

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. (a) Section 1301.052, Occupations Code, is
7 amended to read as follows:

8 Sec. 1301.052. WORK INSIDE OR OUTSIDE MUNICIPALITIES. A
9 person is not required to be licensed under this chapter to perform
10 plumbing, other than plumbing performed in conjunction with new
11 construction, on a property that is:

12 (1) located in a subdivision or on a tract of land that
13 is not required to be platted under Section 232.0015, Local
14 Government Code; or

15 (2) not connected to a public water system and is
16 located outside a municipality; or

17 (3) located outside a municipality and connected to a
18 public water system that does not require a license to perform
19 plumbing; or

20 (4) inside a municipality with fewer than 5,000
21 inhabitants, unless an ordinance of the municipality requires the
22 person to be licensed.

23 (b) In accordance with Subsection (c), Section 311.031,
24 Government Code, which gives effect to a substantive amendment
25 enacted by the same legislature that codifies the amended statute,
26 the text of Section 1301.052, Occupations Code, as set out in
27 Subsection (a) of this section, gives effect to changes made by

1 Chapter 791, Acts of the 77th Legislature, Regular Session, 2001.

2 SECTION 4. Subsection (c), Section 1301.151, Occupations
3 Code, is amended to read as follows:

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

7 SECTION 5. Section 1301.153, Occupations Code, is amended
8 to read as follows:

9 Sec. 1301.153. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

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

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

22 (1) the person is an officer, employee, or paid
23 consultant of a Texas trade association in the field of building
24 construction [~~industry~~]; or

25 (2) the person's spouse [~~related within the second~~
26 ~~degree by consanguinity or affinity, as determined under Chapter~~
27 ~~573, Government Code, to a person who~~] is an officer, manager

1 ~~[employee]~~, or paid consultant of a Texas trade association in the
2 field of building construction ~~[regulated industry]~~.

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

9 SECTION 6. Section 1301.156, Occupations Code, is amended
10 to read as follows:

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

13 (1) does not have at the time of taking office
14 ~~[appointment]~~ the qualifications required by Section 1301.151 or
15 1301.152;

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

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

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

23 (5) is absent from more than ~~[fails to attend at least]~~
24 half of the regularly scheduled board meetings that the member is
25 eligible to attend during a calendar year without an excuse
26 approved by a majority vote of the board.

27 (b) The validity of an action of the board is not affected by

1 the fact that it is taken when a ground for removal of a board member
2 exists.

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

12 SECTION 7. Section 1301.157, Occupations Code, is amended
13 to read as follows:

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

17 (b) The board shall elect a [presiding officer and a]
18 secretary from its membership.

19 SECTION 8. Subchapter C, Chapter 1301, Occupations Code, is
20 amended by adding Section 1301.159 to read as follows:

21 Sec. 1301.159. TRAINING. (a) A person who is appointed to
22 and qualifies for office as a member of the board may not vote,
23 deliberate, or be counted as a member in attendance at a meeting of
24 the board until the person completes a training program that
25 complies with this section.

26 (b) The training program must provide the person with
27 information regarding:

- 1 (1) this chapter;
2 (2) the programs operated by the agency;
3 (3) the role and functions of the agency;
4 (4) the rules of the agency, with an emphasis on the
5 rules that relate to disciplinary and investigatory authority;
6 (5) the current budget for the agency;
7 (6) the results of the most recent formal audit of the
8 agency;
9 (7) the requirements of:
10 (A) the open meetings law, Chapter 551,
11 Government Code;
12 (B) the public information law, Chapter 552,
13 Government Code;
14 (C) the administrative procedure law, Chapter
15 2001, Government Code; and
16 (D) other laws relating to public officials,
17 including conflict-of-interest laws; and
18 (8) any applicable ethics policies adopted by the
19 agency or the Texas Ethics Commission.
20 (c) A person appointed to the board is entitled to
21 reimbursement, as provided by the General Appropriations Act, for
22 the travel expenses incurred in attending the training program
23 regardless of whether the attendance at the program occurs before
24 or after the person qualifies for office.

25 SECTION 9. The heading to Subchapter D, Chapter 1301,
26 Occupations Code, is amended to read as follows:

1 SUBCHAPTER D. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL

2 SECTION 10. Section 1301.201, Occupations Code, is amended
3 to read as follows:

4 Sec. 1301.201. EXECUTIVE DIRECTOR AND STAFF. (a) The
5 board shall employ an executive director as the executive head of
6 the agency.

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

10 SECTION 11. Subsection (b), Section 1301.203, Occupations
11 Code, is amended to read as follows:

12 (b) A field representative may:

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

15 (2) investigate consumer complaints filed under
16 Section 1301.303;

17 (3) assist municipal plumbing inspectors in enforcing
18 this chapter; ~~and~~

19 (4) issue citations as provided by Section 1301.502;
20 and

21 (5) in the performance of the field representative's
22 other duties under this chapter, check the license, registration,
23 or endorsement of a person regulated by the Texas Department of
24 Licensing and Regulation in accordance with the memorandum of
25 understanding adopted under Section 1301.259 and report any
26 noncompliance to that agency.

27 SECTION 12. Subchapter D, Chapter 1301, Occupations Code,

1 is amended by adding Sections 1301.205 through 1301.208 to read as
2 follows:

3 Sec. 1301.205. EQUAL EMPLOYMENT OPPORTUNITY POLICY.

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

9 (b) The policy statement must include:

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

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

18 (c) The policy statement must:

19 (1) be updated annually;

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

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

23 Sec. 1301.206. EMPLOYEE INCENTIVE PROGRAM. The executive
24 director or the executive director's designee shall provide to
25 agency employees information and training on the benefits and
26 methods of participation in the state employee incentive program.

27 Sec. 1301.207. STANDARDS OF CONDUCT. The executive

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

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

12 SECTION 13. Subchapter E, Chapter 1301, Occupations Code,
13 is amended by adding Sections 1301.258 through 1301.262 to read as
14 follows:

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

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

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

25 Sec. 1301.259. MEMORANDUM OF UNDERSTANDING. (a) The board
26 and the Texas Department of Licensing and Regulation shall enter
27 into a memorandum of understanding to improve services and

1 coordinate the functions of each agency.

2 (b) The memorandum of understanding must:

3 (1) require each agency to share:

4 (A) information technology to support the
5 regulation and enforcement of occupational licenses; and

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

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

14 (3) state the circumstances when a joint investigation
15 between the board and the Texas Department of Licensing and
16 Regulation is appropriate.

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

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

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

26 (A) interact with the agency through the
27 Internet; and

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

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

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

8 (1) negotiated rulemaking procedures under Chapter
9 2008, Government Code, for the adoption of agency rules; and

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

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

18 (c) The board 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 agency.

26 Sec. 1301.262. PLUMBING INSPECTOR CODE OF CONDUCT. The
27 board by rule shall establish a code of conduct for licensed

1 plumbing inspectors. The code of conduct shall require a plumbing
2 inspector to enforce this chapter and board rules in a consistent
3 manner across job sites.

4 SECTION 14. Subchapter F, Chapter 1301, Occupations Code,
5 is amended by adding Section 1301.3015 to read as follows:

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

10 SECTION 15. Section 1301.303, Occupations Code, is amended
11 to read as follows:

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

- 14 (1) is licensed under this chapter; or
15 (2) performs plumbing without holding a license under
16 this chapter.

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

- 20 (1) the name of the person who filed the complaint;
21 (2) the date the complaint is received by the agency;
22 (3) the subject matter of the complaint;
23 (4) the name of any municipality and the county in
24 which the conduct that is the subject of the complaint occurred;
25 (5) the name of each person contacted in relation to
26 the complaint;
27 (6) a summary of the results of the review or

1 investigation of the complaint; and

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

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

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

17 (e) The board by rule shall assign priorities and prescribe
18 investigative procedures for investigations of complaints based
19 on:

20 (1) the severity of the conduct alleged in the
21 complaint; and

22 (2) the degree of harm to public health, safety, or
23 property.

24 (f) The board shall maintain information about complaints,
25 including source, type, and geographical area, to identify and
26 address regulatory problem areas and focus enforcement in those
27 areas.

1 SECTION 16. Subchapter F, Chapter 1301, Occupations Code,
2 is amended by adding Section 1301.304 to read as follows:

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

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

11 (c) The board shall conduct joint investigations with the
12 Texas Department of Licensing and Regulation as circumstances
13 require.

14 SECTION 17. Section 1301.351, Occupations Code, is amended
15 by adding Subsection (c) to read as follows:

16 (c) A license holder who is supervising and controlling
17 under Subsection (a)(2) the work of a person engaged in the business
18 of plumbing in the construction of a new one-family or two-family
19 dwelling in an unincorporated area of the state must have training
20 and management responsibility for, and shall review and inspect,
21 the person's work. The license holder is not required to provide
22 continuous or uninterrupted on-the-job oversight of the person's
23 work.

24 SECTION 18. Subchapter G, Chapter 1301, Occupations Code,
25 is amended by adding Sections 1301.3521 and 1301.3522 to read as
26 follows:

27 Sec. 1301.3521. EXAMINATION FEE REFUND. (a) The board

1 shall refund the examination fee paid by an applicant who:

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

4 (2) is unable to take the examination because of an
5 emergency.

6 (b) The board shall adopt rules that establish the required
7 notification period and the emergency situations that warrant a
8 refund.

9 Sec. 1301.3522. EXAMINATION REVIEW COURSE. (a) The board
10 shall develop a review course in English and Spanish to assist
11 license applicants in preparation for each license examination
12 offered by the board. If the board provides the review course, the
13 board may charge a fee to an applicant who applies to take the
14 review course.

15 (b) The board may provide the review course training
16 materials to private course providers for a fee determined by the
17 board.

18 SECTION 19. Subchapter G, Chapter 1301, Occupations Code,
19 is amended by adding Section 1301.3541 to read as follows:

20 Sec. 1301.3541. APPRENTICE REGISTRATION REQUIREMENTS. The
21 board by rule may adopt registration requirements for plumber's
22 apprentices, including training and education requirements.

23 SECTION 20. Section 1301.358, Occupations Code, is amended
24 to read as follows:

25 Sec. 1301.358. OUT-OF-STATE APPLICANTS; PROVISIONAL
26 LICENSE. (a) The board may waive any prerequisite to obtaining a
27 license [~~requirement under this chapter~~] for an applicant after

1 reviewing the applicant's credentials and determining that the
2 applicant [~~who~~] holds a license issued by another jurisdiction
3 [~~state~~] that has licensing requirements substantially equivalent
4 to those [~~the requirements~~] of this state.

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

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

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

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

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

20 (d) A provisional license is valid until the date the board
21 approves or denies the provisional license holder's application for
22 a license. The board shall issue a license under this chapter to
23 the provisional license holder if:

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

26 (2) the provisional license holder passes the part of
27 the examination under Section 1301.352 that relates to the

1 applicant's knowledge and understanding of the laws and rules
2 relating to the practice of plumbing in this state and:

3 (A) the board verifies that the provisional
4 license holder meets the academic and experience requirements for a
5 license under this chapter; and

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

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

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

16 SECTION 21. (a) Section 1301.403, Occupations Code, is
17 amended to read as follows:

18 Sec. 1301.403. PROCEDURE FOR RENEWAL. (a) A person who is
19 otherwise eligible to renew a license, endorsement, or registration
20 may renew an unexpired license, endorsement, or registration by
21 paying the required renewal fee to the agency [~~board~~] before the
22 expiration date of the license, endorsement, or registration. A
23 person whose license, endorsement, or registration has expired may
24 not engage in activities that require a license, endorsement, or
25 registration until the license, endorsement, or registration has
26 been renewed.

27 (b) A person whose license or endorsement has been expired

1 for 90 days or less may renew the license or endorsement by paying
2 to the agency a renewal fee that is equal to 1-1/2 times the
3 normally [~~board the~~] required renewal fee [~~and a fee equal to half~~
4 ~~of the examination fee for the license or endorsement~~]. A person
5 whose registration has been expired for 90 days or less may renew
6 the registration by paying to the board a renewal fee that is equal
7 to 1-1/2 times the normally required renewal fee [~~and a fee equal to~~
8 ~~half of the registration fee~~].

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

19 (d) A person whose license, endorsement, or registration
20 has been expired for two years or more may not renew the license,
21 endorsement, or registration. The person may obtain a new license,
22 endorsement, or registration by [~~submitting to reexamination and~~
23 complying with the requirements and procedures, including the
24 examination requirements, for obtaining an original license,
25 endorsement, or registration.

26 (e) A person who held a license, endorsement, or
27 registration in this state, moved to another state, and is

1 currently holding a license, endorsement, or registration and has
2 been in practice in the other state for the two years preceding the
3 date of application may obtain a new license, endorsement, or
4 registration without reexamination. The person must pay to the
5 agency a fee that is equal to two times the normally required
6 renewal fee for the license, endorsement, or registration.

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

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

18 SECTION 22. (a) Section 1301.451, Occupations Code, is
19 amended to read as follows:

20 Sec. 1301.451. DISCIPLINARY POWERS OF BOARD. (a) The
21 board shall revoke, suspend, or refuse to renew a license,
22 endorsement, or registration or shall reprimand a holder of a
23 license, endorsement, or registration for a violation of this
24 chapter or a rule of the board [~~On determining that a person who~~
25 ~~holds a license or endorsement or is registered under this chapter~~
26 ~~engaged in conduct for which the person is subject to disciplinary~~
27 ~~action under Section 1301.452, the board shall:~~

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

3 ~~[(2) probate suspension of the person's license,~~
4 ~~endorsement, or registration, or~~

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

6 (b) A person whose license, endorsement, or registration
7 has been revoked may not apply for a new license, endorsement, or
8 registration before the first anniversary of the date of
9 revocation.

10 (c) The board may place on probation a person whose license,
11 endorsement, or registration is suspended. If a license,
12 endorsement, or registration suspension is probated, the board may
13 require the person:

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

16 (2) to limit practice to the areas prescribed by the
17 board; or

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

21 (d) The board by rule shall:

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

24 (2) develop a system to track compliance with the
25 probation requirements.

26 (b) In accordance with Subsection (c), Section 311.031,
27 Government Code, which gives effect to a substantive amendment

1 enacted by the same legislature that codifies the amended statute,
2 the text of Section 1301.451, Occupations Code, as set out in this
3 section, gives effect to changes made by Section 12, Chapter 504,
4 Acts of the 77th Legislature, Regular Session, 2001.

5 SECTION 23. Subchapter I, Chapter 1301, Occupations Code,
6 is amended by adding Sections 1301.4521 and 1301.4522 to read as
7 follows:

8 Sec. 1301.4521. CONSEQUENCES OF CRIMINAL CONVICTION.

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

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

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

15 enforcement committee may approve, without board approval, the
16 application for a license, endorsement, or registration of a person
17 who has a criminal conviction if the enforcement committee finds
18 that the criminal conviction does not directly relate to the duties
19 and responsibilities of the business of plumbing in accordance with
20 the rules adopted by the board under Section 1301.4521.

21 (b) If the enforcement committee determines that a person is
22 ineligible for a license, endorsement, or registration based on the
23 person's criminal conviction, the person may request a hearing
24 before an administrative law judge of the State Office of
25 Administrative Hearings to review the enforcement committee's
26 determination.

27 (c) After receipt of the administrative law judge's

1 proposed findings of fact and conclusions of law, the board shall
2 determine the applicant's eligibility. The board shall provide an
3 applicant who is denied a license a written statement containing
4 the reasons for the board's action.

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

8 SECTION 24. Section 1301.502, Occupations Code, is amended
9 to read as follows:

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

14 (b) The board shall adopt guidelines relating to the
15 circumstances when a field representative may issue a citation.
16 The guidelines must encourage the use of other enforcement
17 measures, including imposition of administrative penalties, before
18 the issuance of a citation.

19 SECTION 25. Subchapter J, Chapter 1301, Occupations Code,
20 is amended by adding Sections 1301.5045 and 1301.5071 to read as
21 follows:

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

27 (b) A violation of an order under this section constitutes

1 grounds for imposing an administrative penalty under Subchapter N.
2 Sec. 1301.5071. INFORMAL SETTLEMENT CONFERENCE;
3 RESTITUTION. (a) The board by rule shall establish procedures
4 under which an informal settlement conference is conducted to
5 resolve a complaint against a person licensed under this chapter.

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

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

16 SECTION 26. Chapter 1301, Occupations Code, is amended by
17 adding Subchapters M and N to read as follows:

18 SUBCHAPTER M. INTERAGENCY COOPERATION AND REGULATION

19 Sec. 1301.651. DEFINITION. In this subchapter, "local
20 workforce development board" means a board created under Subchapter
21 F, Chapter 2308, Government Code.

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

- 27 (1) each local workforce development board with:

1 (A) information about the licensing requirements
2 for the plumbing profession; and

3 (B) available statistical data regarding
4 plumbing; and

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

7 (b) The board may, during public and industry awareness
8 seminars, raise awareness of the career ladder in the plumbing
9 industry and the opportunities that plumbing apprenticeships
10 offer.

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

14 SUBCHAPTER N. ADMINISTRATIVE PENALTY

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

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

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

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

24 (A) the nature, circumstance, extent, and
25 gravity of any prohibited act; and

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

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

3 (3) the history of previous violations;

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

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

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

7 (c) The board by rule or through procedures adopted by the
8 board and published in the Texas Register shall develop a
9 standardized penalty schedule based on the criteria listed in
10 Subsection (b).

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

12 (a) If the enforcement committee determines that a violation
13 occurred, the enforcement committee may issue to the board a report
14 stating:

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

16 (2) the committee's recommendation on the imposition
17 of the penalty, including a recommendation on the amount of the
18 penalty.

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

22 (c) The notice must:

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

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

25 (3) inform the person of the person's right to a
26 hearing on the occurrence of the violation, the amount of the
27 penalty, or both.

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

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

4 (1) accept the determination and recommended penalty
5 of the enforcement committee; or

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

8 (b) If the person accepts the determination and recommended
9 penalty of the enforcement committee, the board by order shall
10 approve the determination and impose the recommended penalty.

11 Sec. 1301.705. HEARING. (a) If the person requests a
12 hearing or fails to respond in a timely manner to the notice, the
13 enforcement committee shall set a hearing and give written notice
14 of the hearing to the person. An administrative law judge of the
15 State Office of Administrative Hearings shall hold the hearing.

16 (b) The administrative law judge shall make findings of fact
17 and conclusions of law and promptly issue to the board a proposal
18 for a decision about the occurrence of the violation and the amount
19 of a proposed penalty.

20 Sec. 1301.706. DECISION BY BOARD. (a) Based on the
21 findings of fact, conclusions of law, and proposal for a decision,
22 the board by order may:

23 (1) find that a violation occurred and impose a
24 penalty; or

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

26 (b) The notice of the board's order given to the person must
27 include a statement of the right of the person to judicial review of

1 the order.

2 Sec. 1301.707. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

3 Not later than the 30th day after the date the board's order becomes
4 final, the person shall:

5 (1) pay the penalty; or

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

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

11 (1) stay enforcement of the penalty by:

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

14 (B) giving the court a supersedeas bond approved
15 by the court that:

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

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

19 (2) request the court to stay enforcement of the
20 penalty by:

21 (A) filing with the court a sworn affidavit of
22 the person stating that the person is financially unable to pay the
23 penalty and is financially unable to give the supersedeas bond; and

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

26 (b) If the enforcement committee receives a copy of an
27 affidavit under Subsection (a)(2), the executive director may file

1 with the court, not later than the fifth day after the date the copy
2 is received, a contest to the affidavit.

3 (c) The court shall hold a hearing on the facts alleged in
4 the affidavit as soon as practicable and shall stay the enforcement
5 of the penalty on finding that the alleged facts are true. The
6 person who files an affidavit has the burden of proving that the
7 person is financially unable to pay the penalty and to give a
8 supersedeas bond.

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

13 (b) If the court does not sustain the finding that a
14 violation occurred, the court shall order that a penalty is not
15 owed.

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

21 (b) The interest accrues at the rate charged on loans to
22 depository institutions by the New York Federal Reserve Bank.

23 (c) The interest shall be paid for the period beginning on
24 the date the penalty is paid and ending on the date the penalty is
25 remitted.

26 Sec. 1301.711. RELEASE OF BOND. (a) If the person gave a
27 supersedeas bond and the penalty is not upheld by the court, the

1 court shall order, when the court's judgment becomes final, the
2 release of the bond.

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

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

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

10 Sec. 1301.713. ADMINISTRATIVE PROCEDURE. A proceeding to
11 impose the penalty is considered to be a contested case under
12 Chapter 2001, Government Code.

13 SECTION 27. Section 51.351, Occupations Code, is amended by
14 adding Subsections (c) and (d) to read as follows:

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

20 (d) The department shall conduct joint investigations with
21 the Texas State Board of Plumbing Examiners as circumstances
22 require.

23 SECTION 28. Section 2308.303, Government Code, is amended
24 by adding Subsections (e) and (f) to read as follows:

25 (e) A board shall educate the public about the plumbing
26 profession and the resources available to employers for the
27 recruitment and training of plumbers as provided by Section

1 1301.652, Occupations Code.

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

5 SECTION 29. (a) Not later than January 1, 2004, the Texas
6 State Board of Plumbing Examiners shall adopt the rules required by
7 Section 1301.4521, Occupations Code, as added by this Act.

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

10 (1) adopt the written guidelines required by
11 Subsection (d), Section 1301.451, Occupations Code, as added by
12 this Act; and

13 (2) adopt the administrative penalty schedule
14 required by Section 1301.702, Occupations Code, as added by this
15 Act.

16 (c) The changes in law made by Section 1301.153, Occupations
17 Code, as amended by this Act, and Section 1301.159, Occupations
18 Code, as added by this Act, in the prohibitions on or qualifications
19 of members of the Texas State Board of Plumbing Examiners do not
20 affect the entitlement of a member serving on the Texas State Board
21 of Plumbing Examiners immediately before September 1, 2003, to
22 continue to serve and function as a member of the Texas State Board
23 of Plumbing Examiners for the remainder of the member's term. Those
24 changes in law apply only to a member appointed on or after
25 September 1, 2003.

26 (d) The change in law made by this Act to Chapter 1301,
27 Occupations Code, relating to the investigation of a complaint

1 applies only to a complaint filed with the Texas State Board of
2 Plumbing Examiners on or after the effective date of this Act. A
3 complaint filed with the board before the effective date of this Act
4 is governed by the law as it existed immediately before that date,
5 and the former law is continued in effect for that purpose.

6 SECTION 30. To the extent of any conflict, this Act prevails
7 over another Act of the 78th Legislature, Regular Session, 2003,
8 relating to nonsubstantive additions to and corrections in enacted
9 codes.

10 SECTION 31. This Act takes effect September 1, 2003.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 282 passed the Senate on April 10, 2003, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 27, 2003, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 282 passed the House, with amendments, on May 24, 2003, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor