

1-1 By: Jackson S.B. No. 282
1-2 (In the Senate - Filed March 10, 2003; March 17, 2003, read
1-3 first time and referred to Committee on Government Organization;
1-4 April 2, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 2, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 282 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the Texas State Board
1-11 of Plumbing Examiners; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. (a) Section 1301.002, Occupations Code, is
1-14 amended by amending Subdivision (4) and adding Subdivision (1-a) to
1-15 read as follows:

1-16 (1-a) "Executive director" means the executive
1-17 director of the Texas State Board of Plumbing Examiners.

1-18 (4) "Plumber's apprentice" means a person other than a
1-19 master plumber, journeyman plumber, or tradesman plumber-limited
1-20 license holder who, as the person's principal occupation, learns
1-21 about and assists in the installation of plumbing, has fulfilled
1-22 the requirements of and is registered by the board, and works under
1-23 the supervision of a master plumber and the direct supervision of a
1-24 licensed plumber.

1-25 (b) In accordance with Subsection (c), Section 311.031,
1-26 Government Code, which gives effect to a substantive amendment
1-27 enacted by the same legislature that codifies the amended statute,
1-28 the text of Subdivision (4), Section 1301.002, Occupations Code, as
1-29 set out in this section, gives effect to changes made by Section 1,
1-30 Chapter 504, Acts of the 77th Legislature, Regular Session, 2001.

1-31 SECTION 2. Section 1301.003, Occupations Code, is amended
1-32 to read as follows:

1-33 Sec. 1301.003. APPLICATION OF SUNSET ACT. The Texas State
1-34 Board of Plumbing Examiners is subject to Chapter 325, Government
1-35 Code (Texas Sunset Act). Unless continued in existence as provided
1-36 by that chapter, the board is abolished and this chapter expires
1-37 September 1, 2015 [~~2003~~].

1-38 SECTION 3. Subsection (c), Section 1301.151, Occupations
1-39 Code, is amended to read as follows:

1-40 (c) Appointments to the board shall be made without regard
1-41 to the race, color, disability [~~creed~~], sex, religion, age, or
1-42 national origin of the appointee.

1-43 SECTION 4. Section 1301.153, Occupations Code, is amended
1-44 to read as follows:

1-45 Sec. 1301.153. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

1-46 (a) In this section, "Texas trade association" means a cooperative
1-47 and voluntarily joined statewide association of business or
1-48 professional competitors in this state designed to assist its
1-49 members and its industry or profession in dealing with mutual
1-50 business or professional problems and in promoting their common
1-51 interest.

1-52 (b) A person may not be a member [~~or employee~~] of the board
1-53 and may not be a board employee employed in a "bona fide executive,
1-54 administrative, or professional capacity," as that phrase is used
1-55 for purposes of establishing an exemption to the overtime
1-56 provisions of the federal Fair Labor Standards Act of 1938 (29
1-57 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

1-58 (1) the person is an officer, employee, or paid
1-59 consultant of a Texas trade association in the field of building
1-60 construction [~~industry~~]; or

1-61 (2) the person's spouse [~~related within the second~~
1-62 ~~degree by consanguinity or affinity, as determined under Chapter~~
1-63 ~~573, Government Code, to a person who] is an officer, manager~~

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

2-3 (c) ~~[(b)]~~ A person may not be ~~[serve as]~~ a member of the
 2-4 board or act as the general counsel to the board or the agency if the
 2-5 person is required to register as a lobbyist under Chapter 305,
 2-6 Government Code, because of the person's activities for
 2-7 compensation on behalf of a profession related to the operation of
 2-8 the agency.

2-9 SECTION 5. Section 1301.156, Occupations Code, is amended
 2-10 to read as follows:

2-11 Sec. 1301.156. GROUNDS FOR REMOVAL. (a) It is a ground for
 2-12 removal from the board that a member:

2-13 (1) does not have at the time of taking office
 2-14 ~~[appointment]~~ the qualifications required by Section 1301.151 or
 2-15 1301.152;

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

2-18 (3) is ineligible for membership under ~~[violates a~~
 2-19 ~~prohibition prescribed by]~~ Section 1301.153; ~~[or]~~

2-20 (4) cannot, because of illness or disability,
 2-21 discharge the member's duties for a substantial part of the member's
 2-22 term; or

2-23 (5) is absent from more than ~~[fails to attend at least]~~
 2-24 half of the regularly scheduled board meetings that the member is
 2-25 eligible to attend during a calendar year without an excuse
 2-26 approved by a majority vote of the board.

2-27 (b) The validity of an action of the board is not affected by
 2-28 the fact that it is taken when a ground for removal of a board member
 2-29 exists.

2-30 (c) If the executive director has knowledge that a potential
 2-31 ground for removal exists, the executive director shall notify the
 2-32 presiding officer of the board of the potential ground. The
 2-33 presiding officer shall then notify the governor and the attorney
 2-34 general that a potential ground for removal exists. If the
 2-35 potential ground for removal involves the presiding officer, the
 2-36 executive director shall notify the next highest ranking officer of
 2-37 the board, who shall then notify the governor and the attorney
 2-38 general that a potential ground for removal exists.

2-39 SECTION 6. Section 1301.157, Occupations Code, is amended
 2-40 to read as follows:

2-41 Sec. 1301.157. OFFICERS. (a) The governor shall designate
 2-42 a member of the board as the presiding officer of the board to serve
 2-43 in that capacity at the pleasure of the governor.

2-44 (b) The board shall elect a ~~[presiding officer and a]~~
 2-45 secretary from its membership.

2-46 SECTION 7. Subchapter C, Chapter 1301, Occupations Code, is
 2-47 amended by adding Section 1301.159 to read as follows:

2-48 Sec. 1301.159. TRAINING. (a) A person who is appointed to
 2-49 and qualifies for office as a member of the board may not vote,
 2-50 deliberate, or be counted as a member in attendance at a meeting of
 2-51 the board until the person completes a training program that
 2-52 complies with this section.

2-53 (b) The training program must provide the person with
 2-54 information regarding:

2-55 (1) this chapter;
 2-56 (2) the programs operated by the agency;
 2-57 (3) the role and functions of the agency;
 2-58 (4) the rules of the agency, with an emphasis on the
 2-59 rules that relate to disciplinary and investigatory authority;

2-60 (5) the current budget for the agency;
 2-61 (6) the results of the most recent formal audit of the
 2-62 agency;

2-63 (7) the requirements of:
 2-64 (A) the open meetings law, Chapter 551,
 2-65 Government Code;

2-66 (B) the public information law, Chapter 552,
 2-67 Government Code;

2-68 (C) the administrative procedure law, Chapter
 2-69 2001, Government Code; and

3-1 (D) other laws relating to public officials,
3-2 including conflict-of-interest laws; and
3-3 (8) any applicable ethics policies adopted by the
3-4 agency or the Texas Ethics Commission.

3-5 (c) A person appointed to the board is entitled to
3-6 reimbursement, as provided by the General Appropriations Act, for
3-7 the travel expenses incurred in attending the training program
3-8 regardless of whether the attendance at the program occurs before
3-9 or after the person qualifies for office.

3-10 SECTION 8. The heading to Subchapter D, Chapter 1301,
3-11 Occupations Code, is amended to read as follows:

3-12 SUBCHAPTER D. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL

3-13 SECTION 9. Section 1301.201, Occupations Code, is amended
3-14 to read as follows:

3-15 Sec. 1301.201. EXECUTIVE DIRECTOR AND STAFF. (a) The
3-16 board shall employ an executive director as the executive head of
3-17 the agency.

3-18 (b) The board may employ personnel as necessary to
3-19 administer this chapter. The board may determine the compensation
3-20 and duties of its employees and the terms of their employment.

3-21 SECTION 10. Subsection (b), Section 1301.203, Occupations
3-22 Code, is amended to read as follows:

3-23 (b) A field representative may:

3-24 (1) conduct on-site license checks to determine
3-25 compliance with this chapter;

3-26 (2) investigate consumer complaints filed under
3-27 Section 1301.303;

3-28 (3) assist municipal plumbing inspectors in enforcing
3-29 this chapter; ~~and~~

3-30 (4) issue citations as provided by Section 1301.502;
3-31 and

3-32 (5) in the performance of the field representative's
3-33 other duties under this chapter, check the license, registration,
3-34 or endorsement of a person regulated by the Texas Department of
3-35 Licensing and Regulation in accordance with the memorandum of
3-36 understanding adopted under Section 1301.259 and report any
3-37 noncompliance to that agency.

3-38 SECTION 11. Subchapter D, Chapter 1301, Occupations Code,
3-39 is amended by adding Sections 1301.205 through 1301.208 to read as
3-40 follows:

3-41 Sec. 1301.205. EQUAL EMPLOYMENT OPPORTUNITY POLICY.

3-42 (a) The executive director or the executive director's designee
3-43 shall prepare and maintain a written policy statement that
3-44 implements a program of equal employment opportunity to ensure that
3-45 all personnel decisions are made without regard to race, color,
3-46 disability, sex, religion, age, or national origin.

3-47 (b) The policy statement must include:

3-48 (1) personnel policies, including policies relating
3-49 to recruitment, evaluation, selection, training, and promotion of
3-50 personnel, that show the intent of the agency to avoid the unlawful
3-51 employment practices described by Chapter 21, Labor Code; and

3-52 (2) an analysis of the extent to which the composition
3-53 of the agency's personnel is in accordance with state and federal
3-54 law and a description of reasonable methods to achieve compliance
3-55 with state and federal law.

3-56 (c) The policy statement must:

3-57 (1) be updated annually;

3-58 (2) be reviewed by the state Commission on Human
3-59 Rights for compliance with Subsection (b)(1); and

3-60 (3) be filed with the governor's office.

3-61 Sec. 1301.206. EMPLOYEE INCENTIVE PROGRAM. The executive
3-62 director or the executive director's designee shall provide to
3-63 agency employees information and training on the benefits and
3-64 methods of participation in the state employee incentive program.

3-65 Sec. 1301.207. STANDARDS OF CONDUCT. The executive
3-66 director or the executive director's designee shall provide to
3-67 members of the board and to agency employees, as often as necessary,
3-68 information regarding the requirements for office or employment
3-69 under this chapter, including information regarding a person's

4-1 responsibilities under applicable laws relating to standards of
 4-2 conduct for state officers or employees.

4-3 Sec. 1301.208. SEPARATION OF RESPONSIBILITIES. The board
 4-4 shall develop and implement policies that clearly separate the
 4-5 policy-making responsibilities of the board and the management
 4-6 responsibilities of the executive director and the staff of the
 4-7 agency.

4-8 SECTION 12. Subchapter E, Chapter 1301, Occupations Code,
 4-9 is amended by adding Sections 1301.258 through 1301.262 to read as
 4-10 follows:

4-11 Sec. 1301.258. BOARD COMMITTEES. (a) The board may create
 4-12 committees to assist the board in exercising its powers and duties.

4-13 (b) The presiding officer of the board shall appoint the
 4-14 members of the committees. Except as provided by Subsection (c),
 4-15 each committee member must be a member of the board.

4-16 (c) The presiding officer may appoint only members of the
 4-17 agency staff to an enforcement committee that reviews complaints
 4-18 and license registration and reviews endorsement applications
 4-19 submitted by applicants who have a criminal conviction history
 4-20 affected by Chapter 53.

4-21 Sec. 1301.259. MEMORANDUM OF UNDERSTANDING. (a) The board
 4-22 and the Texas Department of Licensing and Regulation shall enter
 4-23 into a memorandum of understanding to improve services and
 4-24 coordinate the functions of each agency.

4-25 (b) The memorandum of understanding must:

4-26 (1) require each agency to share:
 4-27 (A) information technology to support the
 4-28 regulation and enforcement of occupational licenses; and

4-29 (B) information on regulatory practices for
 4-30 licensed occupations, including policy issues that affect the
 4-31 regulation of licensed occupations, standardization of complaint
 4-32 and enforcement techniques, and model licensing techniques;

4-33 (2) authorize enforcement officers from each agency to
 4-34 check licenses, registrations, or endorsements held by persons
 4-35 practicing occupations regulated by the other agency and report
 4-36 noncompliance to that agency; and

4-37 (3) state the circumstances when a joint investigation
 4-38 between the board and the Texas Department of Licensing and
 4-39 Regulation is appropriate.

4-40 Sec. 1301.260. POLICY ON TECHNOLOGICAL SOLUTIONS. The
 4-41 board shall develop and implement a policy requiring the executive
 4-42 director and agency employees to research and propose appropriate
 4-43 technological solutions to improve the agency's ability to perform
 4-44 its functions. The technological solutions must:

4-45 (1) ensure that the public is able to easily find
 4-46 information about the agency on the Internet;

4-47 (2) ensure that persons who want to use the agency's
 4-48 services are able to:

4-49 (A) interact with the agency through the
 4-50 Internet; and

4-51 (B) access any service that can be provided
 4-52 effectively through the Internet; and

4-53 (3) be cost-effective and developed through the
 4-54 agency's planning processes.

4-55 Sec. 1301.261. NEGOTIATED RULEMAKING AND ALTERNATIVE
 4-56 DISPUTE RESOLUTION. (a) The board shall develop and implement a
 4-57 policy to encourage the use of:

4-58 (1) negotiated rulemaking procedures under Chapter
 4-59 2008, Government Code, for the adoption of agency rules; and

4-60 (2) appropriate alternative dispute resolution
 4-61 procedures under Chapter 2009, Government Code, to assist in the
 4-62 resolution of internal and external disputes under the agency's
 4-63 jurisdiction.

4-64 (b) The agency's procedures relating to alternative dispute
 4-65 resolution must conform, to the extent possible, to any model
 4-66 guidelines issued by the State Office of Administrative Hearings
 4-67 for the use of alternative dispute resolution by state agencies.

4-68 (c) The board shall designate a trained person to:

4-69 (1) coordinate the implementation of the policy

5-1 adopted under Subsection (a);

5-2 (2) serve as a resource for any training needed to
5-3 implement the procedures for negotiated rulemaking or alternative
5-4 dispute resolution; and

5-5 (3) collect data concerning the effectiveness of those
5-6 procedures, as implemented by the agency.

5-7 Sec. 1301.262. PLUMBING INSPECTOR CODE OF CONDUCT. The
5-8 board by rule shall establish a code of conduct for licensed
5-9 plumbing inspectors. The code of conduct shall require a plumbing
5-10 inspector to enforce this chapter and board rules in a consistent
5-11 manner across job sites.

5-12 SECTION 13. Subchapter F, Chapter 1301, Occupations Code,
5-13 is amended by adding Section 1301.3015 to read as follows:

5-14 Sec. 1301.3015. PUBLIC PARTICIPATION. The board shall
5-15 develop and implement policies that provide the public with a
5-16 reasonable opportunity to appear before the board and to speak on
5-17 any issue under the jurisdiction of the agency.

5-18 SECTION 14. Section 1301.303, Occupations Code, is amended
5-19 to read as follows:

5-20 Sec. 1301.303. COMPLAINTS. (a) The board may investigate
5-21 an alleged violation of this chapter by a person who:

5-22 (1) is licensed under this chapter; or

5-23 (2) performs plumbing without holding a license under
5-24 this chapter.

5-25 (b) The board shall maintain a ~~[keep an information]~~ file on
5-26 ~~[about]~~ each written complaint filed with the board. The file must
5-27 include:

5-28 (1) the name of the person who filed the complaint;

5-29 (2) the date the complaint is received by the agency;

5-30 (3) the subject matter of the complaint;

5-31 (4) the name of any municipality and the county in
5-32 which the conduct that is the subject of the complaint occurred;

5-33 (5) the name of each person contacted in relation to
5-34 the complaint;

5-35 (6) a summary of the results of the review or
5-36 investigation of the complaint; and

5-37 (7) an explanation of the reason the file was closed,
5-38 if the agency closed the file without taking action other than to
5-39 investigate the complaint ~~[relating to a person licensed under this~~
5-40 ~~chapter].~~

5-41 (c) The agency shall provide to the person filing the
5-42 complaint and to each person who is a subject of the complaint a
5-43 copy of the agency's policies and procedures relating to complaint
5-44 investigation and resolution.

5-45 ~~(d) The [If a written complaint is filed with the board~~
5-46 ~~relating to a person licensed under this chapter, the] board, at~~
5-47 ~~least quarterly and until final disposition of the complaint, shall~~
5-48 ~~notify the person filing the complaint and each person who is a~~
5-49 ~~subject of [parties to] the complaint of the status of the~~
5-50 ~~investigation [complaint] unless the notice would jeopardize an~~
5-51 ~~undercover investigation.~~

5-52 (e) The board by rule shall assign priorities and prescribe
5-53 investigative procedures for investigations of complaints based
5-54 on:

5-55 (1) the severity of the conduct alleged in the
5-56 complaint; and

5-57 (2) the degree of harm to public health, safety, or
5-58 property.

5-59 (f) The board shall maintain information about complaints,
5-60 including source, type, and geographical area, to identify and
5-61 address regulatory problem areas and focus enforcement in those
5-62 areas.

5-63 SECTION 15. Subchapter F, Chapter 1301, Occupations Code,
5-64 is amended by adding Section 1301.304 to read as follows:

5-65 Sec. 1301.304. INVESTIGATION OF COMPLAINTS. (a) The
5-66 enforcement committee or an employee designated by the enforcement
5-67 committee may investigate an alleged violation of this chapter or a
5-68 board rule that is reported to the board.

5-69 (b) The enforcement committee shall determine whether a

6-1 person has committed the violation and shall recommend appropriate
 6-2 sanctions to the board or, if the enforcement committee determines
 6-3 that the complaint is without merit, dismissal of the complaint.

6-4 (c) The board shall conduct joint investigations with the
 6-5 Texas Department of Licensing and Regulation as circumstances
 6-6 require.

6-7 SECTION 16. Subsection (a), Section 1301.351, Occupations
 6-8 Code, is amended to read as follows:

6-9 (a) A person may not engage in the business of plumbing
 6-10 unless:

- 6-11 (1) the person is licensed under this chapter; or
- 6-12 (2) the person's work is supervised and controlled by a
 6-13 person licensed under this chapter. For one-family dwellings and
 6-14 two-family dwellings under new construction, a licensee shall have
 6-15 training and management responsibility for a person's work and
 6-16 shall review and inspect the person's work. In no event, however,
 6-17 shall "supervised and controlled," as used in this subdivision,
 6-18 require the continuous or uninterrupted on-the-job oversight of the
 6-19 person's work.

6-20 SECTION 17. Subchapter G, Chapter 1301, Occupations Code,
 6-21 is amended by adding Sections 1301.3521 and 1301.3522 to read as
 6-22 follows:

6-23 Sec. 1301.3521. EXAMINATION FEE REFUND. (a) The board
 6-24 shall refund the examination fee paid by an applicant who:

- 6-25 (1) provides advance notice of the applicant's
 6-26 inability to take the examination; or
- 6-27 (2) is unable to take the examination because of an
 6-28 emergency.

6-29 (b) The board shall adopt rules that establish the required
 6-30 notification period and the emergency situations that warrant a
 6-31 refund.

6-32 Sec. 1301.3522. EXAMINATION REVIEW COURSE. (a) The board
 6-33 shall develop a review course in English and Spanish to assist
 6-34 license applicants in preparation for each license examination
 6-35 offered by the board. If the board provides the review course, the
 6-36 board may charge a fee to an applicant who applies to take the
 6-37 review course.

6-38 (b) The board may provide the review course training
 6-39 materials to private course providers for a fee determined by the
 6-40 board.

6-41 SECTION 18. Subchapter G, Chapter 1301, Occupations Code,
 6-42 is amended by adding Section 1301.3541 to read as follows:

6-43 Sec. 1301.3541. APPRENTICE REGISTRATION REQUIREMENTS. The
 6-44 board by rule may adopt registration requirements for plumber's
 6-45 apprentices, including training and education requirements.

6-46 SECTION 19. Section 1301.358, Occupations Code, is amended
 6-47 to read as follows:

6-48 Sec. 1301.358. OUT-OF-STATE APPLICANTS; PROVISIONAL
 6-49 LICENSE. (a) The board may waive any prerequisite to obtaining a
 6-50 license [~~requirement under this chapter~~] for an applicant after
 6-51 reviewing the applicant's credentials and determining that the
 6-52 applicant [~~who~~] holds a license issued by another jurisdiction
 6-53 [~~state~~] that has licensing requirements substantially equivalent
 6-54 to those [~~the requirements~~] of this state.

6-55 (b) The board may issue a provisional license to an
 6-56 applicant currently licensed in another jurisdiction who seeks a
 6-57 license in this state and who:

- 6-58 (1) has been licensed in good standing as a plumber for
 6-59 at least two years in another jurisdiction, including a foreign
 6-60 country, that has licensing requirements substantially equivalent
 6-61 to the requirements of this chapter;
- 6-62 (2) has passed a national or other examination
 6-63 recognized by the board relating to the practice of plumbing; and
- 6-64 (3) is sponsored by a person licensed by the board
 6-65 under this chapter with whom the provisional license holder will
 6-66 practice during the time the person holds a provisional license.

6-67 (c) The board may waive the requirement of Subsection (b)(3)
 6-68 for an applicant if the board determines that compliance with that
 6-69 subdivision would be a hardship to the applicant.

7-1 (d) A provisional license is valid until the date the board
 7-2 approves or denies the provisional license holder's application for
 7-3 a license. The board shall issue a license under this chapter to
 7-4 the provisional license holder if:

7-5 (1) the provisional license holder is eligible to be
 7-6 licensed under Subsection (a); or

7-7 (2) the provisional license holder passes the part of
 7-8 the examination under Section 1301.352 that relates to the
 7-9 applicant's knowledge and understanding of the laws and rules
 7-10 relating to the practice of plumbing in this state and:

7-11 (A) the board verifies that the provisional
 7-12 license holder meets the academic and experience requirements for a
 7-13 license under this chapter; and

7-14 (B) the provisional license holder satisfies any
 7-15 other licensing requirements under this chapter.

7-16 (e) The board must approve or deny a provisional license
 7-17 holder's application for a license not later than the 180th day
 7-18 after the date the provisional license is issued. The board may
 7-19 extend the 180-day period if the results of an examination have not
 7-20 been received by the board before the end of that period.

7-21 (f) The board may establish a fee for provisional licenses
 7-22 in an amount reasonable and necessary to cover the cost of issuing
 7-23 the license.

7-24 SECTION 20. (a) Section 1301.403, Occupations Code, is
 7-25 amended to read as follows:

7-26 Sec. 1301.403. PROCEDURE FOR RENEWAL. (a) A person who is
 7-27 otherwise eligible to renew a license, endorsement, or registration
 7-28 may renew an unexpired license, endorsement, or registration by
 7-29 paying the required renewal fee to the agency [~~board~~] before the
 7-30 expiration date of the license, endorsement, or registration. A
 7-31 person whose license, endorsement, or registration has expired may
 7-32 not engage in activities that require a license, endorsement, or
 7-33 registration until the license, endorsement, or registration has
 7-34 been renewed.

7-35 (b) A person whose license or endorsement has been expired
 7-36 for 90 days or less may renew the license or endorsement by paying
 7-37 to the agency a renewal fee that is equal to 1-1/2 times the
 7-38 normally [~~board the~~] required renewal fee [~~and a fee equal to half~~
 7-39 ~~of the examination fee for the license or endorsement~~]. A person
 7-40 whose registration has been expired for 90 days or less may renew
 7-41 the registration by paying to the board a renewal fee that is equal
 7-42 to 1-1/2 times the normally required renewal fee [~~and a fee equal to~~
 7-43 ~~half of the registration fee~~].

7-44 (c) A person whose license or endorsement has been expired
 7-45 for more than 90 days but less than two years may renew the license
 7-46 or endorsement by paying to the agency a renewal fee that is equal
 7-47 to two times the normally required renewal fee [~~board all unpaid~~
 7-48 ~~renewal fees and a fee that is equal to the examination fee for the~~
 7-49 ~~license or endorsement~~]. A person whose registration has been
 7-50 expired for more than 90 days but less than two years may renew the
 7-51 registration by paying to the board a renewal fee that is equal to
 7-52 two times the normally required renewal fee [~~all unpaid renewal~~
 7-53 ~~fees and a fee that is equal to the registration fee~~].

7-54 (d) A person whose license, endorsement, or registration
 7-55 has been expired for two years or more may not renew the license,
 7-56 endorsement, or registration. The person may obtain a new license,
 7-57 endorsement, or registration by [~~submitting to reexamination and~~
 7-58 complying with the requirements and procedures, including the
 7-59 examination requirements, for obtaining an original license,
 7-60 endorsement, or registration.

7-61 (e) A person who held a license, endorsement, or
 7-62 registration in this state, moved to another state, and is
 7-63 currently holding a license, endorsement, or registration and has
 7-64 been in practice in the other state for the two years preceding the
 7-65 date of application may obtain a new license, endorsement, or
 7-66 registration without reexamination. The person must pay to the
 7-67 agency a fee that is equal to two times the normally required
 7-68 renewal fee for the license, endorsement, or registration.

7-69 (f) Not later than the 30th day before the date a person's

8-1 license, endorsement, or registration is scheduled to expire, the
 8-2 agency shall send written notice of the impending expiration to the
 8-3 person at the person's last known address according to the records
 8-4 of the agency.

8-5 (b) In accordance with Subsection (c), Section 311.031,
 8-6 Government Code, which gives effect to a substantive amendment
 8-7 enacted by the same legislature that codifies the amended statute,
 8-8 the text of Section 1301.403, Occupations Code, as set out in this
 8-9 section, gives effect to changes made by Section 14, Chapter 504,
 8-10 Acts of the 77th Legislature, Regular Session, 2001.

8-11 SECTION 21. (a) Section 1301.451, Occupations Code, is
 8-12 amended to read as follows:

8-13 Sec. 1301.451. DISCIPLINARY POWERS OF BOARD. (a) The
 8-14 board shall revoke, suspend, or refuse to renew a license,
 8-15 endorsement, or registration or shall reprimand a holder of a
 8-16 license, endorsement, or registration for a violation of this
 8-17 chapter or a rule of the board [On determining that a person who
 8-18 holds a license or endorsement or is registered under this chapter
 8-19 engaged in conduct for which the person is subject to disciplinary
 8-20 action under Section 1301.452, the board shall:

8-21 [~~(1) revoke or suspend the person's license,~~
 8-22 ~~endorsement, or registration,~~

8-23 [~~(2) probate suspension of the person's license,~~
 8-24 ~~endorsement, or registration, or~~

8-25 [~~(3) reprimand the person].~~

8-26 (b) A person whose license, endorsement, or registration
 8-27 has been revoked may not apply for a new license, endorsement, or
 8-28 registration before the first anniversary of the date of
 8-29 revocation.

8-30 (c) The board may place on probation a person whose license,
 8-31 endorsement, or registration is suspended. If a license,
 8-32 endorsement, or registration suspension is probated, the board may
 8-33 require the person:

8-34 (1) to report regularly to the agency on matters that
 8-35 are the basis of the probation;

8-36 (2) to limit practice to the areas prescribed by the
 8-37 board; or

8-38 (3) to continue or review professional education until
 8-39 the person attains a degree of skill satisfactory to the board in
 8-40 those areas that are the basis of the probation.

8-41 (d) The board by rule shall:

8-42 (1) adopt written guidelines to ensure that probation
 8-43 is administered consistently; and

8-44 (2) develop a system to track compliance with the
 8-45 probation requirements.

8-46 (b) In accordance with Subsection (c), Section 311.031,
 8-47 Government Code, which gives effect to a substantive amendment
 8-48 enacted by the same legislature that codifies the amended statute,
 8-49 the text of Section 1301.451, Occupations Code, as set out in this
 8-50 section, gives effect to changes made by Section 12, Chapter 504,
 8-51 Acts of the 77th Legislature, Regular Session, 2001.

8-52 SECTION 22. Subchapter I, Chapter 1301, Occupations Code,
 8-53 is amended by adding Sections 1301.4521 and 1301.4522 to read as
 8-54 follows:

8-55 Sec. 1301.4521. CONSEQUENCES OF CRIMINAL CONVICTION.

8-56 (a) The board shall adopt rules in compliance with the guidelines
 8-57 authorized by Chapter 53 relating to criminal convictions.

8-58 (b) The board shall adopt a method to review the agency's
 8-59 compliance with Chapter 53 and the rules adopted under this
 8-60 section.

8-61 Sec. 1301.4522. REVIEW OF APPLICATION. (a) The

8-62 enforcement committee may approve, without board approval, the
 8-63 application for a license, endorsement, or registration of a person
 8-64 who has a criminal conviction if the enforcement committee finds
 8-65 that the criminal conviction does not directly relate to the duties
 8-66 and responsibilities of the business of plumbing in accordance with
 8-67 the rules adopted by the board under Section 1301.4521.

8-68 (b) If the enforcement committee determines that a person is
 8-69 ineligible for a license, endorsement, or registration based on the

9-1 person's criminal conviction, the person may request a hearing
 9-2 before an administrative law judge of the State Office of
 9-3 Administrative Hearings to review the enforcement committee's
 9-4 determination.

9-5 (c) After receipt of the administrative law judge's
 9-6 proposed findings of fact and conclusions of law, the board shall
 9-7 determine the applicant's eligibility. The board shall provide an
 9-8 applicant who is denied a license a written statement containing
 9-9 the reasons for the board's action.

9-10 (d) An applicant who has a criminal conviction may appear
 9-11 before the board or the enforcement committee to present
 9-12 information relating to the applicant's criminal conviction.

9-13 SECTION 23. Section 1301.502, Occupations Code, is amended
 9-14 to read as follows:

9-15 Sec. 1301.502. CITATION. (a) A field representative,
 9-16 water district plumbing inspector, or, within the jurisdiction of
 9-17 the municipality, municipal plumbing inspector may issue a citation
 9-18 to a person who engages in conduct described by Section 1301.508.

9-19 (b) The board shall adopt guidelines relating to the
 9-20 circumstances when a field representative may issue a citation.
 9-21 The guidelines must encourage the use of other enforcement
 9-22 measures, including imposition of administrative penalties, before
 9-23 the issuance of a citation.

9-24 SECTION 24. Subchapter J, Chapter 1301, Occupations Code,
 9-25 is amended by adding Sections 1301.5045 and 1301.5071 to read as
 9-26 follows:

9-27 Sec. 1301.5045. CEASE AND DESIST ORDER. (a) If it appears
 9-28 to the board that a person is violating this chapter or a rule
 9-29 adopted under this chapter, the board, after notice and opportunity
 9-30 for a hearing, may issue a cease and desist order prohibiting the
 9-31 person from engaging in the activity.

9-32 (b) A violation of an order under this section constitutes
 9-33 grounds for imposing an administrative penalty under Subchapter N.

9-34 Sec. 1301.5071. INFORMAL SETTLEMENT CONFERENCE;
 9-35 RESTITUTION. (a) The board by rule shall establish procedures
 9-36 under which an informal settlement conference is conducted to
 9-37 resolve a complaint against a person licensed under this chapter.

9-38 (b) Subject to Subsection (c), the board may order a person
 9-39 licensed under this chapter to pay restitution to a person as
 9-40 provided in an agreement resulting from an informal settlement
 9-41 conference instead of or in addition to assessing an administrative
 9-42 penalty under Subchapter N.

9-43 (c) The amount of restitution ordered as provided by an
 9-44 agreement resulting from an informal settlement conference may not
 9-45 exceed the amount the person paid to the license holder for a
 9-46 service regulated by this chapter. The board may not require
 9-47 payment of other damages or estimate harm in a restitution order.

9-48 SECTION 25. Chapter 1301, Occupations Code, is amended by
 9-49 adding Subchapters M and N to read as follows:

9-50 SUBCHAPTER M. INTERAGENCY COOPERATION AND REGULATION

9-51 Sec. 1301.651. DEFINITION. In this subchapter, "local
 9-52 workforce development board" means a board created under Subchapter
 9-53 F, Chapter 2308, Government Code.

9-54 Sec. 1301.652. PUBLIC EDUCATION EFFORT. (a) The board and
 9-55 the Texas Workforce Commission shall, through the local workforce
 9-56 development boards, coordinate efforts to educate the public about
 9-57 the plumbing profession and the resources available to employers
 9-58 for the recruitment and training of plumbers, including providing:

9-59 (1) each local workforce development board with:

9-60 (A) information about the licensing requirements
 9-61 for the plumbing profession; and

9-62 (B) available statistical data regarding
 9-63 plumbing; and

9-64 (2) a link to each agency's Internet site and to the
 9-65 Internet sites of other local workforce development boards.

9-66 (b) The board may, during public and industry awareness
 9-67 seminars, raise awareness of the career ladder in the plumbing
 9-68 industry and the opportunities that plumbing apprenticeships
 9-69 offer.

10-1 (c) This section applies to the extent that the plumbing
 10-2 profession is designated as an occupation in demand by a local
 10-3 workforce development board.

10-4 SUBCHAPTER N. ADMINISTRATIVE PENALTY

10-5 Sec. 1301.701. IMPOSITION OF PENALTY. The board may impose
 10-6 an administrative penalty on a person who violates this chapter or a
 10-7 rule or order adopted under this chapter.

10-8 Sec. 1301.702. AMOUNT OF PENALTY. (a) The amount of an
 10-9 administrative penalty may not exceed \$5,000 for each violation.
 10-10 Each day a violation continues or occurs is a separate violation for
 10-11 purposes of imposing a penalty.

10-12 (b) The amount of the penalty shall be based on:

10-13 (1) the seriousness of the violation, including:

10-14 (A) the nature, circumstance, extent, and
 10-15 gravity of any prohibited act; and

10-16 (B) the hazard or potential hazard created to the
 10-17 health, safety, or economic welfare of the public;

10-18 (2) the economic harm to property or the environment
 10-19 caused by the violation;

10-20 (3) the history of previous violations;

10-21 (4) the amount necessary to deter a future violation;

10-22 (5) efforts made to correct the violation; and

10-23 (6) any other matter that justice may require.

10-24 (c) The board by rule or through procedures adopted by the
 10-25 board and published in the Texas Register shall develop a
 10-26 standardized penalty schedule based on the criteria listed in
 10-27 Subsection (b).

10-28 Sec. 1301.703. REPORT AND NOTICE OF VIOLATION AND PENALTY.

10-29 (a) If the enforcement committee determines that a violation
 10-30 occurred, the enforcement committee may issue to the board a report
 10-31 stating:

10-32 (1) the facts on which the determination is based; and

10-33 (2) the committee's recommendation on the imposition
 10-34 of the penalty, including a recommendation on the amount of the
 10-35 penalty.

10-36 (b) Not later than the 14th day after the date the report is
 10-37 issued, the enforcement committee shall give written notice of the
 10-38 report to the person.

10-39 (c) The notice must:

10-40 (1) include a brief summary of the alleged violation;

10-41 (2) state the amount of the recommended penalty; and

10-42 (3) inform the person of the person's right to a
 10-43 hearing on the occurrence of the violation, the amount of the
 10-44 penalty, or both.

10-45 Sec. 1301.704. PENALTY TO BE PAID OR HEARING REQUESTED.

10-46 (a) Not later than the 20th day after the date the person receives
 10-47 the notice, the person in writing may:

10-48 (1) accept the determination and recommended penalty
 10-49 of the enforcement committee; or

10-50 (2) make a request for a hearing on the occurrence of
 10-51 the violation, the amount of the penalty, or both.

10-52 (b) If the person accepts the determination and recommended
 10-53 penalty of the enforcement committee, the board by order shall
 10-54 approve the determination and impose the recommended penalty.

10-55 Sec. 1301.705. HEARING. (a) If the person requests a
 10-56 hearing or fails to respond in a timely manner to the notice, the
 10-57 enforcement committee shall set a hearing and give written notice
 10-58 of the hearing to the person. An administrative law judge of the
 10-59 State Office of Administrative Hearings shall hold the hearing.

10-60 (b) The administrative law judge shall make findings of fact
 10-61 and conclusions of law and promptly issue to the board a proposal
 10-62 for a decision about the occurrence of the violation and the amount
 10-63 of a proposed penalty.

10-64 Sec. 1301.706. DECISION BY BOARD. (a) Based on the
 10-65 findings of fact, conclusions of law, and proposal for a decision,
 10-66 the board by order may:

10-67 (1) find that a violation occurred and impose a
 10-68 penalty; or

10-69 (2) find that a violation did not occur.

11-1 (b) The notice of the board's order given to the person must
 11-2 include a statement of the right of the person to judicial review of
 11-3 the order.

11-4 Sec. 1301.707. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
 11-5 Not later than the 30th day after the date the board's order becomes
 11-6 final, the person shall:

11-7 (1) pay the penalty; or

11-8 (2) file a petition for judicial review contesting the
 11-9 occurrence of the violation, the amount of the penalty, or both.

11-10 Sec. 1301.708. STAY OF ENFORCEMENT OF PENALTY. (a) Within
 11-11 the 30-day period prescribed by Section 1301.707, a person who
 11-12 files a petition for judicial review may:

11-13 (1) stay enforcement of the penalty by:

11-14 (A) paying the penalty to the court for placement
 11-15 in an escrow account; or

11-16 (B) giving the court a supersedeas bond approved
 11-17 by the court that:

11-18 (i) is for the amount of the penalty; and

11-19 (ii) is effective until all judicial review
 11-20 of the board's order is final; or

11-21 (2) request the court to stay enforcement of the
 11-22 penalty by:

11-23 (A) filing with the court a sworn affidavit of
 11-24 the person stating that the person is financially unable to pay the
 11-25 penalty and is financially unable to give the supersedeas bond; and

11-26 (B) sending a copy of the affidavit to the
 11-27 enforcement committee by certified mail.

11-28 (b) If the enforcement committee receives a copy of an
 11-29 affidavit under Subsection (a)(2), the executive director may file
 11-30 with the court, not later than the fifth day after the date the copy
 11-31 is received, a contest to the affidavit.

11-32 (c) The court shall hold a hearing on the facts alleged in
 11-33 the affidavit as soon as practicable and shall stay the enforcement
 11-34 of the penalty on finding that the alleged facts are true. The
 11-35 person who files an affidavit has the burden of proving that the
 11-36 person is financially unable to pay the penalty and to give a
 11-37 supersedeas bond.

11-38 Sec. 1301.709. DECISION BY COURT. (a) If the court
 11-39 sustains the finding that a violation occurred, the court may
 11-40 uphold or reduce the amount of the penalty and order the person to
 11-41 pay the full or reduced amount of the penalty.

11-42 (b) If the court does not sustain the finding that a
 11-43 violation occurred, the court shall order that a penalty is not
 11-44 owed.

11-45 Sec. 1301.710. REMITTANCE OF PENALTY AND INTEREST. (a) If
 11-46 the person paid the penalty and if the amount of the penalty is
 11-47 reduced or the penalty is not upheld by the court, the court shall
 11-48 order, when the court's judgment becomes final, that the
 11-49 appropriate amount plus accrued interest be remitted to the person.

11-50 (b) The interest accrues at the rate charged on loans to
 11-51 depository institutions by the New York Federal Reserve Bank.

11-52 (c) The interest shall be paid for the period beginning on
 11-53 the date the penalty is paid and ending on the date the penalty is
 11-54 remitted.

11-55 Sec. 1301.711. RELEASE OF BOND. (a) If the person gave a
 11-56 supersedeas bond and the penalty is not upheld by the court, the
 11-57 court shall order, when the court's judgment becomes final, the
 11-58 release of the bond.

11-59 (b) If the person gave a supersedeas bond and the amount of
 11-60 the penalty is reduced, the court shall order the release of the
 11-61 bond after the person pays the reduced amount.

11-62 Sec. 1301.712. COLLECTION OF PENALTY. (a) If the person
 11-63 does not pay the penalty and the enforcement of the penalty is not
 11-64 stayed, the penalty may be collected.

11-65 (b) The attorney general may sue to collect the penalty.

11-66 Sec. 1301.713. ADMINISTRATIVE PROCEDURE. A proceeding to
 11-67 impose the penalty is considered to be a contested case under
 11-68 Chapter 2001, Government Code.

11-69 SECTION 26. Section 51.351, Occupations Code, is amended by

adding Subsections (c) and (d) to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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