

By: Jackson

S.B. No. 282

A BILL TO BE ENTITLED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

AN ACT

relating to the continuation and functions of the Texas State Board of Plumbing Examiners; providing penalties.

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

SECTION 1. (a) Section 1301.002, Occupations Code, is amended by amending Subdivision (4) and adding Subdivision (1-a) to read as follows:

(1-a) "Executive director" means the executive director of the Texas State Board of Plumbing Examiners.

(4) "Plumber's apprentice" means a person other than a master plumber, journeyman plumber, or tradesman plumber-limited license holder who, as the person's principal occupation, learns about and assists in the installation of plumbing, has fulfilled the requirements of and is registered by the board, and works under the supervision of a master plumber and the direct supervision of a licensed plumber.

(b) In accordance with Subsection (c), Section 311.031, Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Subdivision (4), Section 1301.002, Occupations Code, as set out in this section, gives effect to changes made by Section 1, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 2. Section 1301.003, Occupations Code, is amended to read as follows:

1 Sec. 1301.003. APPLICATION OF SUNSET ACT. The Texas State
2 Board of Plumbing Examiners is subject to Chapter 325, Government
3 Code (Texas Sunset Act). Unless continued in existence as provided
4 by that chapter, the board is abolished and this chapter expires
5 September 1, 2015 [~~2003~~].

6 SECTION 3. Subsection (c), Section 1301.151, Occupations
7 Code, is amended to read as follows:

8 (c) Appointments to the board shall be made without regard
9 to the race, color, disability [~~creed~~], sex, religion, age, or
10 national origin of the appointee.

11 SECTION 4. Section 1301.153, Occupations Code, is amended
12 to read as follows:

13 Sec. 1301.153. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

14 (a) In this section, "Texas trade association" means a cooperative
15 and voluntarily joined statewide association of business or
16 professional competitors in this state designed to assist its
17 members and its industry or profession in dealing with mutual
18 business or professional problems and in promoting their common
19 interest.

20 (b) A person may not be a member [~~or employee~~] of the board
21 and may not be a board employee employed in a "bona fide executive,
22 administrative, or professional capacity," as that phrase is used
23 for purposes of establishing an exemption to the overtime
24 provisions of the federal Fair Labor Standards Act of 1938 (29
25 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

26 (1) the person is an officer, employee, or paid
27 consultant of a Texas trade association in the field of building

1 construction [~~industry~~]; or

2 (2) the person's spouse [~~related within the second~~
3 ~~degree by consanguinity or affinity, as determined under Chapter~~
4 ~~573, Government Code, to a person who~~] is an officer, manager
5 [~~employee~~], or paid consultant of a Texas trade association in the
6 field of building construction [~~regulated industry~~].

7 (c) [~~(b)~~] A person may not be [~~serve as~~] a member of the
8 board or act as the general counsel to the board or the agency if the
9 person is required to register as a lobbyist under Chapter 305,
10 Government Code, because of the person's activities for
11 compensation on behalf of a profession related to the operation of
12 the agency.

13 SECTION 5. Section 1301.156, Occupations Code, is amended
14 to read as follows:

15 Sec. 1301.156. GROUNDS FOR REMOVAL. (a) It is a ground for
16 removal from the board that a member:

17 (1) does not have at the time of taking office
18 [~~appointment~~] the qualifications required by Section 1301.151 or
19 1301.152;

20 (2) does not maintain during service on the board the
21 qualifications required by Section 1301.151 or 1301.152;

22 (3) is ineligible for membership under [~~violates a~~
23 ~~prohibition prescribed by~~] Section 1301.153; [~~or~~]

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

27 (5) is absent from more than [~~fails to attend at least~~]

1 half of the regularly scheduled board meetings that the member is
2 eligible to attend during a calendar year without an excuse
3 approved by a majority vote of the board.

4 (b) The validity of an action of the board is not affected by
5 the fact that it is taken when a ground for removal of a board member
6 exists.

7 (c) If the executive director has knowledge that a potential
8 ground for removal exists, the executive director shall notify the
9 presiding officer of the board of the potential ground. The
10 presiding officer shall then notify the governor and the attorney
11 general that a potential ground for removal exists. If the
12 potential ground for removal involves the presiding officer, the
13 executive director shall notify the next highest ranking officer of
14 the board, who shall then notify the governor and the attorney
15 general that a potential ground for removal exists.

16 SECTION 6. Section 1301.157, Occupations Code, is amended
17 to read as follows:

18 Sec. 1301.157. OFFICERS. (a) The governor shall designate
19 a member of the board as the presiding officer of the board to serve
20 in that capacity at the pleasure of the governor.

21 (b) The board shall elect a [~~presiding officer and a~~]
22 secretary from its membership.

23 SECTION 7. Subchapter C, Chapter 1301, Occupations Code, is
24 amended by adding Section 1301.159 to read as follows:

25 Sec. 1301.159. TRAINING. (a) A person who is appointed to
26 and qualifies for office as a member of the board may not vote,
27 deliberate, or be counted as a member in attendance at a meeting of

1 the board until the person completes a training program that
2 complies with this section.

3 (b) The training program must provide the person with
4 information regarding:

5 (1) this chapter;

6 (2) the programs operated by the agency;

7 (3) the role and functions of the agency;

8 (4) the rules of the agency, with an emphasis on the
9 rules that relate to disciplinary and investigatory authority;

10 (5) the current budget for the agency;

11 (6) the results of the most recent formal audit of the
12 agency;

13 (7) the requirements of:

14 (A) the open meetings law, Chapter 551,
15 Government Code;

16 (B) the public information law, Chapter 552,
17 Government Code;

18 (C) the administrative procedure law, Chapter
19 2001, Government Code; and

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

22 (8) any applicable ethics policies adopted by the
23 agency or the Texas Ethics Commission.

24 (c) A person appointed to the board is entitled to
25 reimbursement, as provided by the General Appropriations Act, for
26 the travel expenses incurred in attending the training program
27 regardless of whether the attendance at the program occurs before

1 or after the person qualifies for office.

2 SECTION 8. The heading to Subchapter D, Chapter 1301,
3 Occupations Code, is amended to read as follows:

4 SUBCHAPTER D. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL

5 SECTION 9. Section 1301.201, Occupations Code, is amended
6 to read as follows:

7 Sec. 1301.201. EXECUTIVE DIRECTOR AND STAFF. (a) The
8 board shall employ an executive director as the executive head of
9 the agency.

10 (b) The board may employ personnel as necessary to
11 administer this chapter. The board may determine the compensation
12 and duties of its employees and the terms of their employment.

13 SECTION 10. Subsection (b), Section 1301.203, Occupations
14 Code, is amended to read as follows:

15 (b) A field representative may:

16 (1) conduct on-site license checks to determine
17 compliance with this chapter;

18 (2) investigate consumer complaints filed under
19 Section 1301.303;

20 (3) assist municipal plumbing inspectors in enforcing
21 this chapter; ~~and~~

22 (4) issue citations as provided by Section 1301.502;
23 and

24 (5) in the performance of the field representative's
25 other duties under this chapter, check the license, registration,
26 or endorsement of a person regulated by the Texas Department of
27 Licensing and Regulation in accordance with the memorandum of

1 understanding adopted under Section 1301.259 and report any
2 noncompliance to that agency.

3 SECTION 11. Subchapter D, Chapter 1301, Occupations Code,
4 is amended by adding Sections 1301.205 through 1301.208 to read as
5 follows:

6 Sec. 1301.205. EQUAL EMPLOYMENT OPPORTUNITY POLICY.

7 (a) The executive director or the executive director's designee
8 shall prepare and maintain a written policy statement that
9 implements a program of equal employment opportunity to ensure that
10 all personnel decisions are made without regard to race, color,
11 disability, sex, religion, age, or national origin.

12 (b) The policy statement must include:

13 (1) personnel policies, including policies relating
14 to recruitment, evaluation, selection, training, and promotion of
15 personnel, that show the intent of the agency to avoid the unlawful
16 employment practices described by Chapter 21, Labor Code; and

17 (2) an analysis of the extent to which the composition
18 of the agency's personnel is in accordance with state and federal
19 law and a description of reasonable methods to achieve compliance
20 with state and federal law.

21 (c) The policy statement must:

22 (1) be updated annually;

23 (2) be reviewed by the state Commission on Human
24 Rights for compliance with Subsection (b)(1); and

25 (3) be filed with the governor's office.

26 Sec. 1301.206. EMPLOYEE INCENTIVE PROGRAM. The executive
27 director or the executive director's designee shall provide to

1 agency employees information and training on the benefits and
2 methods of participation in the state employee incentive program.

3 Sec. 1301.207. STANDARDS OF CONDUCT. The executive
4 director or the executive director's designee shall provide to
5 members of the board and to agency employees, as often as necessary,
6 information regarding the requirements for office or employment
7 under this chapter, including information regarding a person's
8 responsibilities under applicable laws relating to standards of
9 conduct for state officers or employees.

10 Sec. 1301.208. SEPARATION OF RESPONSIBILITIES. The board
11 shall develop and implement policies that clearly separate the
12 policy-making responsibilities of the board and the management
13 responsibilities of the executive director and the staff of the
14 agency.

15 SECTION 12. Subchapter E, Chapter 1301, Occupations Code,
16 is amended by adding Sections 1301.258 through 1301.262 to read as
17 follows:

18 Sec. 1301.258. BOARD COMMITTEES. (a) The board may create
19 committees to assist the board in exercising its powers and duties.

20 (b) The presiding officer of the board shall appoint the
21 members of the committees. Except as provided by Subsection (c),
22 each committee member must be a member of the board.

23 (c) The presiding officer may appoint only members of the
24 agency staff to an enforcement committee that reviews complaints
25 and license registration and reviews endorsement applications
26 submitted by applicants who have a criminal conviction history
27 affected by Chapter 53.

1 Sec. 1301.259. MEMORANDUM OF UNDERSTANDING. (a) The board
2 and the Texas Department of Licensing and Regulation shall enter
3 into a memorandum of understanding to improve services and
4 coordinate the functions of each agency.

5 (b) The memorandum of understanding must:

6 (1) require each agency to share:

7 (A) information technology to support the
8 regulation and enforcement of occupational licenses; and

9 (B) information on regulatory practices for
10 licensed occupations, including policy issues that affect the
11 regulation of licensed occupations, standardization of complaint
12 and enforcement techniques, and model licensing techniques;

13 (2) authorize enforcement officers from each agency to
14 check licenses, registrations, or endorsements held by persons
15 practicing occupations regulated by the other agency and report
16 noncompliance to that agency; and

17 (3) state the circumstances when a joint investigation
18 between the board and the Texas Department of Licensing and
19 Regulation is appropriate.

20 Sec. 1301.260. POLICY ON TECHNOLOGICAL SOLUTIONS. The
21 board shall develop and implement a policy requiring the executive
22 director and agency employees to research and propose appropriate
23 technological solutions to improve the agency's ability to perform
24 its functions. The technological solutions must:

25 (1) ensure that the public is able to easily find
26 information about the agency on the Internet;

27 (2) ensure that persons who want to use the agency's

1 services are able to:

2 (A) interact with the agency through the
3 Internet; and

4 (B) access any service that can be provided
5 effectively through the Internet; and

6 (3) be cost-effective and developed through the
7 agency's planning processes.

8 Sec. 1301.261. NEGOTIATED RULEMAKING AND ALTERNATIVE
9 DISPUTE RESOLUTION. (a) The board shall develop and implement a
10 policy to encourage the use of:

11 (1) negotiated rulemaking procedures under Chapter
12 2008, Government Code, for the adoption of agency rules; and

13 (2) appropriate alternative dispute resolution
14 procedures under Chapter 2009, Government Code, to assist in the
15 resolution of internal and external disputes under the agency's
16 jurisdiction.

17 (b) The agency's procedures relating to alternative dispute
18 resolution must conform, to the extent possible, to any model
19 guidelines issued by the State Office of Administrative Hearings
20 for the use of alternative dispute resolution by state agencies.

21 (c) The board shall designate a trained person to:

22 (1) coordinate the implementation of the policy
23 adopted under Subsection (a);

24 (2) serve as a resource for any training needed to
25 implement the procedures for negotiated rulemaking or alternative
26 dispute resolution; and

27 (3) collect data concerning the effectiveness of those

1 procedures, as implemented by the agency.

2 Sec. 1301.262. PLUMBING INSPECTOR CODE OF CONDUCT. The
3 board by rule shall establish a code of conduct for licensed
4 plumbing inspectors. The code of conduct shall require a plumbing
5 inspector to enforce this chapter and board rules in a consistent
6 manner across job sites.

7 SECTION 13. Subchapter F, Chapter 1301, Occupations Code,
8 is amended by adding Section 1301.3015 to read as follows:

9 Sec. 1301.3015. PUBLIC PARTICIPATION. The board shall
10 develop and implement policies that provide the public with a
11 reasonable opportunity to appear before the board and to speak on
12 any issue under the jurisdiction of the agency.

13 SECTION 14. Section 1301.303, Occupations Code, is amended
14 to read as follows:

15 Sec. 1301.303. COMPLAINTS. (a) The board may investigate
16 an alleged violation of this chapter by a person who:

- 17 (1) is licensed under this chapter; or
18 (2) performs plumbing without holding a license under
19 this chapter.

20 (b) The board shall maintain a [~~keep an information~~] file on
21 [~~about~~] each written complaint filed with the board. The file must
22 include:

- 23 (1) the name of the person who filed the complaint;
24 (2) the date the complaint is received by the agency;
25 (3) the subject matter of the complaint;
26 (4) the name of any municipality and the county in
27 which the conduct that is the subject of the complaint occurred;

1 (5) the name of each person contacted in relation to
2 the complaint;

3 (6) a summary of the results of the review or
4 investigation of the complaint; and

5 (7) an explanation of the reason the file was closed,
6 if the agency closed the file without taking action other than to
7 investigate the complaint [~~relating to a person licensed under this~~
8 ~~chapter~~].

9 (c) The agency shall provide to the person filing the
10 complaint and to each person who is a subject of the complaint a
11 copy of the agency's policies and procedures relating to complaint
12 investigation and resolution.

13 (d) The [~~If a written complaint is filed with the board~~
14 ~~relating to a person licensed under this chapter, the~~] board, at
15 least quarterly and until final disposition of the complaint, shall
16 notify the person filing the complaint and each person who is a
17 subject of [~~parties to~~] the complaint of the status of the
18 investigation [~~complaint~~] unless the notice would jeopardize an
19 undercover investigation.

20 (e) The board by rule shall assign priorities and prescribe
21 investigative procedures for investigations of complaints based
22 on:

23 (1) the severity of the conduct alleged in the
24 complaint; and

25 (2) the degree of harm to public health, safety, or
26 property.

27 (f) The board shall maintain information about complaints,

1 including source, type, and geographical area, to identify and
2 address regulatory problem areas and focus enforcement in those
3 areas.

4 SECTION 15. Subchapter F, Chapter 1301, Occupations Code,
5 is amended by adding Section 1301.304 to read as follows:

6 Sec. 1301.304. INVESTIGATION OF COMPLAINTS. (a) The
7 enforcement committee or an employee designated by the enforcement
8 committee may investigate an alleged violation of this chapter or a
9 board rule that is reported to the board.

10 (b) The enforcement committee shall determine whether a
11 person has committed the violation and shall recommend appropriate
12 sanctions to the board or, if the enforcement committee determines
13 that the complaint is without merit, dismissal of the complaint.

14 (c) The board shall conduct joint investigations with the
15 Texas Department of Licensing and Regulation as circumstances
16 require.

17 SECTION 16. Subsection (a), Section 1301.351, Occupations
18 Code, is amended to read as follows:

19 (a) A person may not engage in the business of plumbing
20 unless:

- 21 (1) the person is licensed under this chapter; or
22 (2) the person's work is supervised and controlled by a
23 person licensed under this chapter. For one-family dwellings and
24 two-family dwellings under new construction, a licensee shall have
25 training and management responsibility for a person's work and
26 shall review and inspect the person's work. In no event, however,
27 shall "supervised and controlled," as used in this subdivision,

1 require the continuous or uninterrupted on-the-job oversight of the
2 person's work.

3 SECTION 17. Subchapter G, Chapter 1301, Occupations Code,
4 is amended by adding Sections 1301.3521 and 1301.3522 to read as
5 follows:

6 Sec. 1301.3521. EXAMINATION FEE REFUND. (a) The board
7 shall refund the examination fee paid by an applicant who:

8 (1) provides advance notice of the applicant's
9 inability to take the examination; or

10 (2) is unable to take the examination because of an
11 emergency.

12 (b) The board shall adopt rules that establish the required
13 notification period and the emergency situations that warrant a
14 refund.

15 Sec. 1301.3522. EXAMINATION REVIEW COURSE. (a) The board
16 shall develop a review course in English and Spanish to assist
17 license applicants in preparation for each license examination
18 offered by the board. If the board provides the review course, the
19 board may charge a fee to an applicant who applies to take the
20 review course.

21 (b) The board may provide the review course training
22 materials to private course providers for a fee determined by the
23 board.

24 SECTION 18. Subchapter G, Chapter 1301, Occupations Code,
25 is amended by adding Section 1301.3541 to read as follows:

26 Sec. 1301.3541. APPRENTICE REGISTRATION REQUIREMENTS. The
27 board by rule may adopt registration requirements for plumber's

1 apprentices, including training and education requirements.

2 SECTION 19. Section 1301.358, Occupations Code, is amended
3 to read as follows:

4 Sec. 1301.358. OUT-OF-STATE APPLICANTS; PROVISIONAL
5 LICENSE. (a) The board may waive any prerequisite to obtaining a
6 license [~~requirement under this chapter~~] for an applicant after
7 reviewing the applicant's credentials and determining that the
8 applicant [~~who~~] holds a license issued by another jurisdiction
9 [~~state~~] that has licensing requirements substantially equivalent
10 to those [~~the requirements~~] of this state.

11 (b) The board may issue a provisional license to an
12 applicant currently licensed in another jurisdiction who seeks a
13 license in this state and who:

14 (1) has been licensed in good standing as a plumber for
15 at least two years in another jurisdiction, including a foreign
16 country, that has licensing requirements substantially equivalent
17 to the requirements of this chapter;

18 (2) has passed a national or other examination
19 recognized by the board relating to the practice of plumbing; and

20 (3) is sponsored by a person licensed by the board
21 under this chapter with whom the provisional license holder will
22 practice during the time the person holds a provisional license.

23 (c) The board may waive the requirement of Subsection (b)(3)
24 for an applicant if the board determines that compliance with that
25 subdivision would be a hardship to the applicant.

26 (d) A provisional license is valid until the date the board
27 approves or denies the provisional license holder's application for

1 a license. The board shall issue a license under this chapter to
2 the provisional license holder if:

3 (1) the provisional license holder is eligible to be
4 licensed under Subsection (a); or

5 (2) the provisional license holder passes the part of
6 the examination under Section 1301.352 that relates to the
7 applicant's knowledge and understanding of the laws and rules
8 relating to the practice of plumbing in this state and:

9 (A) the board verifies that the provisional
10 license holder meets the academic and experience requirements for a
11 license under this chapter; and

12 (B) the provisional license holder satisfies any
13 other licensing requirements under this chapter.

14 (e) The board must approve or deny a provisional license
15 holder's application for a license not later than the 180th day
16 after the date the provisional license is issued. The board may
17 extend the 180-day period if the results of an examination have not
18 been received by the board before the end of that period.

19 (f) The board may establish a fee for provisional licenses
20 in an amount reasonable and necessary to cover the cost of issuing
21 the license.

22 SECTION 20. (a) Section 1301.403, Occupations Code, is
23 amended to read as follows:

24 Sec. 1301.403. PROCEDURE FOR RENEWAL. (a) A person who is
25 otherwise eligible to renew a license, endorsement, or registration
26 may renew an unexpired license, endorsement, or registration by
27 paying the required renewal fee to the agency [~~board~~] before the

1 expiration date of the license, endorsement, or registration. A
2 person whose license, endorsement, or registration has expired may
3 not engage in activities that require a license, endorsement, or
4 registration until the license, endorsement, or registration has
5 been renewed.

6 (b) A person whose license or endorsement has been expired
7 for 90 days or less may renew the license or endorsement by paying
8 to the agency a renewal fee that is equal to 1-1/2 times the
9 normally [~~board the~~] required renewal fee [~~and a fee equal to half~~
10 ~~of the examination fee for the license or endorsement~~]. A person
11 whose registration has been expired for 90 days or less may renew
12 the registration by paying to the board a renewal fee that is equal
13 to 1-1/2 times the normally required renewal fee [~~and a fee equal to~~
14 ~~half of the registration fee~~].

15 (c) A person whose license or endorsement has been expired
16 for more than 90 days but less than two years may renew the license
17 or endorsement by paying to the agency a renewal fee that is equal
18 to two times the normally required renewal fee [~~board all unpaid~~
19 ~~renewal fees and a fee that is equal to the examination fee for the~~
20 ~~license or endorsement~~]. A person whose registration has been
21 expired for more than 90 days but less than two years may renew the
22 registration by paying to the board a renewal fee that is equal to
23 two times the normally required renewal fee [~~all unpaid renewal~~
24 ~~fees and a fee that is equal to the registration fee~~].

25 (d) A person whose license, endorsement, or registration
26 has been expired for two years or more may not renew the license,
27 endorsement, or registration. The person may obtain a new license,

1 endorsement, or registration by [~~submitting to reexamination and~~
2 complying with the requirements and procedures, including the
3 examination requirements, for obtaining an original license,
4 endorsement, or registration.

5 (e) A person who held a license, endorsement, or
6 registration in this state, moved to another state, and is
7 currently holding a license, endorsement, or registration and has
8 been in practice in the other state for the two years preceding the
9 date of application may obtain a new license, endorsement, or
10 registration without reexamination. The person must pay to the
11 agency a fee that is equal to two times the normally required
12 renewal fee for the license, endorsement, or registration.

13 (f) Not later than the 30th day before the date a person's
14 license, endorsement, or registration is scheduled to expire, the
15 agency shall send written notice of the impending expiration to the
16 person at the person's last known address according to the records
17 of the agency.

18 (b) In accordance with Subsection (c), Section 311.031,
19 Government Code, which gives effect to a substantive amendment
20 enacted by the same legislature that codifies the amended statute,
21 the text of Section 1301.403, Occupations Code, as set out in this
22 section, gives effect to changes made by Section 14, Chapter 504,
23 Acts of the 77th Legislature, Regular Session, 2001.

24 SECTION 21. (a) Section 1301.451, Occupations Code, is
25 amended to read as follows:

26 Sec. 1301.451. DISCIPLINARY POWERS OF BOARD. (a) The
27 board shall revoke, suspend, or refuse to renew a license,

1 endorsement, or registration or shall reprimand a holder of a
2 license, endorsement, or registration for a violation of this
3 chapter or a rule of the board [~~On determining that a person who~~
4 ~~holds a license or endorsement or is registered under this chapter~~
5 ~~engaged in conduct for which the person is subject to disciplinary~~
6 ~~action under Section 1301.452, the board shall:~~

7 ~~[(1) revoke or suspend the person's license,~~
8 ~~endorsement, or registration,~~

9 ~~[(2) probate suspension of the person's license,~~
10 ~~endorsement, or registration; or~~

11 ~~[(3) reprimand the person].~~

12 (b) A person whose license, endorsement, or registration
13 has been revoked may not apply for a new license, endorsement, or
14 registration before the first anniversary of the date of
15 revocation.

16 (c) The board may place on probation a person whose license,
17 endorsement, or registration is suspended. If a license,
18 endorsement, or registration suspension is probated, the board may
19 require the person:

20 (1) to report regularly to the agency on matters that
21 are the basis of the probation;

22 (2) to limit practice to the areas prescribed by the
23 board; or

24 (3) to continue or review professional education until
25 the person attains a degree of skill satisfactory to the board in
26 those areas that are the basis of the probation.

27 (d) The board by rule shall:

1 (1) adopt written guidelines to ensure that probation
2 is administered consistently; and

3 (2) develop a system to track compliance with the
4 probation requirements.

5 (b) In accordance with Subsection (c), Section 311.031,
6 Government Code, which gives effect to a substantive amendment
7 enacted by the same legislature that codifies the amended statute,
8 the text of Section 1301.451, Occupations Code, as set out in this
9 section, gives effect to changes made by Section 12, Chapter 504,
10 Acts of the 77th Legislature, Regular Session, 2001.

11 SECTION 22. Subchapter I, Chapter 1301, Occupations Code,
12 is amended by adding Sections 1301.4521 and 1301.4522 to read as
13 follows:

14 Sec. 1301.4521. CONSEQUENCES OF CRIMINAL CONVICTION.

15 (a) The board shall adopt rules in compliance with the guidelines
16 authorized by Chapter 53 relating to criminal convictions.

17 (b) The board shall adopt a method to review the agency's
18 compliance with Chapter 53 and the rules adopted under this
19 section.

20 Sec. 1301.4522. REVIEW OF APPLICATION. (a) The

21 enforcement committee may approve, without board approval, the
22 application for a license, endorsement, or registration of a person
23 who has a criminal conviction if the enforcement committee finds
24 that the criminal conviction does not directly relate to the duties
25 and responsibilities of the business of plumbing in accordance with
26 the rules adopted by the board under Section 1301.4521.

27 (b) If the enforcement committee determines that a person is

1 ineligible for a license, endorsement, or registration based on the
2 person's criminal conviction, the person may request a hearing
3 before an administrative law judge of the State Office of
4 Administrative Hearings to review the enforcement committee's
5 determination.

6 (c) After receipt of the administrative law judge's
7 proposed findings of fact and conclusions of law, the board shall
8 determine the applicant's eligibility. The board shall provide an
9 applicant who is denied a license a written statement containing
10 the reasons for the board's action.

11 (d) An applicant who has a criminal conviction may appear
12 before the board or the enforcement committee to present
13 information relating to the applicant's criminal conviction.

14 SECTION 23. Section 1301.502, Occupations Code, is amended
15 to read as follows:

16 Sec. 1301.502. CITATION. (a) A field representative,
17 water district plumbing inspector, or, within the jurisdiction of
18 the municipality, municipal plumbing inspector may issue a citation
19 to a person who engages in conduct described by Section 1301.508.

20 (b) The board shall adopt guidelines relating to the
21 circumstances when a field representative may issue a citation.
22 The guidelines must encourage the use of other enforcement
23 measures, including imposition of administrative penalties, before
24 the issuance of a citation.

25 SECTION 24. Subchapter J, Chapter 1301, Occupations Code,
26 is amended by adding Sections 1301.5045 and 1301.5071 to read as
27 follows:

1 Sec. 1301.5045. CEASE AND DESIST ORDER. (a) If it appears
2 to the board that a person is violating this chapter or a rule
3 adopted under this chapter, the board, after notice and opportunity
4 for a hearing, may issue a cease and desist order prohibiting the
5 person from engaging in the activity.

6 (b) A violation of an order under this section constitutes
7 grounds for imposing an administrative penalty under Subchapter N.

8 Sec. 1301.5071. INFORMAL SETTLEMENT CONFERENCE;
9 RESTITUTION. (a) The board by rule shall establish procedures
10 under which an informal settlement conference is conducted to
11 resolve a complaint against a person licensed under this chapter.

12 (b) Subject to Subsection (c), the board may order a person
13 licensed under this chapter to pay restitution to a person as
14 provided in an agreement resulting from an informal settlement
15 conference instead of or in addition to assessing an administrative
16 penalty under Subchapter N.

17 (c) The amount of restitution ordered as provided by an
18 agreement resulting from an informal settlement conference may not
19 exceed the amount the person paid to the license holder for a
20 service regulated by this chapter. The board may not require
21 payment of other damages or estimate harm in a restitution order.

22 SECTION 25. Chapter 1301, Occupations Code, is amended by
23 adding Subchapters M and N to read as follows:

24 SUBCHAPTER M. INTERAGENCY COOPERATION AND REGULATION

25 Sec. 1301.651. DEFINITION. In this subchapter, "local
26 workforce development board" means a board created under Subchapter
27 F, Chapter 2308, Government Code.

1 Sec. 1301.652. PUBLIC EDUCATION EFFORT. (a) The board and
2 the Texas Workforce Commission shall, through the local workforce
3 development boards, coordinate efforts to educate the public about
4 the plumbing profession and the resources available to employers
5 for the recruitment and training of plumbers, including providing:

6 (1) each local workforce development board with:

7 (A) information about the licensing requirements
8 for the plumbing profession; and

9 (B) available statistical data regarding
10 plumbing; and

11 (2) a link to each agency's Internet site and to the
12 Internet sites of other local workforce development boards.

13 (b) The board may, during public and industry awareness
14 seminars, raise awareness of the career ladder in the plumbing
15 industry and the opportunities that plumbing apprenticeships
16 offer.

17 (c) This section applies to the extent that the plumbing
18 profession is designated as an occupation in demand by a local
19 workforce development board.

20 SUBCHAPTER N. ADMINISTRATIVE PENALTY

21 Sec. 1301.701. IMPOSITION OF PENALTY. The board may impose
22 an administrative penalty on a person who violates this chapter or a
23 rule or order adopted under this chapter.

24 Sec. 1301.702. AMOUNT OF PENALTY. (a) The amount of an
25 administrative penalty may not exceed \$5,000 for each violation.
26 Each day a violation continues or occurs is a separate violation for
27 purposes of imposing a penalty.

1 (b) The amount of the penalty shall be based on:

2 (1) the seriousness of the violation, including:

3 (A) the nature, circumstance, extent, and
4 gravity of any prohibited act; and

5 (B) the hazard or potential hazard created to the
6 health, safety, or economic welfare of the public;

7 (2) the economic harm to property or the environment
8 caused by the violation;

9 (3) the history of previous violations;

10 (4) the amount necessary to deter a future violation;

11 (5) efforts made to correct the violation; and

12 (6) any other matter that justice may require.

13 (c) The board by rule or through procedures adopted by the
14 board and published in the Texas Register shall develop a
15 standardized penalty schedule based on the criteria listed in
16 Subsection (b).

17 Sec. 1301.703. REPORT AND NOTICE OF VIOLATION AND PENALTY.

18 (a) If the enforcement committee determines that a violation
19 occurred, the enforcement committee may issue to the board a report
20 stating:

21 (1) the facts on which the determination is based; and

22 (2) the committee's recommendation on the imposition
23 of the penalty, including a recommendation on the amount of the
24 penalty.

25 (b) Not later than the 14th day after the date the report is
26 issued, the enforcement committee shall give written notice of the
27 report to the person.

1 (c) The notice must:

2 (1) include a brief summary of the alleged violation;

3 (2) state the amount of the recommended penalty; and

4 (3) inform the person of the person's right to a
5 hearing on the occurrence of the violation, the amount of the
6 penalty, or both.

7 Sec. 1301.704. PENALTY TO BE PAID OR HEARING REQUESTED.

8 (a) Not later than the 20th day after the date the person receives
9 the notice, the person in writing may:

10 (1) accept the determination and recommended penalty
11 of the enforcement committee; or

12 (2) make a request for a hearing on the occurrence of
13 the violation, the amount of the penalty, or both.

14 (b) If the person accepts the determination and recommended
15 penalty of the enforcement committee, the board by order shall
16 approve the determination and impose the recommended penalty.

17 Sec. 1301.705. HEARING. (a) If the person requests a
18 hearing or fails to respond in a timely manner to the notice, the
19 enforcement committee shall set a hearing and give written notice
20 of the hearing to the person. An administrative law judge of the
21 State Office of Administrative Hearings shall hold the hearing.

22 (b) The administrative law judge shall make findings of fact
23 and conclusions of law and promptly issue to the board a proposal
24 for a decision about the occurrence of the violation and the amount
25 of a proposed penalty.

26 Sec. 1301.706. DECISION BY BOARD. (a) Based on the
27 findings of fact, conclusions of law, and proposal for a decision,

1 the board by order may:

2 (1) find that a violation occurred and impose a
3 penalty; or

4 (2) find that a violation did not occur.

5 (b) The notice of the board's order given to the person must
6 include a statement of the right of the person to judicial review of
7 the order.

8 Sec. 1301.707. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
9 Not later than the 30th day after the date the board's order becomes
10 final, the person shall:

11 (1) pay the penalty; or

12 (2) file a petition for judicial review contesting the
13 occurrence of the violation, the amount of the penalty, or both.

14 Sec. 1301.708. STAY OF ENFORCEMENT OF PENALTY. (a) Within
15 the 30-day period prescribed by Section 1301.707, a person who
16 files a petition for judicial review may:

17 (1) stay enforcement of the penalty by:

18 (A) paying the penalty to the court for placement
19 in an escrow account; or

20 (B) giving the court a supersedeas bond approved
21 by the court that:

22 (i) is for the amount of the penalty; and

23 (ii) is effective until all judicial review
24 of the board's order is final; or

25 (2) request the court to stay enforcement of the
26 penalty by:

27 (A) filing with the court a sworn affidavit of

1 the person stating that the person is financially unable to pay the
2 penalty and is financially unable to give the supersedeas bond; and

3 (B) sending a copy of the affidavit to the
4 enforcement committee by certified mail.

5 (b) If the enforcement committee receives a copy of an
6 affidavit under Subsection (a)(2), the executive director may file
7 with the court, not later than the fifth day after the date the copy
8 is received, a contest to the affidavit.

9 (c) The court shall hold a hearing on the facts alleged in
10 the affidavit as soon as practicable and shall stay the enforcement
11 of the penalty on finding that the alleged facts are true. The
12 person who files an affidavit has the burden of proving that the
13 person is financially unable to pay the penalty and to give a
14 supersedeas bond.

15 Sec. 1301.709. DECISION BY COURT. (a) If the court
16 sustains the finding that a violation occurred, the court may
17 uphold or reduce the amount of the penalty and order the person to
18 pay the full or reduced amount of the penalty.

19 (b) If the court does not sustain the finding that a
20 violation occurred, the court shall order that a penalty is not
21 owed.

22 Sec. 1301.710. REMITTANCE OF PENALTY AND INTEREST. (a) If
23 the person paid the penalty and if the amount of the penalty is
24 reduced or the penalty is not upheld by the court, the court shall
25 order, when the court's judgment becomes final, that the
26 appropriate amount plus accrued interest be remitted to the person.

27 (b) The interest accrues at the rate charged on loans to

1 depository institutions by the New York Federal Reserve Bank.

2 (c) The interest shall be paid for the period beginning on
3 the date the penalty is paid and ending on the date the penalty is
4 remitted.

5 Sec. 1301.711. RELEASE OF BOND. (a) If the person gave a
6 supersedeas bond and the penalty is not upheld by the court, the
7 court shall order, when the court's judgment becomes final, the
8 release of the bond.

9 (b) If the person gave a supersedeas bond and the amount of
10 the penalty is reduced, the court shall order the release of the
11 bond after the person pays the reduced amount.

12 Sec. 1301.712. COLLECTION OF PENALTY. (a) If the person
13 does not pay the penalty and the enforcement of the penalty is not
14 stayed, the penalty may be collected.

15 (b) The attorney general may sue to collect the penalty.

16 Sec. 1301.713. ADMINISTRATIVE PROCEDURE. A proceeding to
17 impose the penalty is considered to be a contested case under
18 Chapter 2001, Government Code.

19 SECTION 26. Section 51.351, Occupations Code, is amended by
20 adding Subsections (c) and (d) to read as follows:

21 (c) A department employee may check the license,
22 registration, or endorsement of a person regulated by the Texas
23 State Board of Plumbing Examiners in accordance with the memorandum
24 of understanding under Section 1301.259 and report any
25 noncompliance to that agency.

26 (d) The department shall conduct joint investigations with
27 the Texas State Board of Plumbing Examiners as circumstances

1 require.

2 SECTION 27. Section 2308.303, Government Code, is amended
3 by adding Subsections (e) and (f) to read as follows:

4 (e) A board shall educate the public about the plumbing
5 profession and the resources available to employers for the
6 recruitment and training of plumbers as provided by Section
7 1301.652, Occupations Code.

8 (f) These educational efforts may be conducted to the extent
9 that the plumbing profession is designated as an occupation in
10 demand by a board.

11 SECTION 28. (a) Not later than January 1, 2004, the Texas
12 State Board of Plumbing Examiners shall adopt the rules required by
13 Section 1301.4521, Occupations Code, as added by this Act.

14 (b) Not later than September 1, 2004, the Texas State Board
15 of Plumbing Examiners shall:

16 (1) adopt the written guidelines required by
17 Subsection (d), Section 1301.451, Occupations Code, as added by
18 this Act; and

19 (2) adopt the administrative penalty schedule
20 required by Section 1301.702, Occupations Code, as added by this
21 Act.

22 (c) The changes in law made by Section 1301.153, Occupations
23 Code, as amended by this Act, and Section 1301.159, Occupations
24 Code, as added by this Act, in the prohibitions on or qualifications
25 of members of the Texas State Board of Plumbing Examiners do not
26 affect the entitlement of a member serving on the Texas State Board
27 of Plumbing Examiners immediately before September 1, 2003, to

1 continue to serve and function as a member of the Texas State Board
2 of Plumbing Examiners for the remainder of the member's term. Those
3 changes in law apply only to a member appointed on or after
4 September 1, 2003.

5 (d) The change in law made by this Act to Chapter 1301,
6 Occupations Code, relating to the investigation of a complaint
7 applies only to a complaint filed with the Texas State Board of
8 Plumbing Examiners on or after the effective date of this Act. A
9 complaint filed with the board before the effective date of this Act
10 is governed by the law as it existed immediately before that date,
11 and the former law is continued in effect for that purpose.

12 SECTION 29. To the extent of any conflict, this Act prevails
13 over another Act of the 78th Legislature, Regular Session, 2003,
14 relating to nonsubstantive additions to and corrections in enacted
15 codes.

16 SECTION 30. This Act takes effect September 1, 2003.