

By: Jackson

S.B. No. 282

Substitute the following for S.B. No. 282:

By: Wise

C.S.S.B. No. 282

A BILL TO BE ENTITLED

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. Section 1301.351, Occupations Code, is amended
18 by adding Subsection (c) to read as follows:

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

27 SECTION 17. Subchapter G, Chapter 1301, Occupations Code,

1 is amended by adding Sections 1301.3521 and 1301.3522 to read as
2 follows:

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

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

7 (2) is unable to take the examination because of an
8 emergency.

9 (b) The board shall adopt rules that establish the required
10 notification period and the emergency situations that warrant a
11 refund.

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

18 (b) The board may provide the review course training
19 materials to private course providers for a fee determined by the
20 board.

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

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

26 SECTION 19. Section 1301.358, Occupations Code, is amended
27 to read as follows:

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

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

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

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

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

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

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

27 (1) the provisional license holder is eligible to be

1 licensed under Subsection (a); or

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

6 (A) the board verifies that the provisional
7 license holder meets the academic and experience requirements for a
8 license under this chapter; and

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

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

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

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

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

1 registration until the license, endorsement, or registration has
2 been renewed.

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

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

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

1 endorsement, or registration.

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

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

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

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

23 Sec. 1301.451. DISCIPLINARY POWERS OF BOARD. (a) The
24 board shall revoke, suspend, or refuse to renew a license,
25 endorsement, or registration or shall reprimand a holder of a
26 license, endorsement, or registration for a violation of this
27 chapter or a rule of the board [~~On determining that a person who~~

1 ~~holds a license or endorsement or is registered under this chapter~~
2 ~~engaged in conduct for which the person is subject to disciplinary~~
3 ~~action under Section 1301.452, the board shall:~~

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

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

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

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

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

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

19 (2) to limit practice to the areas prescribed by the
20 board; or

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

24 (d) The board by rule shall:

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

27 (2) develop a system to track compliance with the

1 probation requirements.

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

8 SECTION 22. Subchapter I, Chapter 1301, Occupations Code,
9 is amended by adding Sections 1301.4521 and 1301.4522 to read as
10 follows:

11 Sec. 1301.4521. CONSEQUENCES OF CRIMINAL CONVICTION.

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

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

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

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

24 (b) If the enforcement committee determines that a person is
25 ineligible for a license, endorsement, or registration based on the
26 person's criminal conviction, the person may request a hearing
27 before an administrative law judge of the State Office of

1 Administrative Hearings to review the enforcement committee's
2 determination.

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

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

11 SECTION 23. Section 1301.502, Occupations Code, is amended
12 to read as follows:

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

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

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

25 Sec. 1301.5045. CEASE AND DESIST ORDER. (a) If it appears
26 to the board that a person is violating this chapter or a rule
27 adopted under this chapter, the board, after notice and opportunity

1 for a hearing, may issue a cease and desist order prohibiting the
2 person from engaging in the activity.

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

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

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

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

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

21 SUBCHAPTER M. INTERAGENCY COOPERATION AND REGULATION

22 Sec. 1301.651. DEFINITION. In this subchapter, "local
23 workforce development board" means a board created under Subchapter
24 F, Chapter 2308, Government Code.

25 Sec. 1301.652. PUBLIC EDUCATION EFFORT. (a) The board and
26 the Texas Workforce Commission shall, through the local workforce
27 development boards, coordinate efforts to educate the public about

1 the plumbing profession and the resources available to employers
2 for the recruitment and training of plumbers, including providing:

3 (1) each local workforce development board with:

4 (A) information about the licensing requirements
5 for the plumbing profession; and

6 (B) available statistical data regarding
7 plumbing; and

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

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

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

17 SUBCHAPTER N. ADMINISTRATIVE PENALTY

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

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

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

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

27 (A) the nature, circumstance, extent, and

1 gravity of any prohibited act; and

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

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

6 (3) the history of previous violations;

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

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

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

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

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

15 (a) If the enforcement committee determines that a violation
16 occurred, the enforcement committee may issue to the board a report
17 stating:

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

19 (2) the committee's recommendation on the imposition
20 of the penalty, including a recommendation on the amount of the
21 penalty.

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

25 (c) The notice must:

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

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

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

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

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

7 (1) accept the determination and recommended penalty
8 of the enforcement committee; or

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

11 (b) If the person accepts the determination and recommended
12 penalty of the enforcement committee, the board by order shall
13 approve the determination and impose the recommended penalty.

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

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

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

26 (1) find that a violation occurred and impose a
27 penalty; or

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

2 (b) The notice of the board's order given to the person must
3 include a statement of the right of the person to judicial review of
4 the order.

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

8 (1) pay the penalty; or

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

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

14 (1) stay enforcement of the penalty by:

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

17 (B) giving the court a supersedeas bond approved
18 by the court that:

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

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

22 (2) request the court to stay enforcement of the
23 penalty by:

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

27 (B) sending a copy of the affidavit to the

1 enforcement committee by certified mail.

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

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

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

16 (b) If the court does not sustain the finding that a
17 violation occurred, the court shall order that a penalty is not
18 owed.

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

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

26 (c) The interest shall be paid for the period beginning on
27 the date the penalty is paid and ending on the date the penalty is

1 remitted.

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

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

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

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

13 Sec. 1301.713. ADMINISTRATIVE PROCEDURE. A proceeding to
14 impose the penalty is considered to be a contested case under
15 Chapter 2001, Government Code.

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

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

23 (d) The department shall conduct joint investigations with
24 the Texas State Board of Plumbing Examiners as circumstances
25 require.

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

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

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

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

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

13 (1) adopt the written guidelines required by
14 Subsection (d), Section 1301.451, Occupations Code, as added by
15 this Act; and

16 (2) adopt the administrative penalty schedule
17 required by Section 1301.702, Occupations Code, as added by this
18 Act.

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

1 September 1, 2003.

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

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

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