

1-1 By: Armbrister S.B. No. 305
1-2 (In the Senate - Filed January 31, 2005; February 7, 2005,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 April 22, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 22, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 305 By: Armbrister

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

1-10 relating to the licensing and regulation of glass technicians;
1-11 providing administrative penalties.

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

1-13 SECTION 1. Title 8, Occupations Code, is amended by adding
1-14 Chapter 1306 to read as follows:

1-15 CHAPTER 1306. GLASS TECHNICIANS

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 1306.001. SHORT TITLE. This chapter may be cited as
1-18 the Glass Technicians License Act.

1-19 Sec. 1306.002. DEFINITIONS. In this chapter:

1-20 (1) "Automotive glass work" means installing,
1-21 maintaining, or repairing fixed or moveable glass in a motor
1-22 vehicle.

1-23 (2) "Board" means the Glass Technicians Board of
1-24 Examiners.

1-25 (3) "Glazing" means installing, maintaining, or
1-26 repairing glass in a residential or commercial building.

1-27 (4) "Licensed automotive glass repair technician"
1-28 means a person who holds a license under this chapter to repair
1-29 damaged fixed or moveable glass in a motor vehicle.

1-30 (5) "Licensed automotive glass replacement
1-31 technician" means a person who holds a license under this chapter to
1-32 perform automotive glass work.

1-33 (6) "Licensed glazier" means a person who holds a
1-34 license under this chapter to perform glazing.

1-35 (7) "Trainee" means a person not licensed under this
1-36 chapter who performs automotive glass work or glazing under the
1-37 supervision of a licensed automotive glass replacement technician,
1-38 licensed automotive glass repair technician, or licensed glazier.

1-39 Sec. 1306.003. EXEMPTIONS. The following persons are not
1-40 required to be licensed under this chapter to perform the actions
1-41 listed:

1-42 (1) a person employed by a federal, state, or local
1-43 governmental agency performing automotive glass work or glazing as
1-44 an assigned duty for which the person has been properly trained;

1-45 (2) a student performing automotive glass work or
1-46 glazing as part of a board-approved educational or training program
1-47 if:

1-48 (A) the work product produced by the student as
1-49 part of the program is not intended for public use; or

1-50 (B) the student, while performing assigned
1-51 duties, is supervised by a licensed instructor;

1-52 (3) a glass instructor certified by the National Glass
1-53 Association or another certification organization approved by the
1-54 board or licensed by another state, if:

1-55 (A) the instructor is performing automotive
1-56 glass work or glazing in this state as part of a board-approved
1-57 educational or training program;

1-58 (B) the instructor does not perform the
1-59 automotive glass work or glazing in this state for more than 30 days
1-60 each calendar year; and

1-61 (C) the work product of the educational or
1-62 training program is not intended for public use;

1-63 (4) a trainee performing assigned automotive glass

2-1 work or glazing under the direct on-site supervision of a licensed
2-2 automotive glass replacement technician, licensed automotive glass
2-3 repair technician, or licensed glazier in accordance with this
2-4 chapter and board rules;

2-5 (5) an employee of a business entity, whose primary
2-6 duties include automotive glass work or glazing performed on
2-7 premises owned or leased by the business for the use of the business
2-8 and not intended for use by the public;

2-9 (6) a person fabricating glass products;

2-10 (7) a person installing, maintaining, repairing, or
2-11 servicing glass in or around a single-family residence owned and
2-12 occupied or to be occupied by the person, subject to any inspection
2-13 and approval required by other law;

2-14 (8) a person who:

2-15 (A) is a maintenance person or maintenance
2-16 engineer and is a regular employee of the owner, lessee, or
2-17 management company of the property where the work is being
2-18 performed;

2-19 (B) performs the work in connection with the
2-20 business in which the person is employed; and

2-21 (C) does not engage in the business of automotive
2-22 glass work or glazing for hire to the general public;

2-23 (9) a person that holds the person out to be a retail
2-24 seller of glass products and engages in the retail sale of glass
2-25 products, if the person does not also engage in automotive glass
2-26 work or glazing; and

2-27 (10) a person who:

2-28 (A) installs safety-backed mirror products; or

2-29 (B) repairs or replaces flat glass in residential
2-30 buildings that does not exceed 30 square feet.

2-31 Sec. 1306.004. APPLICATION OF SUNSET ACT. The Glass
2-32 Technicians Board of Examiners is subject to Chapter 325,
2-33 Government Code (Texas Sunset Act). Unless continued in existence
2-34 as provided by that chapter, the board is abolished September 1,
2-35 2017.

2-36 [Sections 1306.005-1306.050 reserved for expansion]

2-37 SUBCHAPTER B. GLASS TECHNICIANS BOARD OF EXAMINERS

2-38 Sec. 1306.051. BOARD; MEMBERSHIP. (a) The Glass
2-39 Technicians Board of Examiners consists of nine members appointed
2-40 by the governor with the advice and consent of the senate as
2-41 follows:

2-42 (1) one licensed automotive glass replacement
2-43 technician;

2-44 (2) one member who is an owner or principal of a
2-45 company engaged in the business of replacing automotive glass;

2-46 (3) one licensed automotive glass repair technician;

2-47 (4) one member who is an owner or principal of a
2-48 company engaged in the business of repairing automotive glass;

2-49 (5) one licensed glazier;

2-50 (6) one member who is an owner or principal of a
2-51 company engaged in the business of glazing; and

2-52 (7) three members who represent the public.

2-53 (b) Appointments to the board shall be made without regard
2-54 to the race, color, disability, sex, religion, age, or national
2-55 origin of the appointee.

2-56 Sec. 1306.052. MEMBER ELIGIBILITY. (a) To qualify as a
2-57 board member, a person must be a resident of this state.

2-58 (b) A person is not eligible for appointment as a public
2-59 member of the board if the person or the person's spouse:

2-60 (1) is registered, certified, or licensed by an
2-61 occupational regulatory agency in the field of automotive glass
2-62 work or glazing;

2-63 (2) is employed by or participates in the management
2-64 of a business entity or other organization regulated by the board or
2-65 receiving funds from the board;

2-66 (3) owns or controls, directly or indirectly, more
2-67 than a 10 percent interest in a business entity or other
2-68 organization regulated by the board or receiving funds from the
2-69 board; or

3-1 (4) uses or receives a substantial amount of tangible
3-2 goods, services, or money from the board, other than compensation
3-3 or reimbursement authorized by law for board membership,
3-4 attendance, or expenses.

3-5 Sec. 1306.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

3-6 (a) In this section, "Texas trade association" means a cooperative
3-7 and voluntarily joined association of business or professional
3-8 competitors in this state designed to assist its members and its
3-9 industry or profession in dealing with mutual business or
3-10 professional problems and in promoting their common interest.

3-11 (b) A person may not be a member of the board or an employee
3-12 of the board employed in a "bona fide executive, administrative, or
3-13 professional capacity," as that phrase is used for purposes of
3-14 establishing an exemption to the overtime provisions of the federal
3-15 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

3-16 (1) the person is an officer, employee, manager, or
3-17 paid consultant of a Texas trade association in the field of
3-18 automotive glass work or glazing; or

3-19 (2) the person's spouse is an officer, manager, or paid
3-20 consultant of a Texas trade association in the field of automotive
3-21 glass work or glazing.

3-22 (c) A person may not be a member of the board or act as
3-23 general counsel to the board if the person is required to register
3-24 as a lobbyist under Chapter 305, Government Code, because of the
3-25 person's activities for compensation on behalf of a profession
3-26 related to the operation of the board.

3-27 Sec. 1306.054. TERMS; VACANCIES. (a) Members of the board
3-28 serve staggered six-year terms. The terms of three members expire
3-29 on January 31 of each odd-numbered year.

3-30 (b) A vacancy on the board shall be filled by appointment of
3-31 the governor.

3-32 Sec. 1306.055. PRESIDING OFFICER. The governor shall
3-33 designate a member of the board as presiding officer of the board to
3-34 serve in that capacity at the pleasure of the governor.

3-35 Sec. 1306.056. MEETINGS; OFFICIAL RECORD. (a) The board
3-36 shall meet at least once each year.

3-37 (b) The board may meet at other times at the call of the
3-38 presiding officer or as provided by board rule.

3-39 (c) The board shall keep an official record of all board
3-40 meetings and proceedings.

3-41 Sec. 1306.057. GROUNDS FOR REMOVAL. (a) It is a ground for
3-42 removal from the board that a member:

3-43 (1) does not have at the time of taking office the
3-44 qualifications required by Sections 1306.051 and 1306.052;

3-45 (2) does not maintain during service on the board the
3-46 qualifications required by Sections 1306.051 and 1306.052;

3-47 (3) is ineligible for membership under Section
3-48 1306.053;

3-49 (4) cannot, because of illness or disability,
3-50 discharge the member's duties for a substantial part of the member's
3-51 term; or

3-52 (5) is absent from more than half of the regularly
3-53 scheduled board meetings that the member is eligible to attend
3-54 during a calendar year without an excuse approved by a majority vote
3-55 of the board.

3-56 (b) The validity of an action of the board is not affected by
3-57 the fact that it is taken when a ground for removal of a board member
3-58 exists.

3-59 (c) If the executive director has knowledge that a potential
3-60 ground for removal of a board member exists, the executive director
3-61 shall notify the presiding officer of the board of the potential
3-62 ground. The presiding officer shall then notify the governor and
3-63 the attorney general that a potential ground for removal exists. If
3-64 the potential ground for removal involves the presiding officer,
3-65 the executive director shall notify the next highest officer of the
3-66 board, who shall notify the governor and the attorney general that a
3-67 potential ground for removal exists.

3-68 Sec. 1306.058. TRAINING. (a) A person who is appointed to
3-69 and qualifies for office as a member of the board may not vote,

4-1 deliberate, or be counted as a member in attendance at a meeting of
 4-2 the board until the person completes a training program that
 4-3 complies with this section.

4-4 (b) The training program must provide the person with
 4-5 information regarding:

4-6 (1) this chapter and the board's programs, functions,
 4-7 rules, and budget;

4-8 (2) the results of the most recent formal audit of the
 4-9 board;

4-10 (3) the requirements of laws relating to open
 4-11 meetings, public information, administrative procedure, and
 4-12 conflict of interest; and

4-13 (4) any applicable ethics policies adopted by the
 4-14 board or the Texas Ethics Commission.

4-15 (c) A person appointed to the board is entitled to
 4-16 reimbursement, as provided by the General Appropriations Act, for
 4-17 travel expenses incurred in attending the training program
 4-18 regardless of whether the attendance at the program occurs before
 4-19 or after the person qualifies for office.

4-20 Sec. 1306.059. QUALIFICATIONS AND STANDARDS OF CONDUCT
 4-21 INFORMATION. The executive director or the executive director's
 4-22 designee shall provide to members of the board, as often as
 4-23 necessary, information regarding their:

4-24 (1) qualifications for office under this chapter; and

4-25 (2) responsibilities under applicable laws relating
 4-26 to standards of conduct for state officers.

4-27 Sec. 1306.060. REIMBURSEMENT. A board member is entitled
 4-28 to reimbursement for expenses as provided by the General
 4-29 Appropriations Act.

4-30 Sec. 1306.061. APPLICATION OF OPEN MEETINGS, OPEN RECORDS,
 4-31 AND ADMINISTRATIVE PROCEDURE LAWS. Except as provided by this
 4-32 chapter, the board is subject to Chapters 551, 552, and 2001,
 4-33 Government Code.

4-34 [Sections 1306.062-1306.100 reserved for expansion]

4-35 SUBCHAPTER C. BOARD POWERS AND DUTIES

4-36 Sec. 1306.101. RULES. The board shall adopt rules
 4-37 consistent with this chapter for the administration of this chapter
 4-38 and the operation of the board.

4-39 Sec. 1306.102. GENERAL POWERS AND DUTIES. The board shall:

4-40 (1) evaluate the qualifications of license applicants
 4-41 and issue licenses to qualified applicants;

4-42 (2) contract with a nationally recognized testing
 4-43 organization, such as the National Glass Association or another
 4-44 organization whose examination is determined by the board to be at
 4-45 least as stringent as the applicable examination given by the
 4-46 National Glass Association, to develop and administer to applicants
 4-47 who apply for a license under this chapter a written automotive
 4-48 glass replacement technician examination, automotive glass repair
 4-49 technician examination, or glazier examination;

4-50 (3) establish standards of ethical conduct for persons
 4-51 performing automotive glass work or glazing;

4-52 (4) by rule establish safety standards in accordance
 4-53 with accepted industry standards for:

4-54 (A) automotive glass replacement that are at
 4-55 least as stringent as the 2002 Auto Glass Replacement Safety
 4-56 Standards developed by the American National Standards Institute;
 4-57 and

4-58 (B) glazing and automotive glass repair that are
 4-59 at least as stringent as national safety standards recognized by
 4-60 the board for glazing and automotive glass repair; and

4-61 (5) establish continuing education requirements for
 4-62 renewal of each type of license issued under this chapter.

4-63 Sec. 1306.103. FEES. The board shall set and collect
 4-64 application, license, renewal, and other necessary fees in amounts
 4-65 that are reasonable and necessary to cover the costs of
 4-66 administering and enforcing this chapter.

4-67 Sec. 1306.104. RULES RESTRICTING ADVERTISING OR
 4-68 COMPETITIVE BIDDING. (a) The board may not adopt rules
 4-69 restricting advertising or competitive bidding by a person

5-1 regulated by the board except to prohibit false, misleading, or
5-2 deceptive practices by that person.

5-3 (b) The board may not include in its rules to prohibit
5-4 false, misleading, or deceptive practices by a person regulated by
5-5 the board a rule that:

5-6 (1) restricts the use of any advertising medium;

5-7 (2) restricts the person's personal appearance or the
5-8 use of the person's voice in an advertisement;

5-9 (3) relates to the size or duration of an
5-10 advertisement by the person; or

5-11 (4) restricts the use of a trade name in advertising by
5-12 the person.

5-13 Sec. 1306.105. RULES ON CONSEQUENCES OF CRIMINAL
5-14 CONVICTION. (a) The board shall adopt rules necessary to comply
5-15 with Chapter 53.

5-16 (b) In its rules under this section, the board shall list
5-17 the specific offenses for which a conviction would constitute
5-18 grounds for the board to take action under Section 53.021.

5-19 Sec. 1306.106. SUBPOENA. (a) The board may request and,
5-20 if necessary, compel by subpoena:

5-21 (1) the attendance of a witness for examination under
5-22 oath; and

5-23 (2) the production for inspection and copying of
5-24 records and other evidence relevant to the investigation of an
5-25 alleged violation of this chapter.

5-26 (b) If a person fails to comply with a subpoena issued under
5-27 this section, the board, acting through the attorney general, may
5-28 file suit to enforce the subpoena in a district court in Travis
5-29 County or in the county in which a hearing conducted by the board
5-30 may be held.

5-31 (c) The court shall order a person to comply with the
5-32 subpoena if the court determines that good cause exists for issuing
5-33 the subpoena.

5-34 Sec. 1306.107. USE OF TECHNOLOGY. The board shall
5-35 implement a policy requiring the board to use appropriate
5-36 technological solutions to improve the board's ability to perform
5-37 its functions. The policy must ensure that the public is able to
5-38 interact with the board on the Internet.

5-39 Sec. 1306.108. NEGOTIATED RULEMAKING AND ALTERNATIVE
5-40 DISPUTE RESOLUTION POLICY. (a) The board shall develop and
5-41 implement a policy to encourage the use of:

5-42 (1) negotiated rulemaking procedures under Chapter
5-43 2008, Government Code, for the adoption of board rules; and

5-44 (2) appropriate alternative dispute resolution
5-45 procedures under Chapter 2009, Government Code, to assist in the
5-46 resolution of internal and external disputes under the board's
5-47 jurisdiction.

5-48 (b) The board's procedures relating to alternative dispute
5-49 resolution must conform, to the extent possible, to any model
5-50 guidelines issued by the State Office of Administrative Hearings
5-51 for the use of alternative dispute resolution by state agencies.

5-52 (c) The board shall designate a trained person to:

5-53 (1) coordinate the implementation of the policy
5-54 adopted under Subsection (a);

5-55 (2) serve as a resource for any training needed to
5-56 implement the procedures for negotiated rulemaking or alternative
5-57 dispute resolution; and

5-58 (3) collect data concerning the effectiveness of those
5-59 procedures, as implemented by the board.

5-60 Sec. 1306.109. COMMITTEES. The board may appoint
5-61 committees that it considers necessary to carry out its duties.

5-62 Sec. 1306.110. ANNUAL REPORT. (a) The board shall file
5-63 annually with the governor and the presiding officer of each house
5-64 of the legislature a complete and detailed written report
5-65 accounting for all money received and disbursed by the board during
5-66 the preceding fiscal year.

5-67 (b) The annual report must be in the form and be reported in
5-68 the time provided by the General Appropriations Act.

5-69 [Sections 1306.111-1306.150 reserved for expansion]

6-1 SUBCHAPTER D. EXECUTIVE DIRECTOR AND PERSONNEL

6-2 Sec. 1306.151. EXECUTIVE DIRECTOR. (a) The board shall
 6-3 employ an executive director. The executive director is the
 6-4 executive head of the board and performs its administrative duties.

6-5 (b) The board shall set the compensation of the executive
 6-6 director.

6-7 Sec. 1306.152. PERSONNEL. The executive director may
 6-8 employ personnel as necessary to implement this chapter.

6-9 Sec. 1306.153. EQUAL EMPLOYMENT OPPORTUNITY POLICY.

6-10 (a) The executive director or the executive director's designee
 6-11 shall prepare and maintain a written policy statement that
 6-12 implements a program of equal employment opportunity to ensure that
 6-13 all personnel decisions are made without regard to race, color,
 6-14 disability, sex, religion, age, or national origin.

6-15 (b) The policy statement must include:

6-16 (1) personnel policies, including policies relating
 6-17 to recruitment, evaluation, selection, training, and promotion of
 6-18 personnel, that show the intent of the board to avoid the unlawful
 6-19 employment practices described by Chapter 21, Labor Code; and

6-20 (2) an analysis of the extent to which the composition
 6-21 of the board's personnel is in accordance with state and federal law
 6-22 and a description of reasonable methods to achieve compliance with
 6-23 state and federal law.

6-24 (c) The policy statement must:

6-25 (1) be updated annually;

6-26 (2) be reviewed by the civil rights division of the
 6-27 Texas Workforce Commission for compliance with Subsection (b)(1);
 6-28 and

6-29 (3) be filed with the governor's office.

6-30 Sec. 1306.154. STATE EMPLOYEE INCENTIVE PROGRAM. The
 6-31 executive director or the executive director's designee shall
 6-32 provide to board employees information and training on the benefits
 6-33 and methods of participation in the state employee incentive
 6-34 program.

6-35 Sec. 1306.155. DIVISION OF RESPONSIBILITIES. The board
 6-36 shall develop and implement policies that clearly separate the
 6-37 policy-making responsibilities of the board and the management
 6-38 responsibilities of the executive director and the staff of the
 6-39 board.

6-40 [Sections 1306.156-1306.200 reserved for expansion]

6-41 SUBCHAPTER E. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

6-42 Sec. 1306.201. PUBLIC INTEREST INFORMATION. (a) The board
 6-43 shall prepare and disseminate consumer information that describes
 6-44 the regulatory functions of the board and the procedures by which
 6-45 consumer complaints are filed with and resolved by the board.

6-46 (b) The board shall make the information available to the
 6-47 public and appropriate state agencies.

6-48 Sec. 1306.202. COMPLAINTS. (a) The board by rule shall
 6-49 establish methods by which consumers and service recipients are
 6-50 notified of the name, mailing address, and telephone number of the
 6-51 board for the purpose of directing complaints to the board. The
 6-52 board may provide for that notice:

6-53 (1) on each form, application, or written contract for
 6-54 services of a person regulated under this chapter;

6-55 (2) on a sign prominently displayed in the place of
 6-56 business of each person regulated under this chapter; or

6-57 (3) in a bill for service provided by a person
 6-58 regulated under this chapter.

6-59 (b) The board shall list with its regular telephone number
 6-60 any toll-free telephone number established under other state law
 6-61 that may be called to present a complaint about a glass technician.

6-62 Sec. 1306.203. RECORDS OF COMPLAINTS. (a) The board shall
 6-63 maintain a system to promptly and efficiently act on complaints
 6-64 filed with the board. The board shall maintain:

6-65 (1) information about the parties to the complaint and
 6-66 the subject matter of the complaint;

6-67 (2) a summary of the results of the review or
 6-68 investigation of the complaint; and

6-69 (3) information about the disposition of the

7-1 complaint.

7-2 (b) The board shall make information available describing
7-3 its procedures for complaint investigation and resolution.

7-4 (c) The board shall periodically notify the parties of the
7-5 status of the complaint until final disposition of the complaint.

7-6 Sec. 1306.204. GENERAL RULES REGARDING COMPLAINT
7-7 INVESTIGATION AND DISPOSITION. The board shall adopt rules
7-8 concerning the investigation of a complaint filed with the board.
7-9 The rules must:

7-10 (1) distinguish between categories of complaints;

7-11 (2) ensure that complaints are not dismissed without
7-12 appropriate consideration;

7-13 (3) require that the board be advised of a complaint
7-14 that is dismissed and that a letter be sent to the person who filed
7-15 the complaint explaining the action taken on the dismissed
7-16 complaint;

7-17 (4) ensure that the person who files a complaint has an
7-18 opportunity to explain the allegations made in the complaint; and

7-19 (5) prescribe guidelines concerning the categories of
7-20 complaints that require the use of a private investigator and the
7-21 procedures for the board to obtain the services of a private
7-22 investigator.

7-23 Sec. 1306.205. DISPOSITION OF COMPLAINT. (a) The board
7-24 shall:

7-25 (1) dispose of each complaint in a timely manner; and

7-26 (2) establish a schedule for conducting each phase of
7-27 a complaint that is under the control of the board not later than
7-28 the 30th day after the date the board receives the complaint.

7-29 (b) Each party shall be notified of the projected time
7-30 requirements for pursuing the complaint. The board shall notify
7-31 each party to the complaint of any change in the schedule
7-32 established under Subsection (a)(2) not later than the seventh day
7-33 after the date the change is made.

7-34 (c) The executive director shall notify the board of a
7-35 complaint that is not resolved within the time prescribed by the
7-36 board for resolving the complaint.

7-37 Sec. 1306.206. PUBLIC PARTICIPATION. (a) The board shall
7-38 develop and implement policies that provide the public with a
7-39 reasonable opportunity to appear before the board and to speak on
7-40 any issue under the board's jurisdiction.

7-41 (b) The board shall prepare and maintain a written plan that
7-42 describes how a person who does not speak English may be provided
7-43 reasonable access to the board's programs.

7-44 Sec. 1306.207. INFORMAL SETTLEMENT CONFERENCE. The board
7-45 shall establish guidelines for an informal settlement conference
7-46 related to a complaint filed with the board.

7-47 [Sections 1306.208-1306.250 reserved for expansion]

7-48 SUBCHAPTER F. LICENSING REQUIREMENTS

7-49 Sec. 1306.251. LICENSE REQUIRED. (a) Except as provided
7-50 by Section 1306.003, a person may not practice automotive glass
7-51 work or glazing unless the person holds a license issued by the
7-52 board under this chapter.

7-53 (b) Unless a person holds a license issued under this
7-54 chapter, a person may not use the title or represent or imply the
7-55 person has the title "licensed automotive glass replacement
7-56 technician," "licensed automotive glass repair technician," or
7-57 "licensed glazier."

7-58 (c) A license issued under this chapter is nontransferable.

7-59 Sec. 1306.252. ELIGIBILITY REQUIREMENTS. (a) To be
7-60 eligible for a license under this chapter, an applicant must:

7-61 (1) be at least 18 years of age;

7-62 (2) have successfully completed a primary education
7-63 through at least the eighth grade or an equivalent educational
7-64 program;

7-65 (3) pass the required examination;

7-66 (4) submit an application on the form prescribed by
7-67 the board and any other information required by board rule; and

7-68 (5) pay all required fees.

7-69 (b) In addition to the requirements under Subsection (a), an

8-1 applicant applying for an automotive glass replacement technician
 8-2 license must have:

8-3 (1) successfully completed a training program that is
 8-4 approved by the board and is at least as stringent as the Auto Glass
 8-5 Technical Institute training program developed by the National
 8-6 Glass Association or a similar training program selected by the
 8-7 board; and

8-8 (2) worked as a trainee in automotive glass
 8-9 replacement work for not less than six months.

8-10 (c) In addition to the requirements under Subsection (a), an
 8-11 applicant applying for an automotive glass repair technician
 8-12 license must have:

8-13 (1) successfully completed a windshield repair
 8-14 manufacturer factory training program or other equivalent program
 8-15 approved by the board;

8-16 (2) worked as a trainee in automotive glass repair
 8-17 work for not less than six months; and

8-18 (3) performed not less than 200 automotive glass
 8-19 repairs as a trainee.

8-20 (d) In addition to the requirements under Subsection (a), an
 8-21 applicant applying for a glazier license must have:

8-22 (1) successfully completed a training program
 8-23 approved by the board that is at least as stringent as the Glass
 8-24 Installer Technical Institute training program developed by the
 8-25 National Glass Association or a similar training program selected
 8-26 by the board; and

8-27 (2) worked as a trainee in glazing for not less than
 8-28 one year.

8-29 Sec. 1306.253. EXAMINATION. An examination required for
 8-30 issuance of a license under this chapter must test entry level
 8-31 knowledge of automotive glass replacement work, automotive glass
 8-32 repair work, or glazing, including OSHA standards and industry
 8-33 safety standards such as the Auto Glass Replacement Safety Standard
 8-34 developed by the American National Standards Institute.

8-35 Sec. 1306.254. EXAMINATION RESULTS. The board shall notify
 8-36 each applicant of the results of a licensing examination not later
 8-37 than the 30th day after the date the board receives the results of
 8-38 the examination.

8-39 Sec. 1306.255. REEXAMINATION. (a) An applicant who fails
 8-40 to pass a required examination may not apply to retake the
 8-41 examination before the expiration of one month from the date the
 8-42 applicant is notified of the results of the examination.

8-43 (b) An applicant who fails to pass the required examination
 8-44 three times may not retake the examination before:

8-45 (1) the applicant successfully completes the
 8-46 additional training required by the board; and

8-47 (2) the expiration of 180 days from the date the
 8-48 applicant was notified of the results of the most recent
 8-49 examination.

8-50 Sec. 1306.256. PROVISIONAL LICENSE. The board may issue a
 8-51 provisional license to an applicant who:

8-52 (1) holds a license from another state that has
 8-53 license requirements substantially equivalent to those of this
 8-54 state;

8-55 (2) submits the information required by the board; and

8-56 (3) pays the required fees.

8-57 Sec. 1306.257. LICENSE EXPIRATION DATE. (a) An automotive
 8-58 glass replacement technician license and a glazier license issued
 8-59 under this chapter are valid for three years and may be renewed in
 8-60 accordance with this chapter and board rules.

8-61 (b) An automotive glass repair technician license is valid
 8-62 for five years and may be renewed in accordance with this chapter
 8-63 and board rules.

8-64 (c) The board by rule may adopt a system under which
 8-65 licenses expire on various dates during the year.

8-66 (d) For a year in which the license expiration date is
 8-67 changed, license fees payable on January 1 shall be prorated on a
 8-68 monthly basis so that each license holder pays only the portion of
 8-69 the fee that is allocable to the number of months during which the

9-1 license is valid. On renewal of the license on the new expiration
 9-2 date, the total license renewal fee is payable.

9-3 Sec. 1306.258. LICENSE RENEWAL. (a) A person may renew an
 9-4 unexpired license by paying the required renewal fee to the board
 9-5 before the expiration date of the license.

9-6 (b) At least 30 days before the expiration of a person's
 9-7 license, the board shall send written notice of the impending
 9-8 license expiration to the person at the person's last known address
 9-9 according to the board's records.

9-10 (c) A person whose license has been expired for 90 days or
 9-11 less may renew the license by paying to the board the required
 9-12 renewal fee and an additional fee equal to one-half of the
 9-13 examination fee for the license. If a person's license has been
 9-14 expired for more than 90 days but less than one year, the person may
 9-15 renew the license by paying to the board all unpaid renewal fees and
 9-16 an additional fee equal to the examination fee for the license.

9-17 [Sections 1306.259-1306.300 reserved for expansion]

9-18 SUBCHAPTER G. DISCIPLINARY PROCEDURES

9-19 Sec. 1306.301. GROUNDS FOR DISCIPLINARY ACTION. (a) The
 9-20 board shall revoke, suspend, or refuse to renew a license or shall
 9-21 reprimand a license holder if the license holder:

9-22 (1) violates this chapter or a rule adopted by the
 9-23 board;

9-24 (2) performs automotive glass work or glazing in
 9-25 violation of this chapter or a rule adopted by the board;

9-26 (3) obtains or attempts to obtain a license by fraud or
 9-27 misrepresentation;

9-28 (4) has been convicted of a felony;

9-29 (5) committed an act that constitutes gross negligence
 9-30 in the auto glass replacement, auto glass repair work, or glazing
 9-31 and that results in injury to another person;

9-32 (6) engages in dishonorable, unethical, or
 9-33 unprofessional conduct likely to deceive, defraud, or harm the
 9-34 public;

9-35 (7) is habitually intoxicated or participates in the
 9-36 illegal use of drugs;

9-37 (8) directly or indirectly gives or receives a fee,
 9-38 commission, rebate, or other compensation for a service regulated
 9-39 by this chapter that is not performed;

9-40 (9) fails to respond to a written request for
 9-41 information by the board not later than the 60th day after the date
 9-42 the person receives the request;

9-43 (10) has had a license or certification revoked or
 9-44 suspended or other disciplinary action taken by another state or
 9-45 territory;

9-46 (11) aids a person not licensed under this chapter in
 9-47 the performance of automotive glass replacement, automotive glass
 9-48 repair work, or glazing that requires a license under this chapter;
 9-49 or

9-50 (12) makes material misstatements in an application
 9-51 for a license or renewal under this chapter.

9-52 (b) The board may place on probation a person whose license
 9-53 is suspended. If a license suspension is probated, the board may
 9-54 require the person to:

9-55 (1) report regularly to the board on matters that are
 9-56 the basis of the probation;

9-57 (2) limit practice to the areas prescribed by the
 9-58 board; or

9-59 (3) continue or review professional education or
 9-60 training until the person attains a degree of skill satisfactory to
 9-61 the board in those areas that are the basis of the probation.

9-62 Sec. 1306.302. HEARING. (a) If the board proposes to
 9-63 revoke or suspend a person's license, the person is entitled to a
 9-64 hearing before the board.

9-65 (b) A member of the board or employee of the board may
 9-66 communicate directly or indirectly with a party to the proceeding
 9-67 or with the party's representative only if notice and an
 9-68 opportunity to participate are given to each party.

9-69 Sec. 1306.303. SCHEDULE OF SANCTIONS. (a) The board by

10-1 rule shall adopt a broad schedule of sanctions for violations under
 10-2 this chapter.

10-3 (b) The State Office of Administrative Hearings shall use
 10-4 the schedule for any sanction imposed under this chapter as the
 10-5 result of a hearing conducted by that office.

10-6 Sec. 1306.304. TEMPORARY LICENSE SUSPENSION. (a) The
 10-7 board or a three-member committee of board members designated by
 10-8 the board shall temporarily suspend the license of a license holder
 10-9 if the board or committee determines from the evidence or
 10-10 information presented to it that continued practice by the license
 10-11 holder would constitute a continuing and imminent threat to the
 10-12 public welfare.

10-13 (b) The board or committee may temporarily suspend a license
 10-14 without notice or hearing under this section if:

10-15 (1) action is taken to initiate proceedings for a
 10-16 hearing before the board or the State Office of Administrative
 10-17 Hearings simultaneously with the temporary suspension; and

10-18 (2) a hearing is held as soon as practicable under this
 10-19 chapter and Chapter 2001, Government Code.

10-20 (c) The board or the State Office of Administrative Hearings
 10-21 shall hold a preliminary hearing on a date not later than the 14th
 10-22 day after the date of the temporary suspension to determine if there
 10-23 is a probable cause to believe that a continuing and imminent threat
 10-24 to the public welfare still exists. A final hearing on the matter
 10-25 shall be held not later than the 60th day after the date of the
 10-26 temporary suspension.

10-27 Sec. 1306.305. INFORMAL PROCEDURES. (a) The board by rule
 10-28 shall adopt procedures governing:

10-29 (1) informal disposition of a contested case under
 10-30 Section 2001.056, Government Code; and

10-31 (2) an informal proceeding held in compliance with
 10-32 Section 2001.054, Government Code.

10-33 (b) Rules adopted under Subsection (a) must:

10-34 (1) provide the complainant and the license holder an
 10-35 opportunity to be heard; and

10-36 (2) require the presence of a representative of the
 10-37 attorney general or the board's legal counsel to advise the board or
 10-38 the board's employees.

10-39 Sec. 1306.306. ADMINISTRATIVE PROCEDURE. A proceeding to
 10-40 suspend or revoke a license under this subchapter is governed by
 10-41 Chapter 2001, Government Code.

10-42 Sec. 1306.307. MONITORING OF LICENSE HOLDER. (a) The
 10-43 board by rule shall develop a system for monitoring a license
 10-44 holder's compliance with this chapter.

10-45 (b) Rules adopted under this section must include
 10-46 procedures to:

10-47 (1) monitor for compliance a license holder who is
 10-48 ordered by the board to perform certain acts; and

10-49 (2) identify and monitor license holders who represent
 10-50 a risk to the public.

10-51 Sec. 1306.308. REFUND. (a) Subject to Subsection (b), the
 10-52 board may order a license holder to pay a refund to a consumer as
 10-53 provided in an agreement resulting from an informal settlement
 10-54 conference instead of or in addition to imposing an administrative
 10-55 penalty under this chapter.

10-56 (b) The amount of a refund ordered as provided in an
 10-57 agreement resulting from an informal settlement conference may not
 10-58 exceed the amount the consumer paid to the license holder for a
 10-59 service regulated by this chapter. The board may not require
 10-60 payment of other damages or estimate harm in a refund order.

10-61 [Sections 1306.309-1306.350 reserved for expansion]

10-62 SUBCHAPTER H. ADMINISTRATIVE PENALTY

10-63 Sec. 1306.351. IMPOSITION OF ADMINISTRATIVE PENALTY. The
 10-64 board may impose an administrative penalty on a person licensed
 10-65 under this chapter who violates this chapter or a rule or order
 10-66 adopted under this chapter.

10-67 Sec. 1306.352. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
 10-68 amount of the administrative penalty may not be less than \$50 or
 10-69 more than \$5,000 for each violation. Each day a violation continues

11-1 or occurs is a separate violation for the purpose of imposing a
 11-2 penalty.

- 11-3 (b) The amount of the penalty shall be based on:
 11-4 (1) the seriousness of the violation, including the
 11-5 nature, circumstances, extent, and gravity of the violation;
 11-6 (2) the economic harm caused by the violation;
 11-7 (3) the history of previous violations;
 11-8 (4) the amount necessary to deter a future violation;
 11-9 (5) efforts to correct the violation; and
 11-10 (6) any other matter that justice may require.

11-11 (c) The board by rule shall adopt an administrative penalty
 11-12 schedule based on the criteria listed in Subsection (b) for
 11-13 violations of this chapter or board rules to ensure that the amounts
 11-14 of penalties imposed are appropriate to the violation. The board
 11-15 shall provide the administrative penalty schedule to the public on
 11-16 request.

11-17 Sec. 1306.353. REPORT AND NOTICE OF VIOLATION AND PENALTY.

11-18 (a) If the board determines that a violation occurred, the board
 11-19 may issue to the board a report stating:

- 11-20 (1) the facts on which the determination is based; and
 11-21 (2) the board's recommendation on the imposition of an
 11-22 administrative penalty, including a recommendation on the amount of
 11-23 the penalty.

11-24 (b) Not later than the 14th day after the date the report is
 11-25 issued, the board shall give written notice of the report to the
 11-26 person. The notice must:

- 11-27 (1) include a brief summary of the alleged violation;
 11-28 (2) state the amount of the recommended administrative
 11-29 penalty; and
 11-30 (3) inform the person of the person's right to a
 11-31 hearing on the occurrence of the violation, the amount of the
 11-32 penalty, or both.

11-33 Sec. 1306.354. PENALTY TO BE PAID OR HEARING REQUESTED.

11-34 (a) Not later than the 10th day after the date the person receives
 11-35 the notice, the person in writing may:

- 11-36 (1) accept the determination and recommended
 11-37 administrative penalty of the board; or
 11-38 (2) request a hearing on the occurrence of the
 11-39 violation, the amount of the penalty, or both.

11-40 (b) If the person accepts the determination and recommended
 11-41 penalty of the board, the board by order shall approve the
 11-42 determination and impose the recommended penalty.

11-43 Sec. 1306.355. HEARING. (a) If the person requests a
 11-44 hearing or fails to respond in a timely manner to the notice, the
 11-45 board shall set a hearing and give written notice of the hearing to
 11-46 the person.

11-47 (b) An administrative law judge of the State Office of
 11-48 Administrative Hearings shall hold the hearing. The administrative
 11-49 law judge shall:

- 11-50 (1) make findings of fact and conclusions of law; and
 11-51 (2) promptly issue to the board a proposal for a
 11-52 decision about the occurrence of the violation and the amount of any
 11-53 proposed administrative penalty.

11-54 Sec. 1306.356. DECISION BY BOARD. (a) Based on the
 11-55 findings of fact, conclusions of law, and proposal for decision,
 11-56 the board by order may determine that:

- 11-57 (1) a violation occurred and impose an administrative
 11-58 penalty; or
 11-59 (2) a violation did not occur.

11-60 (b) The notice of the board's order given to the person must
 11-61 include a statement of the right of the person to judicial review of
 11-62 the order.

11-63 Sec. 1306.357. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

11-64 (a) Not later than the 30th day after the date the board's order
 11-65 becomes final, the person shall:

- 11-66 (1) pay the administrative penalty; or
 11-67 (2) file a petition for judicial review contesting the
 11-68 occurrence of the violation, the amount of the penalty, or both.

11-69 (b) Within the 30-day period prescribed by Subsection (a), a

12-1 person who files a petition for judicial review may:

12-2 (1) stay enforcement of the penalty by:

12-3 (A) paying the penalty to the court for placement

12-4 in an escrow account; or

12-5 (B) giving the court a supersedeas bond approved

12-6 by the court and that:

12-7 (i) is for the amount of the penalty; and

12-8 (ii) is effective until judicial review of

12-9 the board's order is final; or

12-10 (2) request the court to stay enforcement of the

12-11 penalty by:

12-12 (A) filing with the court a sworn affidavit of

12-13 the person stating that the person is financially unable to pay the

12-14 penalty and is financially unable to give the supersedeas bond; and

12-15 (B) giving a copy of the affidavit to the board by

12-16 certified mail.

12-17 (c) If the board receives a copy of an affidavit under

12-18 Subsection (b)(2), the board may file with the court, not later than

12-19 the fifth day after the date the copy is received, a contest to the

12-20 affidavit.

12-21 (d) The court shall hold a hearing on the facts alleged in

12-22 the affidavit as soon as practicable and shall stay the enforcement

12-23 of the penalty on finding that the alleged facts are true. The

12-24 person who files an affidavit has the burden of proving that the

12-25 person is financially unable to pay the penalty and to give a

12-26 supersedeas bond.

12-27 Sec. 1306.358. COLLECTION OF PENALTY. (a) If the person

12-28 does not pay the administrative penalty and the enforcement of the

12-29 penalty is not stayed, the penalty may be collected.

12-30 (b) The attorney general may sue to collect the penalty.

12-31 Sec. 1306.359. DETERMINATION BY COURT. (a) If a court

12-32 sustains the determination that a violation occurred, the court may

12-33 uphold or reduce the amount of the administrative penalty and order

12-34 the person to pay the full or reduced penalty.

12-35 (b) If the court does not sustain the finding that a

12-36 violation occurred, the court shall order that a penalty is not

12-37 owed.

12-38 Sec. 1306.360. REMITTANCE OF PENALTY AND INTEREST. (a) If

12-39 the person paid the administrative penalty and if the amount of the

12-40 penalty is reduced or the penalty is not upheld by the court, the

12-41 court shall order, when the court's judgment becomes final, that

12-42 the appropriate amount plus accrued interest be remitted to the

12-43 person.

12-44 (b) The interest accrues at the rate charged on loans to

12-45 depository institutions by the New York Federal Reserve Bank.

12-46 (c) The interest shall be paid for the period beginning on

12-47 the date the penalty is paid and ending on the date the penalty is

12-48 remitted.

12-49 Sec. 1306.361. RELEASE OF BOND. (a) If the person gave a

12-50 supersedeas bond and the penalty is not upheld by the court, the

12-51 court shall order, when the court's judgment becomes final, the

12-52 release of the bond.

12-53 (b) If the person gave a supersedeas bond and the amount of

12-54 the penalty is reduced, the court shall order the release of the

12-55 bond after the person pays the reduced amount.

12-56 Sec. 1306.362. ADMINISTRATIVE PROCEDURE. A proceeding to

12-57 impose an administrative penalty is considered to be a contested

12-58 case under Chapter 2001, Government Code.

12-59 [Sections 1306.363-1306.400 reserved for expansion]

12-60 SUBCHAPTER I. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

12-61 Sec. 1306.401. INJUNCTIVE RELIEF. (a) The board may

12-62 commence an action in its own name for an injunction to restrain a

12-63 violation of this chapter. An action under this section is in

12-64 addition to any other action authorized by law.

12-65 (b) The attorney general or the appropriate county or

12-66 district attorney shall represent the board in an action under this

12-67 section.

12-68 Sec. 1306.402. CEASE AND DESIST ORDER. (a) If it appears

12-69 to the board that a person who is not licensed under this chapter is

13-1 violating this chapter, a rule adopted under this chapter, or
13-2 another state statute or rule relating to automotive glass work or
13-3 glazing, the board after notice and opportunity for a hearing may
13-4 issue a cease and desist order prohibiting the person from engaging
13-5 in the activity.

13-6 (b) A violation of an order under this section constitutes
13-7 grounds for imposing an administrative penalty under this chapter.

13-8 SECTION 2. (a) Not later than the 90th day after the
13-9 effective date of this Act, the governor shall make appointments to
13-10 the Glass Technicians Board of Examiners. In making the initial
13-11 appointments to the board, the governor shall designate:

13-12 (1) one professional member, one public member, and
13-13 one member who is owner or principal of a company for terms expiring
13-14 January 31, 2007;

13-15 (2) one professional member, one public member, and
13-16 one member who is owner or principal of a company for terms expiring
13-17 January 31, 2009; and

13-18 (3) one professional member, one public member, and
13-19 one member who is owner or principal of a company for terms expiring
13-20 January 31, 2011.

13-21 (b) For the initial members of the Glass Technicians Board
13-22 of Examiners, the automotive glass replacement technician, the
13-23 automotive glass repair technician, and the glazier members are not
13-24 required to be licensed under Chapter 1306, Occupations Code, as
13-25 added by this Act, until September 1, 2006.

13-26 SECTION 3. Not later than May 1, 2006, the Glass Technicians
13-27 Board of Examiners shall:

13-28 (1) adopt rules, procedures, and fees under Chapter
13-29 1306, Occupations Code, as added by this Act; and

13-30 (2) contract with a nationally recognized testing
13-31 organization for the administration of the license examinations
13-32 required by Section 1306.102, Occupations Code, as added by this
13-33 Act.

13-34 SECTION 4. (a) The Glass Technicians Board of Examiners
13-35 shall issue a license to a qualified applicant under this section
13-36 who:

13-37 (1) applies for a license under this section not later
13-38 than June 1, 2006;

13-39 (2) submits to the board the information required by
13-40 board rule;

13-41 (3) holds a current auto glass repair, auto glass
13-42 replacement, or glass installer certificate issued by the National
13-43 Glass Association or other certification approved by the board; and

13-44 (4) pays the application fee.

13-45 (b) An applicant for a license under this section must be a
13-46 certified automotive glass replacement technician, automotive
13-47 glass repair technician, or glazier on the effective date of this
13-48 Act.

13-49 SECTION 5. (a) Except as provided by Subsection (b) of
13-50 this section, this Act takes effect September 1, 2005.

13-51 (b) Section 1306.251, Occupations Code, as added by this
13-52 Act, and Subchapters G, H, and I, Chapter 1306, Occupations Code, as
13-53 added by this Act, take effect September 1, 2006.

13-54 * * * * *