements of a company; and

19 (2) a certified statement regarding the reserves of a
20 company. This certified statement shall be made by an actuary that
21 is a member in good standing of the American Academy of Actuaries.

22 (b) After reviewing the information required by Subsection
23 (a), the executive director may require the company to maintain
24 certain reserves in order to obtain or maintain its registration.

25 [Sections 953.106-953.150 reserved for expansion]

26 SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

27 Sec. 953.151. COMPANY REQUIREMENTS. (a) A company may not

1 sell, offer for sale, or issue a legal service contract in this
2 state unless the company gives the legal service contract holder:

3 (1) a receipt for, or other written evidence of, the
4 purchase of the contract; and

5 (2) a copy of the legal service contract.

6 (b) A company shall perform the services as stated in the
7 legal service contract.

8 Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. A company may
9 issue group legal service contracts. The company shall provide a
10 legal service contract holder who obtains a group contract with a
11 document that describes the company's services and complies with
12 the requirements of this chapter.

13 Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. A
14 contracting attorney must:

15 (1) be licensed in the jurisdiction in which the legal
16 services are performed;

17 (2) be in good standing with the entity that licenses
18 attorneys in that jurisdiction; and

19 (3) maintain professional liability and errors and
20 omissions insurance with minimum annual limits of \$100,000 for each
21 occurrence and \$300,000 in the aggregate.

22 Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES
23 PROHIBITED. A company may not interfere with the attorney-client
24 relationship or with the contracting attorney's independent
25 exercise of professional judgment.

26 Sec. 953.155. COMPANY RECORDS. (a) A company shall
27 maintain accurate accounts, books, and other records regarding

1 transactions regulated under this chapter. The company's records
2 must include:

3 (1) a copy of each unique form of legal service
4 contract filed with the executive director under Section 953.156;

5 (2) the name and address of each legal service
6 contract holder;

7 (3) a list of the sales representatives authorized by
8 the company to market, sell, or offer to sell the company's legal
9 service contracts;

10 (4) a copy of each contract entered into between the
11 company and a contracting attorney; and

12 (5) a list of complaints the company has received from
13 legal service contract holders, including the name of the sales
14 representative involved in the transaction leading to the
15 complaint.

16 (b) The records required by this section may be maintained
17 in an electronic medium or through other recordkeeping technology.
18 If a record is not in a hard copy, the company must be able to
19 reformat the record into a legible hard copy at the request of the
20 executive director.

21 (c) Except as provided by Subsection (d), a company shall
22 retain the records required by this section until at least the
23 second anniversary of the termination date of the specified period
24 of coverage under the legal service contract.

25 (d) A company that discontinues business in this state shall
26 retain its records until the company furnishes the executive
27 director with proof satisfactory to the executive director that the

1 company has discharged all obligations to legal service contract
2 holders in this state.

3 Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED
4 DISCLOSURES. (a) A legal service contract must be filed with the
5 executive director before it is marketed, sold, offered for sale,
6 administered, or issued in this state. Any subsequent endorsement
7 or attachment to the contract must also be filed with the executive
8 director before the endorsement or attachment is delivered to legal
9 service contract holders.

10 (b) A legal service contract marketed, sold, offered for
11 sale, administered, or issued in this state must:

12 (1) be written, printed, or typed in clear,
13 understandable language that is easy to read;

14 (2) include the name and full address of the company;

15 (3) include the purchase price of the contract and the
16 terms under which the contract is sold;

17 (4) include the terms and restrictions governing
18 cancellation of the contract by the company or the legal service
19 contract holder;

20 (5) identify:

21 (A) any administrator, if the administrator is
22 not the company;

23 (B) the sales representative; and

24 (C) the name of the legal service contract
25 holder;

26 (6) include the amount of any deductible or copayment;

27 (7) specify the legal services and other benefits to

1 be provided under the contract, and any limitation, exception, or
2 exclusion;

3 (8) specify the legal services, if any, for which the
4 company will provide reimbursement and the amount of that
5 reimbursement;

6 (9) specify any restriction governing the
7 transferability of the contract or the assignment of benefits;

8 (10) include the duties of the legal service contract
9 holder;

10 (11) include the contact information for the
11 department, including the department's toll-free number and
12 electronic mail address, as well as a statement that the department
13 regulates the company and the company's sales representatives;

14 (12) explain the method to be used in resolving the
15 legal service contract holder's complaints and grievances;

16 (13) explain how legal services may be obtained under
17 the legal service contract;

18 (14) include a provision stating that no change in the
19 contract is valid until the change has been approved by an executive
20 officer of the company and unless the approval is endorsed or
21 attached to the contract;

22 (15) include any eligibility and effective date
23 requirements, including a definition of eligible dependents and the
24 effective date of their coverage;

25 (16) include the conditions under which coverage will
26 terminate;

27 (17) explain any subrogation arrangements;

1 (18) contain a payment provision that provides for a
2 grace period of at least 31 days;

3 (19) include conditions under which contract rates may
4 be modified; and

5 (20) include any other items required by the
6 commission as determined by rule.

7 Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. A
8 legal service contract holder may terminate the legal service
9 contract if the legal service contract holder provides the company
10 with written notice of the legal service contract holder's
11 intention of terminating the contract not later than the seventh
12 day after the date the legal service contract holder receives the
13 contract.

14 Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) If a
15 legal service contract holder terminates a legal service contract
16 in accordance with Section 953.157 and the holder has not sought
17 legal services under the contract before the contract is
18 terminated, the contract is void.

19 (b) A legal service contract holder may void the legal
20 service contract at a later time as provided by the contract.

21 (c) If a legal service contract is voided, the company shall
22 refund to the legal service contract holder or credit to the account
23 of the legal service contract holder the full purchase price of the
24 contract. If the company does not pay the refund or credit the
25 legal service contract holder's account before the 46th day after
26 the date the contract is voided, the company is liable to the legal
27 service contract holder for a penalty each month an amount remains

1 outstanding. The monthly penalty may not exceed 10 percent of the
2 amount outstanding.

3 (d) The right to void a legal service contract is not
4 transferable.

5 Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT. (a) A
6 company may cancel a legal service contract by mailing a written
7 notice of cancellation to the legal service contract holder at the
8 legal service contract holder's last known address according to the
9 records of the company. The company must mail the notice before the
10 fifth day preceding the effective date of the cancellation. The
11 notice must state the effective date of the cancellation and the
12 reason for the cancellation.

13 (b) The company is not required to provide prior notice of
14 cancellation if the legal service contract is canceled because of:

15 (1) nonpayment of the consideration for the contract;

16 (2) a material misrepresentation by the legal service
17 contract holder to the company;

18 (3) a substantial breach of a duty by the legal service
19 contract holder; or

20 (4) cancellation of the contract by the legal service
21 contract holder.

22 Sec. 953.160. LIMITATIONS ON COMPANY NAME. (a) A company
23 may not use a name that:

24 (1) includes "insurance," "casualty," "surety," or
25 "mutual" or any other word descriptive of the insurance, casualty,
26 or surety business; or

27 (2) is deceptively similar to the name or description

1 of an insurance or surety corporation or to the name of any other
2 company.

3 (b) This section does not apply to a company that, before
4 September 1, 2003, included a word prohibited under this section in
5 its name. A company described by this subsection must include in
6 each legal service contract a statement substantially similar to
7 the following: "This agreement is not an insurance contract."

8 Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. A company,
9 a sales representative, or a representative of a sales
10 representative may not, in the company's contracts or marketing:

11 (1) make, permit, or cause to be made any false or
12 misleading statement; or

13 (2) deliberately omit a material statement if the
14 omission would be considered misleading.

15 Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF
16 ADMINISTRATOR. (a) A company may appoint an administrator or
17 designate a person to be responsible for:

18 (1) all or any part of the administration or sale of
19 legal service contracts; and

20 (2) compliance with this chapter.

21 (b) The commission may adopt rules regarding the
22 registration of an administrator with the department.

23 [Sections 953.163-953.200 reserved for expansion]

24 SUBCHAPTER E. DISCIPLINARY ACTION

25 Sec. 953.201. DISCIPLINARY ACTION. On a finding that a
26 ground for disciplinary action exists under this chapter, the
27 commission may impose an administrative sanction, including any

1 administrative penalty, as provided by Chapter 51.

2 Sec. 953.202. EMERGENCY CEASE AND DESIST ORDER. (a) The
3 executive director may issue an emergency cease and desist order to
4 enforce this chapter if the executive director determines that an
5 emergency exists requiring immediate action to protect the public.

6 (b) The executive director may issue the emergency cease and
7 desist order without notice and hearing if the executive director
8 determines that an immediate issuance is necessary under the
9 circumstances.

10 (c) The executive director shall set the time and place for
11 a hearing to affirm, modify, or set aside an emergency cease and
12 desist order that was issued without a hearing.

13 Sec. 953.203. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
14 executive director may institute an action against a company or
15 sales representative for injunctive relief under Section 51.352 to
16 restrain a violation or a threatened violation of this chapter or an
17 order issued or rule adopted under this chapter.

18 (b) In addition to the injunctive relief provided by
19 Subsection (a), the executive director may institute an action for
20 a civil penalty as provided by Section 51.352.

21 Sec. 953.204. ADMINISTRATIVE PROCEDURE. Sections 51.310,
22 51.353, and 51.354 apply to a disciplinary action taken under this
23 chapter.

24 Sec. 953.205. APPEAL. A person affected by a ruling, order,
25 decision, or other action of the executive director or department
26 may appeal by filing a petition in a district court in Travis
27 County.

1 SECTION 26.002. Article 5.13-1, Insurance Code, is amended
2 by adding Subsection (h) to read as follows:

3 (h) An insurer may not issue or renew a prepaid legal
4 service contract under this article after March 1, 2004.

5 SECTION 26.003. Subsection (b), Section 951.003,
6 Occupations Code, is amended to read as follows:

7 (b) A law pertaining to legal service contracts under
8 Chapter 953 or insurance does not apply to a program under this
9 chapter.

10 SECTION 26.004. (a) Chapter 953, Occupations Code, as
11 added by this Act, applies only to:

12 (1) a legal service contract entered into on or after
13 March 1, 2004; or

14 (2) a legal service contract entered into before
15 March 1, 2004, that meets the requirements of Subsection (c) of
16 this section.

17 (b) A person regulated under Chapter 953, Occupations Code,
18 as added by this Act, is not required to comply with that chapter
19 until March 1, 2004, but may implement the requirements of that
20 chapter before March 1, 2004. The failure of a legal service
21 contract company or other person to comply with Chapter 953,
22 Occupations Code, as added by this Act, or otherwise to administer a
23 legal service contract plan in the manner required by that chapter
24 before March 1, 2004, is not admissible in any court, arbitration,
25 or alternative dispute resolution proceeding and may not otherwise
26 be used to prove that the action of any person or the affected legal
27 service contract was unlawful or otherwise improper.

1 (c) The Texas Department of Licensing and Regulation and the
2 Texas Department of Insurance may enter into a memorandum of
3 understanding for a transition plan to transfer the regulation of
4 legal service contracts from the Texas Department of Insurance to
5 the Texas Department of Licensing and Regulation. The transition
6 plan at a minimum shall:

7 (1) allow persons licensed under Chapter 21, Insurance
8 Code, who have not registered with the Texas Department of
9 Licensing and Regulation to continue to sell legal service
10 contracts regulated by the Texas Department of Licensing and
11 Regulation until March 1, 2004; and

12 (2) allow a prepaid legal service contract issued
13 subject to Article 5.13-1, Insurance Code, to be maintained by the
14 legal service contract holder if:

15 (A) the insurer that issued the contract or a
16 related entity is registered with the Texas Department of Licensing
17 and Regulation under Chapter 953, Occupations Code, as added by
18 this Act, not later than March 1, 2004;

19 (B) the legal service contract complies with the
20 requirements established by Chapter 953, Occupations Code, as added
21 by this Act, for a legal service contract; and

22 (C) any addition or deletion to the contract made
23 by a legal service contract company registered with the Texas
24 Department of Licensing and Regulation is approved by the company
25 and the approval is endorsed or attached to the contract.

26 ARTICLE 27. GENERAL CONFORMING AMENDMENTS

27 SECTION 27.001. Section 57.044, Government Code, is amended

1 to read as follows:

2 Sec. 57.044. COURT INTERPRETER LICENSE. To qualify for a
3 court interpreter license under this subchapter, an individual must
4 apply on a form prescribed by the executive director [~~commissioner~~]
5 and demonstrate, in the manner required by the executive director
6 [~~commissioner~~], reasonable proficiency in interpreting English and
7 court proceedings for individuals who can hear but who do not
8 comprehend English or communicate in English.

9 SECTION 27.002. Subsections (a) and (c), Section 57.046,
10 Government Code, are amended to read as follows:

11 (a) The executive director [~~commissioner~~] shall prepare
12 examinations under this subchapter that test an applicant's
13 knowledge, skill, and efficiency in interpreting under this
14 subchapter.

15 (c) Examinations shall be offered in the state at least
16 twice a year at times and places designated by the executive
17 director [~~commissioner~~].

18 SECTION 27.003. The heading to Section 57.047, Government
19 Code, is amended to read as follows:

20 Sec. 57.047. [~~COMMISSIONER~~—AND] DEPARTMENT DUTIES;
21 INSPECTIONS.

22 SECTION 27.004. Subsection (a), Section 57.047, Government
23 Code, is amended to read as follows:

24 (a) The executive director [~~commissioner~~] shall enforce
25 this subchapter.

26 SECTION 27.005. Section 754.020, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 754.020. DEPOSIT OF FEES. Fees collected under this
2 subchapter shall be deposited to the credit of an account in the
3 general revenue fund that may be used by the executive director
4 [~~commissioner~~] only to administer and enforce this subchapter and
5 to reimburse expenses of board members provided by this subchapter.

6 SECTION 27.006. Section 754.021, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 754.021. LIST OF INSPECTORS; PERSONNEL. The executive
9 director [~~commissioner~~] may:

10 (1) compile a list of ASME-QEI-1 certified inspectors
11 who are registered with the department to perform an inspection
12 under this subchapter; and

13 (2) employ personnel as necessary to enforce this
14 subchapter.

15 SECTION 27.007. Section 754.022, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 754.022. NOTICE OF NONCOMPLIANCE. If the executive
18 director [~~commissioner~~] learns of a situation of noncompliance
19 under Section 754.019, the executive director [~~commissioner~~] shall
20 send notice by certified mail of the noncompliance and the actions
21 required to remedy the noncompliance to the record owner of the real
22 property on which the equipment that is the subject of the
23 noncompliance is located.

24 SECTION 27.008. Subsections (a), (c), and (d), Section
25 755.023, Health and Safety Code, are amended to read as follows:

26 (a) The executive director [~~commissioner~~] shall appoint a
27 chief inspector of boilers to administer the boiler program. The

1 chief inspector must:

2 (1) be a resident of this state and a citizen of the
3 United States;

4 (2) have at least five years' experience in the
5 construction, installation, inspection, operation, maintenance, or
6 repair of boilers; and

7 (3) pass a written examination that demonstrates the
8 necessary ability to judge the safety of boilers.

9 (c) As needed, the executive director [~~commissioner~~] shall
10 appoint persons with qualifications similar to those of the chief
11 inspector to serve as deputy inspectors.

12 (d) The executive director [~~commissioner~~] may employ
13 clerical assistants as necessary to carry out this chapter.

14 SECTION 27.009. Subsections (a), (b), (f), and (g), Section
15 755.024, Health and Safety Code, are amended to read as follows:

16 (a) To be an authorized inspector, a person must obtain a
17 commission as a boiler inspector from the executive director
18 [~~commissioner~~] and must be continuously employed by an inspection
19 agency.

20 (b) The executive director [~~commissioner~~], by written
21 examination, shall determine the qualifications of an applicant for
22 a commission to be an authorized inspector.

23 (f) After proper investigation, the executive director
24 [~~commissioner~~] may accept an inspection commission issued to a
25 person by any other jurisdiction that has a written examination
26 equal to that of this state.

27 (g) For good cause, the executive director [~~commissioner~~]

1 may rescind a commission issued by this state.

2 SECTION 27.010. Subsections (a), (f), and (g), Section
3 755.025, Health and Safety Code, are amended to read as follows:

4 (a) The executive director [~~commissioner~~] shall require
5 each boiler to be inspected internally and externally at the time of
6 initial installation and at subsequent intervals as provided by
7 this section. The executive director [~~commissioner~~] may provide
8 that the inspection be performed by any inspector.

9 (f) The executive director [~~commissioner~~] shall designate
10 the manner of inspection for nuclear boilers, the form of the
11 inspection report, and the information to be reported. The
12 executive director [~~commissioner~~] and the owner of a nuclear boiler
13 shall establish the intervals of inspection for the boiler.

14 (g) The executive director [~~commissioner~~] may authorize the
15 inspection of a boiler at any reasonable time if the executive
16 director [~~commissioner~~] determines that the boiler may be in an
17 unsafe condition. The executive director [~~commissioner~~] shall
18 notify the inspection agency that insures that boiler and request
19 the authorized inspector employed by that agency to participate
20 with the chief inspector or a deputy inspector in a joint inspection
21 of the boiler not later than the 20th day after the date on which the
22 executive director [~~commissioner~~] notifies the inspection agency.
23 An additional charge may not be made for the joint inspection.

24 SECTION 27.011. Subsections (a), (c), (d), and (e), Section
25 755.026, Health and Safety Code, are amended to read as follows:

26 (a) With the approval of the executive director
27 [~~commissioner~~] and the inspection agency that has jurisdiction for

1 the power boiler, the interval between internal inspections may be
2 extended to a period not exceeding a total of 48 months. For other
3 unfired steam boilers or steam collection or liberation drums of
4 process steam generators, the inspection interval may be extended
5 to the next scheduled downtime of the boiler, but not exceeding a
6 total of 84 months.

7 (c) The executive director [~~commissioner~~] and the
8 inspection agency may grant an additional extension for a period
9 not exceeding 120 days to the inspection interval covered by the
10 boiler's certificate of operation on receipt of a request for
11 extension stating that an emergency exists. Before the extension
12 may be granted, the inspection agency must make an external
13 inspection of the boiler, and the conditions imposed under
14 Subsection (b) must be met.

15 (d) If an extended period between internal inspections is
16 approved by the executive director [~~commissioner~~] and the
17 inspection agency, the executive director [~~commissioner~~] shall
18 issue a new certificate of operation for the extended period of
19 operation.

20 (e) If the interval between internal inspections of a gas
21 fired boiler is extended under Subsection (a), the executive
22 director [~~commissioner~~] and inspection agency shall require that an
23 inspection of the gas regulator or pressure reducing valve that
24 services the boiler be performed as part of the next regularly
25 scheduled external certificate inspection of the boiler to verify
26 proper venting of gas to a safe point of discharge.

27 SECTION 27.012. Subsections (a) and (c), Section 755.027,

1 Health and Safety Code, are amended to read as follows:

2 (a) Not later than the 30th day after the date on which a
3 certificate inspection is performed by an authorized inspector, the
4 inspection agency employing the authorized inspector shall file a
5 report with the executive director [~~commissioner~~] in the manner
6 specified by the executive director [~~department~~].

7 (c) An inspection agency shall notify the executive
8 director [~~commissioner~~] in writing of the cancellation or
9 expiration of any insurance policy issued by that agency to cover a
10 boiler located in this state, and shall include in the notice the
11 reason for the cancellation or expiration. The notice must state
12 the date the policy was issued and the date on which the
13 cancellation or expiration takes effect.

14 SECTION 27.013. Section 755.028, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 755.028. SPECIAL INSPECTIONS. The executive director
17 [~~commissioner~~] may provide a special inspection service to the
18 owners, operators, and manufacturers of boilers. The service may
19 include surveys required for certification to construct, assemble,
20 or repair boilers or pressure vessels.

21 SECTION 27.014. Subsection (a), Section 755.029, Health and
22 Safety Code, is amended to read as follows:

23 (a) The executive director [~~commissioner~~] shall issue to
24 the owner or operator of a boiler a certificate of operation for the
25 boiler if after a certificate inspection:

26 (1) the boiler is found to be in a safe condition for
27 operation; and

1 (2) the owner or operator has paid the fees assessed
2 under Section 755.030.

3 SECTION 27.015. Section 755.042, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 755.042. PROSECUTION; INJUNCTION. (a) A prosecution
6 may not be maintained if the issuance or renewal of a certificate of
7 operation has been requested for a boiler but has not been acted on.
8 However, the executive director [~~commissioner~~] may petition a
9 district court for an injunction to restrain the operation of the
10 boiler until the condition restraining its use is corrected and a
11 certificate of operation is issued if the executive director
12 [~~commissioner~~] determines that the operation of the boiler without
13 a certificate of operation constitutes a serious menace to the life
14 and safety of the persons in or about the premises. The attorney
15 general or the district or county attorney may bring the suit, and
16 venue is in the county in which the boiler is located or in Travis
17 County. It is not necessary for the prosecutor to verify the
18 pleadings or for the state to execute a bond.

19 (b) The executive director's [~~commissioner's~~] affidavit
20 that a certificate of operation or an application for a certificate
21 does not exist for a boiler, and the affidavit of the chief
22 inspector or a deputy inspector that the operation of the boiler
23 constitutes a menace to the life and safety of persons in or about
24 the premises, are sufficient proof to warrant the immediate
25 issuance of a temporary restraining order.

26 SECTION 27.016. Subsection (a), Section 91.003, Labor Code,
27 is amended to read as follows:

1 (a) Each state agency that in performing duties under other
2 law affects the regulation of staff leasing services shall
3 cooperate with the department [~~, the commissioner,~~] and other state
4 agencies as necessary to implement and enforce this chapter.

5 SECTION 27.017. Subsection (c), Section 91.015, Labor Code,
6 is amended to read as follows:

7 (c) Before denying a license application, the department
8 shall provide written notice to an applicant specifying the reasons
9 for the denial. The department shall provide the applicant at least
10 30 days after the date of the notice to address the reasons for the
11 denial. For good cause and on a showing of a good faith effort to
12 remedy the reasons for the denial, the executive director
13 [~~commissioner~~] may grant an additional 30 days to remedy the
14 reasons for denial.

15 SECTION 27.018. Section 91.048, Labor Code, is amended to
16 read as follows:

17 Sec. 91.048. REQUIRED INFORMATION. Each license holder
18 shall:

19 (1) maintain adequate books and records regarding the
20 license holder's duties and responsibilities;

21 (2) maintain and make available at all times to the
22 executive director [~~commissioner~~] the following information, which
23 shall be treated as proprietary and confidential and is exempt from
24 disclosure to persons other than other governmental agencies having
25 a reasonable, legitimate purpose for obtaining the information:

26 (A) the correct name, address, and telephone
27 number of each client company;

1 (B) each client company contract; and

2 (C) a listing by classification code as described
3 in the "Standard Industrial Classification Manual" published by the
4 United States Office of Management and Budget, of each client
5 company;

6 (3) notify the department of any addition or deletion
7 of a controlling person as listed on the license application or
8 renewal form by providing the name of the person not later than the
9 45th day after the date on which the person is added or deleted as a
10 controlling person; and

11 (4) provide a biographical history to the department
12 in connection with the addition of a new controlling person.

13 SECTION 27.019. Subsection (a), Section 91.062, Labor Code,
14 is amended to read as follows:

15 (a) The executive director [~~commissioner~~] may notify the
16 attorney general of a violation of this chapter. The attorney
17 general may apply to a district court in Travis County for
18 permission to file for quo warranto relief, injunctive relief, or
19 both.

20 SECTION 27.020. Subsection (a), Section 92.014, Labor Code,
21 is amended to read as follows:

22 (a) The department shall issue a temporary common worker
23 employer license to a person who meets the application requirements
24 established by the executive director [~~commissioner~~] and pays the
25 application and registration fees set by the commission.

26 SECTION 27.021. Subsection (a), Section 92.031, Labor Code,
27 is amended to read as follows:

1 (a) A person commits an offense if the person knowingly or
2 intentionally violates:

3 (1) this chapter;

4 (2) a rule adopted under this chapter; or

5 (3) an administrative order adopted [~~by the~~
6 ~~commissioner~~] under this chapter.

7 SECTION 27.022. Subsections (a) and (c), Section 1152.154,
8 Occupations Code, are amended to read as follows:

9 (a) An applicant for registration must file an application
10 with the department on a printed form prescribed by the executive
11 director [~~commissioner~~].

12 (c) The department shall refund the registration fee if the
13 executive director [~~commissioner~~] does not approve the
14 application.

15 SECTION 27.023. Section 1152.156, Occupations Code, is
16 amended to read as follows:

17 Sec. 1152.156. ELIGIBILITY TO REGISTER AS PROPERTY TAX
18 CONSULTANT. (a) In addition to satisfying the requirements of
19 Section 1152.155, an applicant for registration as a property tax
20 consultant must:

21 (1) complete at least 15 classroom hours of
22 educational courses approved by the executive director
23 [~~commissioner~~], including at least four hours of instruction on
24 laws and legal issues in this state related to property tax
25 consulting services; or

26 (2) if the person is eligible for registration under
27 Section 1152.155(b), submit to the commission evidence that the

1 applicant has completed at least four classroom hours of
2 educational programs or courses on the laws and legal issues in this
3 state related to property tax consulting services.

4 (b) The executive director [~~commissioner~~] may give
5 appropriate credit to an initial applicant for:

6 (1) educational courses on principles of law related
7 to property tax consulting services completed by the applicant not
8 more than two years before the date of application; and

9 (2) educational programs or courses completed by the
10 applicant on:

- 11 (A) property taxation;
- 12 (B) the property tax system;
- 13 (C) property tax administration;
- 14 (D) ethical standards; or
- 15 (E) general principles of appraisal, accounting,

16 or law as they relate to property tax consulting services.

17 SECTION 27.024. Section 1152.159, Occupations Code, is
18 amended to read as follows:

19 Sec. 1152.159. CREDITS FOR SENIOR PROPERTY TAX CONSULTANT
20 APPLICANTS. (a) The executive director [~~commissioner~~] shall
21 grant credit to an applicant for registration as a senior property
22 tax consultant as follows:

23 (1) two credits for each year the applicant completed
24 at an institution of higher education that meets program and
25 accreditation standards comparable to those for public
26 institutions of higher education as determined by the Texas Higher
27 Education Coordinating Board, not to exceed six credits;

1 (2) four credits to an applicant who holds a bachelor's
2 degree or equivalent from an institution of higher education
3 described by Subdivision (1); and

4 (3) one credit for each year in excess of five years
5 that the applicant's primary occupation involved the performance or
6 supervision of property tax consulting services or property
7 appraisal, assessment, or taxation, not to exceed 10 credits.

8 (b) The executive director [~~commissioner~~] may grant
9 additional credits to an applicant for registration as a senior
10 property tax consultant for:

11 (1) successful completion of educational programs or
12 courses on:

- 13 (A) property taxation;
- 14 (B) the property tax system;
- 15 (C) property tax administration;
- 16 (D) ethical standards; or
- 17 (E) general principles of appraisal, accounting,

18 and law as they relate to property tax consulting services;

19 (2) completion of other educational programs or
20 courses; or

21 (3) advanced or postgraduate educational achievement,
22 occupational experience, professional licenses, or professional
23 designations obtained from recognized associations, institutes, or
24 organizations.

25 (c) The executive director [~~commissioner~~] may assign not
26 less than one credit or more than five credits to a program or
27 course described by Subsection (b)(1). In determining the amount

1 of credit for the program or course, the executive director
2 [~~commissioner~~] shall consider:

- 3 (1) the nature of the program or course;
- 4 (2) the number of actual instructional hours in the
5 program or course;
- 6 (3) whether an examination is required for successful
7 completion of the program or course; and
- 8 (4) other factors the executive director
9 [~~commissioner~~] determines appropriate.

10 SECTION 27.025. Section 1152.162, Occupations Code, is
11 amended to read as follows:

12 Sec. 1152.162. ISSUANCE OF CERTIFICATE OF REGISTRATION.

13 (a) The executive director [~~commissioner~~] shall act on an initial
14 application for registration filed under Section 1152.154 not later
15 than the 31st day after the date the department receives the
16 application.

17 (b) The executive director [~~commissioner~~] shall issue to an
18 applicant who qualifies for registration the appropriate
19 certificate of registration.

20 SECTION 27.026. Section 1202.055, Occupations Code, is
21 amended to read as follows:

22 Sec. 1202.055. SECRETARY; PERSONNEL. The executive
23 director [~~commissioner~~] shall:

- 24 (1) act as secretary of the council; and
- 25 (2) provide personnel from the department necessary to
26 perform staff functions for the council.

27 SECTION 27.027. Subsections (b) and (c), Section 1202.105,

1 Occupations Code, are amended to read as follows:

2 (b) The executive director [~~commissioner~~] shall recommend
3 qualified third-party inspectors and design review agencies to the
4 council.

5 (c) The executive director [~~commissioner~~] shall publish a
6 list of all approved inspectors and design review agencies.

7 SECTION 27.028. Subdivision (12), Section 1302.002,
8 Occupations Code, is amended to conform to Section 1, Chapter 790,
9 Acts of the 77th Legislature, Regular Session, 2001, to read as
10 follows:

11 (12) "Mechanical integrity" means the condition of a
12 product, a system, or equipment installed in accordance with its
13 intended purpose and according to:

14 (A) standards at least as strict as the standards
15 provided by:

16 (i) the Uniform Mechanical Code [~~published~~
17 ~~jointly by the International Conference of Building Officials and~~
18 ~~the International Association of Plumbing and Mechanical~~
19 ~~Officials, or their successor organizations~~]; and [~~or~~]

20 (ii) the International [~~Standard~~]
21 Mechanical Code [~~published by the Southern Building Code Congress~~
22 ~~International, Inc., or its successor organization~~];

23 (B) all other applicable codes; and

24 (C) the manufacturer's specifications.

25 SECTION 27.029. Section 1302.102, Occupations Code, is
26 amended to read as follows:

27 Sec. 1302.102. INSURANCE REQUIREMENTS. (a) The executive

1 director [~~commissioner~~] shall set insurance requirements for a
2 license holder under this chapter.

3 (b) The executive director [~~commissioner~~] may waive the
4 insurance requirements for a license holder who does not engage in
5 air conditioning and refrigeration contracting for the public.

6 SECTION 27.030. Section 1302.151, Occupations Code, is
7 amended to read as follows:

8 Sec. 1302.151. CONSUMER INTEREST INFORMATION. (a) The
9 executive director [~~commissioner~~] shall prepare information of
10 consumer interest describing:

11 (1) the functions performed by the executive director
12 [~~commissioner~~] under this chapter; and

13 (2) the rights of a consumer affected by this chapter.

14 (b) The information must describe the procedure by which a
15 consumer complaint is filed with and resolved by the executive
16 director [~~commissioner~~].

17 (c) The executive director [~~commissioner~~] shall make the
18 information available to the public.

19 SECTION 27.031. Section 1302.203, Occupations Code, is
20 amended to read as follows:

21 Sec. 1302.203. EX OFFICIO MEMBERS. The executive director
22 [~~commissioner~~] and the chief administrator of this chapter serve as
23 ex officio, nonvoting members of the advisory board.

24 SECTION 27.032. Subsection (a), Section 1302.253,
25 Occupations Code, is amended to read as follows:

26 (a) The executive director [~~commissioner~~] shall issue a
27 Class A or Class B air conditioning and refrigeration contractor

1 license.

2 SECTION 27.033. Subsections (a) and (c), Section 1302.256,
3 Occupations Code, are amended to read as follows:

4 (a) An applicant for a license must submit a verified
5 application on a form prescribed by the executive director
6 [~~commissioner~~].

7 (c) The application must be accompanied by:

8 (1) a statement containing evidence satisfactory to
9 the executive director [~~commissioner~~] of the applicant's practical
10 experience required by Section 1302.255(a)(2); and

11 (2) the examination fee.

12 SECTION 27.034. Section 1302.257, Occupations Code, is
13 amended to read as follows:

14 Sec. 1302.257. EXAMINATIONS. (a) The executive director
15 [~~commissioner~~] shall prescribe:

16 (1) a separate examination for each class of license;
17 and

18 (2) within each class of license, a separate
19 examination for:

20 (A) an environmental air conditioning
21 endorsement; and

22 (B) a commercial refrigeration and process
23 cooling or heating endorsement.

24 (b) The executive director [~~commissioner~~] shall prescribe
25 the method and content of an examination administered under this
26 chapter and shall set compliance requirements for the examination.
27 To obtain an endorsement, an applicant must pass the examination

1 for the endorsement.

2 (c) The examination shall be offered on a monthly basis or
3 more frequently as determined by the executive director
4 [~~commissioner~~].

5 (d) The examination shall be offered at locations within the
6 state as determined by the executive director [~~commissioner~~]. The
7 examination may be offered by computer at locations within the
8 state as determined by the executive director [~~commissioner~~].

9 SECTION 27.035. Subsection (a), Section 1302.260,
10 Occupations Code, is amended to read as follows:

11 (a) On payment of the license fee, the executive director
12 [~~commissioner~~] shall issue an air conditioning and refrigeration
13 contractor license to an applicant who:

- 14 (1) meets the requirements of this subchapter;
- 15 (2) provides evidence of insurance coverage required
16 by the executive director [~~commissioner~~] in accordance with this
17 chapter; and
- 18 (3) passes the applicable examination.

19 SECTION 27.036. Subsection (b), Section 1302.303,
20 Occupations Code, is amended to read as follows:

21 (b) The municipality shall report a violation of the
22 ordinance to the executive director [~~commissioner~~] not later than
23 the 10th day after the date the municipality acts to enforce the
24 ordinance.

25 SECTION 27.037. Section 1302.451, Occupations Code, is
26 amended to read as follows:

27 Sec. 1302.451. EMERGENCY AND CEASE AND DESIST ORDERS.

1 (a) The executive director [~~commissioner~~] may issue an emergency
2 order as necessary to enforce this chapter if the executive
3 director [~~commissioner~~] determines that an emergency exists
4 requiring immediate action to protect the public health and safety.

5 (b) The executive director [~~commissioner~~] may issue the
6 emergency order without notice and hearing or with any notice and
7 hearing the executive director [~~commissioner~~] considers
8 practicable under the circumstances. The executive director
9 [~~commissioner~~] shall set the time and place for a hearing to affirm,
10 modify, or set aside an emergency order that was issued without a
11 hearing.

12 (c) The executive director [~~commissioner~~] may issue a cease
13 and desist order.

14 SECTION 27.038. Section 1304.007, Occupations Code, is
15 amended to read as follows:

16 Sec. 1304.007. GENERAL INVESTIGATIVE POWER OF EXECUTIVE
17 DIRECTOR [~~COMMISSIONER~~]. (a) The executive director
18 [~~commissioner~~] may investigate a provider, administrator, or other
19 person as necessary to enforce this chapter and protect service
20 contract holders in this state.

21 (b) On request of the executive director [~~commissioner~~], a
22 provider shall make the records required by Section 1304.155
23 available to the executive director [~~commissioner~~] as necessary to
24 enable the executive director [~~commissioner~~] to reasonably
25 determine compliance with this chapter.

26 SECTION 27.039. Section 1304.102, Occupations Code, is
27 amended to read as follows:

1 Sec. 1304.102. APPLICATION FOR REGISTRATION. (a) An
2 applicant for registration must submit an application to the
3 executive director [~~commissioner~~].

4 (b) The application must:

5 (1) be in the form prescribed by the executive
6 director [~~commissioner~~]; and

7 (2) include evidence satisfactory to the executive
8 director [~~commissioner~~] of compliance with the applicable
9 financial security requirements prescribed by Section 1304.151.

10 SECTION 27.040. Section 1304.104, Occupations Code, is
11 amended to read as follows:

12 Sec. 1304.104. INFORMATION CONCERNING NUMBER OF SERVICE
13 CONTRACTS SOLD. Information concerning the number of service
14 contracts sold by a provider that is submitted under Section
15 1304.103:

16 (1) is a trade secret to which Section 552.110,
17 Government Code, applies; and

18 (2) may be used only by the executive director
19 [~~commissioner~~] and the department in developing the tiered fee
20 schedule under Section 1304.103.

21 SECTION 27.041. Subsection (b), Section 1304.152,
22 Occupations Code, is amended to read as follows:

23 (b) The insurer may not cancel the policy until the insurer
24 delivers to the provider a written notice of cancellation that
25 complies with the notice requirements prescribed by Articles
26 21.49-2A and 21.49-2B, Insurance Code, for cancellation of an
27 insurance policy under those articles. The provider shall forward

1 a copy of the cancellation notice to the executive director
2 [~~commissioner~~] not later than the 15th business day after the date
3 the notice is delivered to the provider. Cancellation of the policy
4 does not reduce the insurer's responsibility for a service contract
5 issued by the provider and insured under the policy before the date
6 of the cancellation.

7 SECTION 27.042. Subsections (b) and (d), Section 1304.155,
8 Occupations Code, are amended to read as follows:

9 (b) The records required by this section may be maintained
10 in an electronic medium or through other recordkeeping technology.
11 If a record is not in a hard copy, the provider must be able to
12 reformat the record into a legible hard copy at the request of the
13 executive director [~~commissioner~~].

14 (d) A provider that discontinues business in this state
15 shall retain its records until the provider furnishes the executive
16 director [~~commissioner~~] with proof satisfactory to the executive
17 director [~~commissioner~~] that the provider has discharged all
18 obligations to service contract holders in this state.

19 SECTION 27.043. Section 1304.202, Occupations Code, is
20 amended to read as follows:

21 Sec. 1304.202. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
22 executive director [~~commissioner~~] may institute an action under
23 Section 51.352 for injunctive relief to restrain a violation or a
24 threatened violation of this chapter or an order issued or rule
25 adopted under this chapter.

26 (b) In addition to the injunctive relief provided by
27 Subsection (a), the executive director [~~commissioner~~] may

1 institute an action for a civil penalty as provided by Section
2 51.352. The amount of a civil penalty assessed under this section
3 may not exceed:

- 4 (1) \$2,500 for each violation; or
- 5 (2) \$50,000 in the aggregate for all violations of a
6 similar nature.

7 SECTION 27.044. Section 1802.002, Occupations Code, is
8 amended to read as follows:

9 Sec. 1802.002. APPLICABILITY. This chapter does not apply
10 to:

11 (1) a sale conducted by order of a United States court
12 under Title 11, United States Code;

13 (2) a sale conducted by an employee of the United
14 States, this state, or a political subdivision of this state in the
15 course and scope of employment;

16 (3) a sale conducted by a charitable or nonprofit
17 organization, if the auctioneer receives no compensation;

18 (4) a sale conducted by an individual of the
19 individual's property if the individual is not engaged in the
20 business of selling property as an auctioneer on a recurring basis;

21 (5) a foreclosure sale of real property personally
22 conducted by a trustee under a deed of trust;

23 (6) a foreclosure sale of personal property personally
24 conducted by:

25 (A) a person who holds a security interest in the
26 property, including a mortgage; or

27 (B) an employee or agent of a person described by

1 Paragraph (A) acting in the course and scope of employment, if:

2 (i) the employee or agent is not otherwise
3 engaged in the auction business; and

4 (ii) all property for sale in the auction is
5 subject to a security agreement;

6 (7) a sale conducted by sealed bid;

7 (8) an auction conducted only for student training
8 purposes as part of a course of study approved by the executive
9 director [~~commissioner~~] for auctioneers;

10 (9) an auction conducted by a posted stockyard or
11 market agency as defined by the federal Packers and Stockyards Act
12 (7 U.S.C. Section 181 et seq.), as amended;

13 (10) an auction of livestock conducted by a nonprofit
14 livestock trade association chartered in this state, if the auction
15 involves only the sale of livestock owned by members of the trade
16 association; or

17 (11) an auction conducted by a charitable or nonprofit
18 organization chartered in this state, if the auction:

19 (A) is part of a fair that is organized under
20 state, county, or municipal authority; and

21 (B) involves only the sale of property owned by
22 the organization's members.

23 SECTION 27.045. Subsection (a), Section 1802.051,
24 Occupations Code, is amended to read as follows:

25 (a) A person may not act as an auctioneer or associate
26 auctioneer in an auction held in this state unless the person is an
27 individual who holds a license issued by the executive director

1 ~~[commissioner]~~ under this chapter.

2 SECTION 27.046. Section 1802.054, Occupations Code, is
3 amended to read as follows:

4 Sec. 1802.054. APPLICATION FOR LICENSE. An applicant for a
5 license must apply to the executive director ~~[commissioner]~~ on a
6 form provided by the executive director ~~[commissioner]~~ that
7 establishes the applicant's eligibility for the license. The
8 application must be accompanied by:

- 9 (1) the required bond;
- 10 (2) the required license fee; and
- 11 (3) either:
 - 12 (A) the permit number of a sales tax permit
 - 13 issued to the applicant by the comptroller under Subchapter F,
 - 14 Chapter 151, Tax Code; or
 - 15 (B) proof of exemption from the tax permit
 - 16 requirement under Chapter 151, Tax Code.

17 SECTION 27.047. Subsections (a) and (b), Section 1802.055,
18 Occupations Code, are amended to read as follows:

19 (a) An individual who establishes that the individual is
20 eligible for an auctioneer's license may apply to the executive
21 director ~~[commissioner]~~ to take the license examination. The
22 application must be accompanied by the examination fee.

23 (b) On receipt of an examination application and fee, the
24 executive director ~~[commissioner]~~ shall furnish the applicant
25 with:

- 26 (1) study materials and references on which the
- 27 examination will be based; and

1 (2) a schedule specifying the dates and places the
2 examination will be offered.

3 SECTION 27.048. Subsections (b) and (c), Section 1802.056,
4 Occupations Code, are amended to read as follows:

5 (b) The license examination shall be offered at least four
6 times each year at locations designated by the executive director
7 ~~[commissioner]~~.

8 (c) The executive director ~~[commissioner]~~ shall prepare:

9 (1) examinations for an auctioneer's license; and

10 (2) study and reference materials on which the
11 examinations are based.

12 SECTION 27.049. Subsection (a), Section 1802.152,
13 Occupations Code, is amended to read as follows:

14 (a) The department is the manager of the fund and shall:

15 (1) administer the fund without appropriation;

16 (2) maintain books and records as required by the
17 executive director ~~[commissioner]~~;

18 (3) appear at hearings or judicial proceedings; and

19 (4) invest and reinvest the fund's assets as
20 instructed by the executive director ~~[commissioner]~~.

21 SECTION 27.050. Subsection (b), Section 1802.155,
22 Occupations Code, is amended to read as follows:

23 (b) If the fund contains insufficient assets to pay the
24 consumer:

25 (1) the department shall record the time and date an
26 order for payment to a consumer was received; and

27 (2) the executive director ~~[commissioner]~~ shall pay

1 consumers for whom an order is recorded under Subdivision (1) as
2 funds become available in the order of the recorded time and date of
3 the order.

4 SECTION 27.051. Section 1802.156, Occupations Code, is
5 amended to read as follows:

6 Sec. 1802.156. EDUCATION EXPENDITURES PERMITTED. The
7 executive director [~~commissioner~~] may use amounts in excess of
8 \$250,000 in the fund to:

9 (1) advance education and research in the
10 auctioneering profession for the benefit of license holders and to
11 improve and increase the efficiency of the industry;

12 (2) underwrite educational seminars, training
13 centers, and other educational projects for the use and benefit of
14 license holders;

15 (3) sponsor, contract, and underwrite other
16 educational and research projects that advance the auctioneering
17 profession in this state; and

18 (4) cooperate with associations of auctioneers and
19 other groups for the education and advancement of the auctioneering
20 profession in this state.

21 SECTION 27.052. Subsections (a) and (b), Section 1802.205,
22 Occupations Code, are amended to read as follows:

23 (a) If the department's determination under Section
24 1802.202 is not disputed by the auctioneer or the aggrieved party,
25 the executive director [~~commissioner~~] shall pay the claim from the
26 fund, subject to Section 1802.206.

27 (b) If a hearing is held on the department's determination,

1 the executive director [~~commissioner~~] shall pay to the aggrieved
2 party the amount of actual damages determined by the executive
3 director [~~commissioner~~].

4 SECTION 27.053. Subsection (a), Section 1802.206,
5 Occupations Code, is amended to read as follows:

6 (a) The executive director [~~commissioner~~] may not pay a
7 single aggrieved party more than \$10,000.

8 SECTION 27.054. Section 1802.208, Occupations Code, is
9 amended to read as follows:

10 Sec. 1802.208. SUBROGATION. If the executive director
11 [~~commissioner~~] pays a claim against an auctioneer, the department
12 is subrogated to all rights of the aggrieved party against the
13 auctioneer to the extent of the amount paid to the aggrieved party.

14 SECTION 27.055. Subsection (b), Section 1901.051,
15 Occupations Code, is amended to read as follows:

16 (b) The executive director [~~commissioner~~] shall issue
17 licenses to applicants who qualify.

18 SECTION 27.056. Section 1901.151, Occupations Code, is
19 amended to read as follows:

20 Sec. 1901.151. LICENSE REQUIRED. A person may not act or
21 offer to act as a driller unless the person holds a license issued
22 by the executive director [~~commissioner~~] under this chapter and
23 rules adopted under this chapter.

24 SECTION 27.057. Section 1901.402, Occupations Code, is
25 amended to read as follows:

26 Sec. 1901.402. INJUNCTION AND OTHER ENFORCEMENT
27 PROVISIONS. (a) The executive director [~~commissioner~~] may bring

1 an action to enjoin a person from violating this chapter.

2 (b) The executive director [~~commissioner~~] may enforce by
3 injunction or other appropriate remedy in a court any rule,
4 decision, determination, or order adopted or entered under this
5 chapter.

6 SECTION 27.058. Section 1901.403, Occupations Code, is
7 amended to read as follows:

8 Sec. 1901.403. VENUE. The executive director
9 [~~commissioner~~] may bring an action in:

10 (1) Travis County; or

11 (2) the county in which:

12 (A) the offending activity occurred; or

13 (B) the person engaging in the activity resides.

14 SECTION 27.059. Subsection (b), Section 1901.404,
15 Occupations Code, is amended to read as follows:

16 (b) At the request of the executive director
17 [~~commissioner~~], the attorney general shall bring an action in the
18 name of the state for injunctive relief, to recover a civil penalty,
19 or for both injunctive relief and a civil penalty, as authorized by
20 this subchapter.

21 SECTION 27.060. Section 1902.151, Occupations Code, is
22 amended to read as follows:

23 Sec. 1902.151. LICENSE REQUIRED. A person may not act or
24 offer to act as an installer unless the person holds a license
25 issued by the executive director [~~commissioner~~] under rules adopted
26 under this chapter.

27 SECTION 27.061. Section 1902.402, Occupations Code, is

1 amended to read as follows:

2 Sec. 1902.402. INJUNCTION AND OTHER ENFORCEMENT
3 PROVISIONS. (a) The executive director [~~commissioner~~] may bring
4 an action to enjoin a person from violating this chapter.

5 (b) The executive director [~~commissioner~~] may enforce by
6 injunction or other appropriate remedy in a court any rule,
7 decision, determination, or order adopted or entered under this
8 chapter.

9 SECTION 27.062. Section 1902.403, Occupations Code, is
10 amended to read as follows:

11 Sec. 1902.403. VENUE. The executive director
12 [~~commissioner~~] may bring an action in:

- 13 (1) Travis County; or
14 (2) the county in which:
15 (A) the offending activity occurred; or
16 (B) the person engaging in the activity resides.

17 SECTION 27.063. Subsection (b), Section 1902.404,
18 Occupations Code, is amended to read as follows:

19 (b) At the request of the executive director
20 [~~commissioner~~], the attorney general shall bring an action in the
21 name of the state for injunctive relief, to recover a civil penalty,
22 or for both injunctive relief and a civil penalty, as authorized by
23 this subchapter.

24 SECTION 27.064. Section 2052.053, Occupations Code, is
25 amended to read as follows:

26 Sec. 2052.053. INVESTIGATIVE AUTHORITY. (a) The
27 executive director [~~commissioner~~] shall investigate allegations of

1 activity that may violate this chapter.

2 (b) The executive director [~~commissioner~~] may enter, at a
3 reasonable time, a place of business or an establishment in which
4 activity alleged to violate this chapter may occur. The executive
5 director [~~commissioner~~] is not required to give advance notice
6 before entering.

7 SECTION 27.065. Section 2052.102, Occupations Code, is
8 amended to read as follows:

9 Sec. 2052.102. BOXING PROMOTER LICENSE APPLICATION
10 REQUIREMENTS. (a) An applicant for a boxing promoter's license
11 under this chapter must apply on a form furnished by the executive
12 director [~~commissioner~~].

13 (b) An application must be accompanied by:

14 (1) a license fee in an amount set by the commission;
15 and

16 (2) a surety bond:

17 (A) subject to approval by the executive director
18 [~~commissioner~~]; and

19 (B) conditioned on the applicant's payment of the
20 tax imposed under Section 2052.151.

21 (c) The executive director [~~commissioner~~] shall establish
22 the amount of the surety bond required under Subsection (b). The
23 bond amount may not be less than \$300.

24 SECTION 27.066. Subsection (a), Section 2052.108,
25 Occupations Code, is amended to read as follows:

26 (a) An application for a license under Section 2052.107 must
27 be made on a form furnished by the executive director

1 ~~commissioner~~].

2 SECTION 27.067. Section 2052.110, Occupations Code, is
3 amended to read as follows:

4 Sec. 2052.110. LICENSE AND BONDING EXCEPTIONS. The
5 licensing and bonding requirements of this subchapter do not apply
6 to:

7 (1) a boxing event in which the participants do not
8 receive a money remuneration, purse, or prize for their
9 performances or services if the event is promoted, conducted, or
10 maintained by:

- 11 (A) an educational institution;
- 12 (B) a law enforcement organization;
- 13 (C) a Texas National Guard Unit; or
- 14 (D) an amateur athletic organization recognized
15 by the executive director ~~commissioner~~;

16 (2) a nonprofit amateur athletic association
17 chartered under the law of this state, including a membership club
18 affiliated with the association located within this state and
19 recognized by the executive director ~~commissioner~~;

20 (3) an event conducted by a college, school, or
21 university that is part of the institution's athletic program in
22 which only students of different educational institutions
23 participate; or

24 (4) an event in which only members of a troop, battery,
25 company, or unit of the Texas National Guard or a law enforcement
26 agency participate.

27 SECTION 27.068. Section 2052.111, Occupations Code, is

1 amended to read as follows:

2 Sec. 2052.111. DENIAL OF APPLICATION. The executive
3 director [~~commissioner~~] may deny an application for a license if:

4 (1) the applicant does not meet the qualifications for
5 the license; or

6 (2) after conducting an investigation and a hearing,
7 the executive director [~~commissioner~~] determines that the
8 applicant has violated this chapter or a rule adopted under this
9 chapter.

10 SECTION 27.069. Subsection (b), Section 2052.203,
11 Occupations Code, is amended to read as follows:

12 (b) The elimination tournament boxing promoter of a local,
13 regional, or championship elimination tournament is not required to
14 require that each elimination tournament contestant wear headgear
15 approved by the department if the promoter under department rules
16 notifies the executive director [~~commissioner~~] of the decision not
17 to use the approved headgear.

18 SECTION 27.070. Subsections (b) and (e), Section 2052.252,
19 Occupations Code, are amended to read as follows:

20 (b) The event may take place only if the executive director
21 [~~commissioner~~] approves the event not later than seven days before
22 the date the event begins.

23 (e) The event is subject to the supervision of the executive
24 director [~~commissioner~~].

25 SECTION 27.071. Section 2052.302, Occupations Code, is
26 amended to read as follows:

27 Sec. 2052.302. FORFEITURE OF PURSE. The executive director

1 ~~[commissioner]~~ may order a boxer or manager to forfeit to this state
2 a purse in an amount of not more than \$1,000 for violating this
3 chapter or a rule adopted under this chapter.

4 SECTION 27.072. Subsections (a) and (b), Section 2052.304,
5 Occupations Code, are amended to read as follows:

6 (a) A person may seek review of a decision or an order of the
7 executive director ~~[commissioner]~~ under this chapter by filing a
8 petition for review in a district court in Travis County not later
9 than the 30th day after the date on which the decision or order of
10 the executive director ~~[commissioner]~~ is final if the person is:

11 (1) a party to an administrative hearing in which the
12 decision or order is issued; and

13 (2) aggrieved by the decision or order.

14 (b) The filing of a petition for review under Subsection (a)
15 does not stay the effect of the decision or order of the executive
16 director ~~[commissioner]~~ that is the subject of the petition. The
17 executive director ~~[commissioner]~~ or the district court in which
18 the petition for review is filed may order a stay on appropriate
19 terms.

20 SECTION 27.073. Section 2052.305, Occupations Code, is
21 amended to read as follows:

22 Sec. 2052.305. SERVICE OF PROCESS. A petition for review
23 filed under Section 2052.304 must be served on:

24 (1) the executive director ~~[commissioner]~~; and

25 (2) all parties of record to a hearing before the
26 executive director ~~[commissioner]~~ that relates to the matter for
27 which the petition for review is filed.

1 SECTION 27.074. Subsection (a), Section 2052.306,
2 Occupations Code, is amended to read as follows:

3 (a) On receipt of a petition for review served under Section
4 2052.305, the executive director [~~commissioner~~], not later than the
5 date on which the answer to the petition must be filed or the date on
6 which the record is made available to the executive director
7 [~~commissioner~~], whichever date is later, shall certify to the
8 district court in which the petition is filed the record of the
9 proceedings to which the petition relates.

10 SECTION 27.075. Section 2052.307, Occupations Code, is
11 amended to read as follows:

12 Sec. 2052.307. JUDICIAL REVIEW. (a) A district court
13 reviewing a decision or an order of the executive director
14 [~~commissioner~~] under this subchapter shall try the action without a
15 jury in the same manner as a civil action, except that evidence is
16 not admissible unless the evidence was presented at the hearing or
17 noticed in the record of the hearing before the executive director
18 [~~commissioner~~]. The petitioner has the burden of proof in the
19 action.

20 (b) The court may:

21 (1) affirm the decision or order of the executive
22 director [~~commissioner~~]; or

23 (2) remand the matter to the executive director
24 [~~commissioner~~] for further proceedings.

25 SECTION 27.076. Section 2052.308, Occupations Code, is
26 amended to read as follows:

27 Sec. 2052.308. APPEAL. (a) The petitioner or executive

1 director [~~commissioner~~] may appeal a final judgment of a court
2 conducting a review under this subchapter in the same manner as a
3 civil action.

4 (b) The executive director [~~commissioner~~] is not required
5 to file an appeal bond.

6 SECTION 27.077. Subsection (a), Section 2501.053,
7 Occupations Code, is amended to read as follows:

8 (a) Not later than the 30th day before the date a personnel
9 service begins operating in this state, the owner of the service
10 must file notice with the executive director [~~commissioner~~].

11 SECTION 27.078. Subsection (a), Section 2501.055,
12 Occupations Code, is amended to read as follows:

13 (a) On receipt of a notice filed under Section 2501.053, the
14 executive director [~~commissioner~~] shall issue to the owner a
15 certificate of authority to do business as a personnel service not
16 later than the 15th day after the date the notice is filed if the
17 owner:

18 (1) pays the filing fee required for the certificate;
19 and

20 (2) complies with the requirements of Section
21 2501.054.

22 SECTION 27.079. Section 2501.057, Occupations Code, is
23 amended to read as follows:

24 Sec. 2501.057. RENEWAL OF CERTIFICATE. The executive
25 director [~~commissioner~~] shall issue a renewal of a certificate of
26 authority on the receipt of:

27 (1) a renewal notice from the owner that contains the

1 information required by Section 2501.053;

2 (2) a renewal fee; and

3 (3) security that complies with Section 2501.054.

4 SECTION 27.080. The heading to Subchapter D, Chapter 2501,
5 Occupations Code, is amended to read as follows:

6 SUBCHAPTER D. ENFORCEMENT [~~BY COMMISSIONER~~]

7 SECTION 27.081. Section 2501.151, Occupations Code, is
8 amended to read as follows:

9 Sec. 2501.151. ENFORCEMENT. (a) The executive director
10 [~~commissioner~~] shall enforce Section 2501.102 and may investigate a
11 personnel service as necessary to enforce that section.

12 (b) The attorney general shall assist the executive
13 director [~~commissioner~~] on request.

14 SECTION 27.082. Subsection (a), Section 2501.253,
15 Occupations Code, is amended to read as follows:

16 (a) In addition to the amount awarded to a complainant under
17 Section 2501.154(b), the executive director [~~commissioner~~] may
18 impose on the personnel service an administrative penalty equal to
19 two times the amount awarded under that subsection. A penalty
20 collected under this section shall be deposited in the state
21 treasury.

22 SECTION 27.083. Subsections (a) and (b), Section 2502.052,
23 Occupations Code, are amended to read as follows:

24 (a) To obtain a certificate of authority, an owner must:

25 (1) file with the executive director [~~commissioner~~] a
26 sworn application accompanied by the required application fee; and

27 (2) file with the department security that complies

1 with Section 2502.053.

2 (b) The application must be in the form prescribed by the
3 executive director [~~commissioner~~] and include:

4 (1) the address of the principal location of the
5 career counseling service;

6 (2) the assumed name, if any, under which the career
7 counseling service will operate;

8 (3) the name and address of each owner; and

9 (4) a statement that the owner has read and is familiar
10 with this chapter.

11 SECTION 27.084. Subsection (a), Section 2502.053,
12 Occupations Code, is amended to read as follows:

13 (a) Before the executive director [~~commissioner~~] may issue
14 a certificate of authority to an owner, the owner must file with the
15 department a bond in the amount of \$10,000 that is:

16 (1) executed by a surety company authorized to do
17 business in this state;

18 (2) payable to the state; and

19 (3) conditioned on the faithful performance of the
20 owner's obligations under this chapter.

21 SECTION 27.085. Subsections (a) and (b), Section 2502.054,
22 Occupations Code, are amended to read as follows:

23 (a) The executive director [~~commissioner~~] shall issue a
24 certificate of authority to do business as a career counseling
25 service to an applicant who meets the requirements of this
26 subchapter.

27 (b) The executive director [~~commissioner~~] shall process a

1 certificate application not later than the 15th day after the date
2 the application is filed.

3 SECTION 27.086. Section 2502.251, Occupations Code, is
4 amended to read as follows:

5 Sec. 2502.251. ENFORCEMENT. (a) The executive director
6 [~~commissioner~~] shall enforce this chapter and may investigate a
7 career counseling service as necessary.

8 (b) The attorney general shall assist the executive
9 director [~~commissioner~~] on request.

10 SECTION 27.087. Section 2502.301, Occupations Code, is
11 amended to read as follows:

12 Sec. 2502.301. ADMINISTRATIVE PENALTY. In addition to the
13 amount awarded to a complainant under Section 2502.254(b), the
14 executive director [~~commissioner~~] may impose on the career
15 counseling service an administrative penalty equal to two times the
16 amount awarded under that subsection. A penalty collected under
17 this section shall be deposited in the state treasury.

18 SECTION 27.088. Section 7, Article 9035, Revised Statutes,
19 is amended to read as follows:

20 Sec. 7. FINANCIAL SECURITY REQUIREMENTS. (a) To ensure
21 the adequate performance of a warrantor's obligations to a
22 consumer, each warrantor shall comply with financial security
23 requirements by:

24 (1) insuring its vehicle protection products under a
25 reimbursement insurance policy issued by an insurer authorized to
26 engage in the business of insurance in this state or under a surplus
27 lines insurance policy issued by an insurer eligible to place

1 coverage in this state as regulated under Chapter 981 [~~Article~~
2 ~~1.14-2~~], Insurance Code; or

3 (2) providing any other form of comparable financial
4 security approved by the executive director [~~commissioner~~].

5 (b) The department may not require any other financial
6 security requirements or financial standards for warrantors.

7 (c) Vehicle protection services must abide by the financial
8 responsibility requirements provided by Chapter 686,
9 Transportation Code. The department may coordinate with the Texas
10 Department of Insurance to assure consistency with the standard
11 proof of motor vehicle liability insurance form prescribed by
12 Section 601.081, Transportation Code.

13 SECTION 27.089. Section 1.14, Chapter 376, Acts of the 77th
14 Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas
15 Civil Statutes), is amended to read as follows:

16 Sec. 1.14. PERSONNEL. The executive director
17 [~~commissioner~~] may, as provided by the General Appropriations Act,
18 appoint and fix the compensation of any personnel, including
19 specialists and consultants, necessary to perform duties and
20 functions under this article.

21 SECTION 27.090. Subsection (e), Section 1.41, Chapter 376,
22 Acts of the 77th Legislature, Regular Session, 2001 (Article 165c,
23 Vernon's Texas Civil Statutes), is amended to read as follows:

24 (e) On written request of at least 25 qualified voters
25 residing in the target area or operational area mentioned in the
26 notice requesting an election accompanied by unsigned petitions,
27 the county clerk of each county within the target area or

1 operational area shall certify and mark for identification
2 petitions for circulation. An application for a petition seeking
3 an election to disapprove the issuance of a permit must be headed:
4 "Application for Election to Disapprove a Weather Modification
5 Permit." The application shall contain a statement just ahead of
6 the signatures of the applicants stating the following: "It is the
7 hope, purpose, and intent of the applicants whose signatures appear
8 on this application to see disapproved the issuance of a permit for
9 weather modification, including hail suppression." An application
10 for a petition seeking an election to approve the issuance of a
11 permit shall be headed: "Application for Election to Approve a
12 Weather Modification Permit." The application shall contain a
13 statement just ahead of the signatures of the applicants as
14 follows: "It is the hope, purpose, and intent of the applicants
15 whose signatures appear on this petition to see approved the
16 issuance of a permit for weather modification, including hail
17 suppression." On the return to the county clerks of petitions
18 signed by at least 10 percent of the qualified voters residing in
19 each county within the target area or operational area in the notice
20 requesting an election, the commissioners court of each county
21 shall call and hold an election. Notice under Chapter 111, Local
22 Government Code, of the commissioners court meeting to call and
23 hold the election is not required. The date of the election shall
24 be determined by the commissioners court in accordance with this
25 section, notwithstanding Sections 41.004 and 41.0041, Election
26 Code. The petition must be filed with the clerk of each county
27 within 30 days immediately following the first publication of

1 notice. The election must be held within 45 days after the date the
2 petition is received to determine whether or not the qualified
3 voters in the target area or operational area approve the issuance
4 of the permit. Immediately on calling the election, the clerk of
5 each county within the target area or operational area shall notify
6 the executive director [~~commissioner~~] of the date of the election.
7 Except as otherwise provided in this article, elections must be
8 held in accordance with the Election Code.

9 ARTICLE 28. VALET PARKING SERVICES FINANCIAL RESPONSIBILITY

10 SECTION 28.001. Section 2, Article 9035, Revised Statutes,
11 is amended by adding Subdivision (10) to read as follows:

12 (10) "Vehicle protection service" means a valet
13 parking service as defined by Section 686.001(3), Transportation
14 Code.

15 SECTION 28.002. Subtitle H, Title 7, Transportation Code,
16 is amended by adding Chapter 686 to read as follows:

17 CHAPTER 686. VALET PARKING SERVICES

18 Sec. 686.001. DEFINITIONS. In this chapter:

19 (1) "Financial responsibility" means the ability to
20 respond in damages for liability for an accident that:

21 (A) occurs after the effective date of the
22 document evidencing the establishment of the financial
23 responsibility; and

24 (B) arises out of the operation of a motor
25 vehicle by an employee of a valet parking service.

26 (2) "Public accommodation" means any:

27 (A) inn, hotel, or motel;

1 (B) restaurant, cafeteria, or other facility
2 principally engaged in selling food for consumption on the
3 premises;

4 (C) bar, nightclub, or other facility engaged in
5 selling alcoholic beverages for consumption on the premises;

6 (D) motion picture house, theater, concert hall,
7 stadium, or other place of exhibition or entertainment; or

8 (E) other facility used by or open to members of
9 the public.

10 (3) "Valet parking service" means a parking service
11 through which the motor vehicles of patrons of a public
12 accommodation are parked for a fee by a third party who is not an
13 employee of the public accommodation.

14 Sec. 686.002. REQUIREMENT OF FINANCIAL RESPONSIBILITY FOR
15 VALET PARKING SERVICES. A person may not operate a valet parking
16 service unless financial responsibility for each employee who
17 operates a motor vehicle for the service is established through:

18 (1) a motor vehicle liability or comprehensive general
19 liability and garage insurance policy in an amount established by
20 Section 686.004;

21 (2) a surety bond filed under Section 601.121; or

22 (3) a deposit in the amount of \$450,000 under Section
23 601.122, notwithstanding any other amount prescribed by that
24 section.

25 Sec. 686.003. EVIDENCE OF FINANCIAL RESPONSIBILITY.

26 (a) The owner or operator of a valet parking service shall provide
27 evidence of financial responsibility in the same manner as required

1 under Section 601.053.

2 (b) In addition to complying with Subsection (a), an owner
3 or operator of a valet parking service shall exhibit, for public
4 inspection, evidence of financial responsibility at a public
5 accommodation whose patrons use the service.

6 Sec. 686.004. MINIMUM COVERAGE AMOUNTS. (a) The minimum
7 amounts of motor vehicle liability insurance coverage required to
8 establish financial responsibility under this chapter are:

9 (1) \$100,000 for bodily injury to or death of one
10 person in one accident;

11 (2) \$300,000 for bodily injury to or death of two or
12 more persons in one accident, subject to the amount provided by
13 Subdivision (1) for bodily injury to or death of one of the persons;
14 and

15 (3) \$50,000 for damage to or destruction of property
16 of others in one accident.

17 (b) The comprehensive general liability insurance must be
18 on a broad form and provide limits of liability for bodily injury
19 and property damage of not less than \$300,000 combined single limit
20 or the equivalent.

21 (c) The garage insurance must provide limits of liability
22 for bodily injury and property damage of not less than \$300,000
23 combined single limit, or the equivalent, and must provide the
24 following coverages:

25 (1) comprehensive and collision coverage for physical
26 damage;

27 (2) coverage for vehicle storage; and

1 (3) coverage for a vehicle driven by or at the
2 direction of the valet parking service.

3 Sec. 686.005. COMMON LAW DEFENSES. In an action against an
4 owner or operator of a valet parking service that has not
5 established financial responsibility as required by this chapter to
6 recover damages for personal injuries, death, or property damage
7 sustained in a motor vehicle accident arising out of the operation
8 of a valet parking service, it is not a defense that the party who
9 brings the action:

10 (1) was guilty of contributory negligence; or

11 (2) assumed the risk of injury, death, or property
12 damage.

13 Sec. 686.006. OPERATION OF MOTOR VEHICLE IN VIOLATION OF
14 FINANCIAL RESPONSIBILITY REQUIREMENT; OFFENSE. (a) A person
15 commits an offense if the person, while in the course and scope of
16 the person's employment with a valet parking service, operates a
17 motor vehicle of a patron of the service without the financial
18 responsibility required by this chapter.

19 (b) Except as provided by Subsections (c) and (d), an
20 offense under this section is a misdemeanor punishable by a fine of
21 not less than \$175 or more than \$350.

22 (c) If a person has been previously convicted of an offense
23 under this section, an offense under this section is a misdemeanor
24 punishable by a fine of not less than \$350 or more than \$1,000.

25 (d) If the court determines that a person who has not been
26 previously convicted of an offense under this section is
27 economically unable to pay the fine, the court may reduce the fine

1 to not less than \$175.

2 Sec. 686.007. DEFENSE: FINANCIAL RESPONSIBILITY IN EFFECT
3 AT TIME OF ALLEGED OFFENSE. It is a defense to prosecution under
4 Section 686.002 that the person charged produces one of the
5 documents listed in Section 601.053 that was valid at the time the
6 offense is alleged to have occurred.

7 ARTICLE 29. GENERAL TRANSITION; EFFECTIVE DATE

8 SECTION 29.001. The changes in law made by this Act
9 regarding the powers and duties of the executive director of the
10 Texas Department of Licensing and Regulation that are transferred
11 to the Texas Commission of Licensing and Regulation do not affect
12 the status of a complaint, investigation, or other proceeding. A
13 rule or form adopted by the executive director before the effective
14 date of this Act remains in effect as a rule or form of the
15 department until amended or changed.

16 SECTION 29.002. This Act takes effect September 1, 2003.