

By: Deuell

S.B. No. 568

A BILL TO BE ENTITLED

AN ACT

relating to personal emergency response system providers;
providing penalties.

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

SECTION 1. Subchapter N, Chapter 1702, Occupations Code, is amended by adding Section 1702.331 to read as follows:

Sec. 1702.331. PERSONAL EMERGENCY RESPONSE SYSTEMS.

(a) In this section, "personal emergency response system" means an alarm system that is:

(1) installed in the residence of a person;

(2) monitored by an alarm systems company;

(3) designed only to permit the person to signal the occurrence of a medical or personal emergency on the part of the person so that the company may dispatch appropriate aid; and

(4) not part of a combination of alarm systems that includes a burglar alarm or fire alarm.

(b) This chapter does not apply to:

(1) an alarm systems company that sells, installs, services, monitors, or responds to only personal emergency response systems;

(2) an alarm systems installer who installs, maintains, or repairs only personal emergency response systems;

(3) a manager or branch office manager of an alarm systems company described by Subdivision (1);

1 (4) a security salesperson who is employed by an alarm
2 systems company described by Subdivision (1) to sell services
3 offered by the company; and

4 (5) an owner, officer, partner, or shareholder of an
5 alarm systems company described by Subdivision (1).

6 SECTION 2. Subtitle B, Title 9, Health and Safety Code, is
7 amended by adding Chapter 781 to read as follows:

8 CHAPTER 781. PERSONAL EMERGENCY RESPONSE SYSTEMS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 781.001. DEFINITIONS. In this chapter:

11 (1) "Alarm system" means electronic equipment and
12 devices designed to act as a personal emergency response system.

13 (2) "Branch office" means an office that:

14 (A) is identified to the public as a place from
15 which business is conducted, solicited, or advertised; and

16 (B) is at a place other than the principal place
17 of business as shown in department records.

18 (3) "Commissioner" means the executive commissioner
19 of the Health and Human Services Commission.

20 (4) "Department" means the Department of State Health
21 Services.

22 (5) "Manager" means an officer or supervisor of a
23 corporation or a general partner of a partnership who manages a
24 security services contractor.

25 (6) "Personal emergency response system" means an
26 alarm system that is:

27 (A) installed in the residence of a person;

1 (B) monitored by an alarm systems company;

2 (C) designed only to permit the person to signal
3 the occurrence of a medical or personal emergency on the part of the
4 person so that the company may dispatch appropriate aid; and

5 (D) not part of a combination of alarm systems
6 that includes a burglar alarm or fire alarm.

7 [Sections 781.002-781.050 reserved for expansion]

8 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

9 Sec. 781.051. GENERAL POWERS AND DUTIES. (a) The
10 department shall perform the functions and duties provided by this
11 chapter.

12 (b) The commissioner shall adopt rules necessary to
13 administer this chapter.

14 (c) The commissioner shall establish fees necessary to
15 administer this chapter, including fees for processing and issuing
16 or renewing a license or registration under this chapter.

17 (d) The commissioner shall prescribe forms required by this
18 chapter.

19 [Sections 781.052-781.100 reserved for expansion]

20 SUBCHAPTER C. LICENSING

21 Sec. 781.101. SECURITY SERVICES CONTRACTOR LICENSE
22 REQUIRED. Unless the person holds a license as a security services
23 contractor, a person may not act as or offer to perform the services
24 of an alarm systems company.

25 Sec. 781.102. ALARM SYSTEMS COMPANY. A person acts as an
26 alarm systems company for the purposes of this chapter if the person
27 sells, installs, services, monitors, or responds to a personal

1 emergency response system.

2 Sec. 781.103. APPLICATION FOR LICENSE. An application for
3 a license under this chapter must be in the form prescribed by the
4 commissioner and include:

5 (1) the full name and business address of the
6 applicant;

7 (2) the name under which the applicant intends to do
8 business;

9 (3) a statement as to the general nature of the
10 business in which the applicant intends to engage;

11 (4) if the applicant is an entity other than an
12 individual, the full name and residence address of each partner,
13 officer, and director of the applicant, and of the applicant's
14 manager;

15 (5) if the applicant is an individual, two
16 classifiable sets of fingerprints of the applicant or, if the
17 applicant is an entity other than an individual, of each officer and
18 of each partner or shareholder who owns at least a 25 percent
19 interest in the applicant;

20 (6) a verified statement of the applicant's experience
21 qualifications;

22 (7) a report from the Department of Public Safety
23 stating the applicant's record of any convictions for a Class B
24 misdemeanor or equivalent offense or a greater offense;

25 (8) the social security number of the individual
26 making the application; and

27 (9) other information, evidence, statements, or

1 documents required by the department.

2 Sec. 781.104. ISSUANCE OF BRANCH OFFICE LICENSE. (a) A
3 license holder shall notify the department in writing of the
4 establishment of a branch office and file in writing with the
5 department the address of the branch office.

6 (b) On application by a license holder, the department shall
7 issue a branch office license.

8 Sec. 781.105. FORM OF LICENSE. The commissioner shall
9 prescribe the form of a license, including a branch office license.

10 The license must include:

11 (1) the name of the license holder;

12 (2) the name under which the license holder is to
13 operate; and

14 (3) the license number and the date the license was
15 issued.

16 Sec. 781.106. GENERAL QUALIFICATIONS FOR LICENSE. (a) An
17 applicant for a license or the applicant's manager must be at least
18 18 years of age and must not:

19 (1) have been convicted in any jurisdiction of a Class
20 A misdemeanor or equivalent offense or a greater offense, unless a
21 full pardon has been granted for reasons relating to a wrongful
22 conviction;

23 (2) have been convicted in any jurisdiction of a Class
24 B misdemeanor or equivalent offense for which the fifth anniversary
25 of the date of conviction has not occurred before the date of
26 application, unless a full pardon has been granted for reasons
27 relating to a wrongful conviction;

1 (3) have been found by a court to be incompetent by
2 reason of a mental defect or disease and not have been restored to
3 competency;

4 (4) be suffering from habitual drunkenness or from
5 narcotics addiction or dependence; or

6 (5) have been discharged from the United States armed
7 forces under other than honorable conditions.

8 (b) The department may deny an application for a license if
9 the applicant has been convicted in any jurisdiction of a Class B
10 misdemeanor or equivalent offense if the fifth anniversary of the
11 date of conviction has occurred before the date of application,
12 unless a full pardon has been granted for reasons relating to a
13 wrongful conviction.

14 Sec. 781.107. MANAGER REQUIRED. (a) A license holder's
15 business shall be operated under the direction and control of one
16 manager. A license holder may not apply to designate more than one
17 individual to serve as manager of the license holder's business.

18 (b) An individual may not act as a manager until the
19 individual has made a satisfactory showing to the department that
20 the individual:

21 (1) satisfies the requirements of Section 781.106; and

22 (2) has not engaged in conduct regarding a violation
23 or conviction that is grounds for disciplinary action under Section
24 781.351.

25 Sec. 781.108. INSURANCE. (a) A license holder shall
26 maintain on file with the department at all times the certificate of
27 insurance required by this chapter.

1 (b) The department shall immediately suspend the license of
2 a license holder who violates Subsection (a).

3 (c) The department may rescind the license suspension if the
4 license holder provides proof to the department that the insurance
5 coverage is still in effect. The license holder must provide the
6 proof in a form satisfactory to the department not later than the
7 10th day after the date the license is suspended.

8 (d) After suspension of the license, the department may not
9 reinstate the license until an application, in the form prescribed
10 by the commissioner, is filed accompanied by a proper insurance
11 certificate. The department may deny the application
12 notwithstanding the applicant's compliance with this section:

13 (1) for a reason that would justify suspending,
14 revoking, or denying a license; or

15 (2) if, during the suspension, the applicant performs
16 a practice for which a license is required.

17 Sec. 781.109. INSURANCE REQUIREMENT. (a) The department
18 may not issue a license unless the applicant files with the
19 department:

20 (1) evidence of a general liability insurance policy
21 on a certificate of insurance form prescribed by the Texas
22 Department of Insurance and countersigned by an insurance agent
23 licensed in this state; or

24 (2) a certificate of insurance for surplus lines
25 coverage obtained under Chapter 981, Insurance Code, through a
26 licensed Texas surplus lines agent resident in this state.

27 (b) The general liability insurance policy must be

1 conditioned to pay on behalf of the license holder damages that the
2 license holder becomes legally obligated to pay because of bodily
3 injury, property damage, or personal injury, caused by an event
4 involving the principal, or an officer, agent, or employee of the
5 principal, in the conduct of any business licensed under this
6 chapter.

7 (c) The insurance policy must contain minimum limits of:

8 (1) \$100,000 for each occurrence for bodily injury and
9 property damage;

10 (2) \$50,000 for each occurrence for personal injury;
11 and

12 (3) a total aggregate amount of \$200,000 for all
13 occurrences.

14 (d) An insurance certificate executed and filed with the
15 department under this chapter remains in effect until the insurer
16 terminates future liability by providing to the department at least
17 10 days' notice of the intent to terminate liability.

18 Sec. 781.110. LICENSE HOLDER EXEMPTIONS FROM CERTAIN LOCAL
19 REGULATIONS. (a) A license holder or an employee of a license
20 holder is not required to obtain an authorization, permit,
21 franchise, or license from, pay another fee or franchise tax to, or
22 post a bond in a municipality, county, or other political
23 subdivision of this state to engage in business or perform a service
24 authorized under this chapter.

25 (b) A municipality, county, or other political subdivision
26 of this state may not require a payment for the use of municipal,
27 county, or other public facilities in connection with a business or

1 service provided by a license holder, except that a municipality
2 may impose and collect:

3 (1) a reasonable charge for the use of a central alarm
4 installation located in a police office that is owned, operated, or
5 monitored by the municipality; and

6 (2) reasonable inspection and reinspection fees in
7 connection with a device that causes at least five false alarms in a
8 12-month period.

9 (c) A municipality may require, until the device is repaired
10 to the satisfaction of the appropriate municipal official,
11 discontinuation of service of an alarm signal device that, because
12 of mechanical malfunction or faulty equipment, causes at least five
13 false alarms in a 12-month period.

14 (d) For the purposes of Subsection (c), a false alarm caused
15 by human error or an act of God is not considered a mechanical
16 malfunction or faulty equipment.

17 [Sections 781.111-781.150 reserved for expansion]

18 SUBCHAPTER D. REGISTRATION REQUIREMENTS

19 Sec. 781.151. REGISTRATION REQUIRED. An individual must
20 register with the department if the individual:

21 (1) is employed as an alarm systems company, alarm
22 systems installer, manager or branch office manager, or security
23 salesperson who enters a client's residence at any time while
24 performing the salesperson's responsibilities; or

25 (2) is an owner, officer, partner, or shareholder of a
26 license holder and is responsible for managing the business of the
27 license holder.

1 Sec. 781.152. ALARM SYSTEMS INSTALLER. An individual acts
2 as an alarm systems installer for purposes of this chapter if the
3 individual installs, maintains, or repairs a personal emergency
4 response system.

5 Sec. 781.153. ALARM SYSTEMS MONITOR. (a) An individual
6 acts as an alarm systems monitor for purposes of this chapter if the
7 individual monitors a personal emergency response system.

8 (b) This section does not apply to an individual employed
9 exclusively and regularly by an employer, other than a license
10 holder, in connection with the affairs of that employer and with
11 whom the individual has an employee-employer relationship.

12 Sec. 781.154. SECURITY SALESPERSON. An individual acts as
13 a security salesperson for purposes of this chapter if the
14 individual:

15 (1) is employed by a security services contractor to
16 sell services offered by the contractor; and

17 (2) enters a client's residence at any time during the
18 person's employment.

19 Sec. 781.155. QUALIFICATIONS FOR REGISTRATION. (a) An
20 individual must be at least 18 years of age to be registered.

21 (b) The department by rule may adopt additional
22 qualifications for an individual to be registered under this
23 subchapter.

24 Sec. 781.156. APPLICATION FOR REGISTRATION. (a) An
25 application for registration must be verified and include:

26 (1) the applicant's full name, residence address,
27 residence telephone number, date and place of birth, and social

1 security number;

2 (2) a statement that:

3 (A) lists each name used by the applicant, other
4 than the name by which the applicant is known at the time of
5 application, and an explanation stating each place where each name
6 was used, the date of each use, and a full explanation of the
7 reasons the name was used; or

8 (B) states that the applicant has never used a
9 name other than the name by which the applicant is known at the time
10 of application;

11 (3) the name and address of the applicant's employer
12 and, if applicable, the applicant's consulting firm;

13 (4) the date the employment commenced;

14 (5) a letter from the license holder requesting that
15 the applicant be registered;

16 (6) the title of the position occupied by the
17 applicant and a description of the applicant's duties; and

18 (7) any other information, evidence, statement, or
19 document required by the department.

20 (b) The employer of the applicant shall make a reasonable
21 attempt to verify the information required under Subsection (a)(1).

22 [Sections 781.157-781.200 reserved for expansion]

23 SUBCHAPTER E. GENERAL PROVISIONS APPLICABLE TO REGULATED PERSONS

24 Sec. 781.201. CRIMINAL HISTORY CHECK. (a) The department
25 shall conduct a criminal history check, including a check of any
26 criminal history record information maintained by the Federal
27 Bureau of Investigation, in the manner provided by Subchapter F,

1 Chapter 411, Government Code, on each applicant for a license or
2 registration. An applicant is not eligible for a license or
3 registration if the check reveals that the applicant has committed
4 an act that constitutes grounds for the denial of the license or
5 registration. Each applicant must include in the application two
6 complete sets of fingerprints on forms prescribed by the
7 commissioner accompanied by the fee set by the commissioner.

8 (b) A license or registration issued by the department is
9 conditional on the department's receipt of criminal history record
10 information.

11 Sec. 781.202. ALARM SYSTEMS RECORDS CONFIDENTIAL.
12 Information contained in alarm systems records maintained by a
13 governmental body that concerns the location of an alarm system,
14 the name of the occupant of an alarm system location, or the type of
15 alarm system used is confidential and may be disclosed only to the
16 department or as otherwise required by state law or court order.

17 Sec. 781.203. FALSE REPRESENTATION. A person may not
18 represent falsely that the person:

- 19 (1) is employed by a license holder; or
20 (2) is licensed or registered under this chapter.

21 Sec. 781.204. PROHIBITION AGAINST CERTAIN POLITICAL
22 SUBDIVISIONS ACTING AS ALARM SYSTEMS COMPANY. (a) Except as
23 provided by Subsection (b), a political subdivision may not offer
24 alarm system sales, service, installation, or monitoring unless it
25 was providing monitoring services to residences within the
26 boundaries of the political subdivision on September 1, 1999. Any
27 fee charged by the political subdivision may not exceed the cost of

1 the monitoring.

2 (b) A political subdivision may:

3 (1) offer service, installation, or monitoring for
4 property owned by the political subdivision or another political
5 subdivision;

6 (2) allow for the response of an alarm or detection
7 device by a law enforcement agency or by a law enforcement officer
8 acting in an official capacity;

9 (3) offer monitoring in connection with a criminal
10 investigation; or

11 (4) offer monitoring to a financial institution, as
12 defined by Section 201.101, Finance Code, that requests, in
13 writing, that the political subdivision provide monitoring service
14 to the financial institution.

15 (c) The limitations of Subsection (a) do not apply to a
16 political subdivision in a county with a population of less than
17 80,000 or to a political subdivision where monitoring is not
18 otherwise provided or available.

19 [Sections 781.205-781.250 reserved for expansion]

20 SUBCHAPTER F. EXPIRATION; RENEWAL

21 Sec. 781.251. EXPIRATION. (a) A license is valid for two
22 years from the date of issuance. A license expires at midnight on
23 the last day of the 23rd month after the month in which it is issued.

24 (b) Registration as a manager, branch office manager, alarm
25 systems installer, or security salesperson expires on the second
26 anniversary of the date of registration.

27 (c) Registration as an owner, officer, partner, or

1 shareholder of a license holder expires on the second anniversary
2 of the date of registration.

3 Sec. 781.252. LICENSE RENEWAL. (a) A person who is
4 otherwise eligible to renew a license may renew an unexpired
5 license by paying the required renewal fee to the department before
6 the expiration date of the license. A person whose license has
7 expired may not engage in activities that require a license until
8 the license has been renewed.

9 (b) A person whose license has been expired for 90 days or
10 less may renew the license by paying to the department a renewal fee
11 that is equal to 1-1/2 times the normally required renewal fee.

12 (c) A person whose license has been expired for longer than
13 90 days but less than one year may renew the license by paying to the
14 department a renewal fee that is equal to two times the normally
15 required renewal fee.

16 (d) A person whose license has been expired for one year or
17 more may not renew the license. The person may obtain a new license
18 by complying with the requirements and procedures for obtaining an
19 original license.

20 (e) Not later than the 30th day before the date a person's
21 license is scheduled to expire, the department shall send written
22 notice of the impending expiration to the person at the person's
23 last known address according to the department's records.

24 Sec. 781.253. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE
25 PRACTITIONER. A person who was licensed in this state, moved to
26 another state, and is currently licensed and has been in practice in
27 the other state for the two years preceding the date the person

1 applies for renewal may obtain a new license. The person must pay
2 to the department a fee that is equal to two times the normally
3 required renewal fee for the license.

4 Sec. 781.254. STAGGERED RENEWAL; PRORATION OF LICENSE FEE.

5 The department by rule may adopt a system under which licenses
6 expire on various dates during the year. For the year in which the
7 expiration date of a license is changed, the department shall
8 prorate license fees on a monthly basis so that each license holder
9 pays only that portion of the license fee that is allocable to the
10 number of months during which the license is valid. On renewal of
11 the license on the new expiration date, the total license renewal
12 fee is payable.

13 Sec. 781.255. EFFECT OF LICENSE RENEWAL ON DISCIPLINARY
14 ACTION. Renewal of a license does not prohibit the bringing of a
15 disciplinary proceeding for an act committed before the effective
16 date of the renewal.

17 Sec. 781.256. EFFECT OF SUSPENSION ON LICENSE RENEWAL
18 REQUIREMENTS. A suspended license expires on the license's
19 expiration date and may be renewed as provided by this chapter. The
20 renewal does not entitle the license holder, while the license
21 remains suspended and until the license is reinstated, to engage in
22 the licensed activity or in conduct in violation of the order or
23 judgment by which the license was suspended.

24 Sec. 781.257. REGISTRATION RENEWAL. (a) An individual who
25 is otherwise eligible to renew a registration may renew an
26 unexpired registration by paying the required renewal fee to the
27 department before the expiration date of the registration. An

1 individual whose registration has expired may not engage in
2 activities that require a registration until the registration has
3 been renewed.

4 (b) An individual whose registration has been expired for 90
5 days or less may renew the registration by paying to the department
6 a renewal fee that is equal to 1-1/2 times the normally required
7 renewal fee.

8 (c) An individual whose registration has been expired for
9 more than 90 days but less than one year may renew the registration
10 by paying to the department a renewal fee that is equal to two times
11 the normally required renewal fee.

12 (d) An individual whose registration has been expired for
13 one year or more may not renew the registration. The individual may
14 obtain a new registration by complying with the requirements and
15 procedures for obtaining an original registration.

16 (e) An individual who was registered in this state, moved to
17 another state, and is currently registered and has been in practice
18 in the other state for the two years preceding the date of
19 application may obtain a new registration. The individual must pay
20 to the department a fee that is equal to two times the normally
21 required renewal fee for the registration.

22 (f) Not later than the 30th day before the expiration date
23 of an individual's registration, the department shall send written
24 notice of the impending expiration to the individual at the
25 individual's last known address according to department records.

26 Sec. 781.258. CONTINUING EDUCATION. (a) The department
27 shall recognize, prepare, or administer continuing education

1 programs for license holders and registrants. The department shall
2 set the minimum number of hours that must be completed and the types
3 of programs that may be offered.

4 (b) A license holder or registrant must participate in the
5 programs to the extent required by the department to keep the
6 person's license or registration. A license holder or registrant
7 shall submit evidence of compliance with the department's
8 continuing education requirements in a manner prescribed by the
9 department.

10 [Sections 781.259-781.300 reserved for expansion]

11 SUBCHAPTER G. EXCEPTIONS

12 Sec. 781.301. GOVERNMENT EMPLOYEES. This chapter does not
13 apply to an officer or employee of the United States, this state, or
14 a political subdivision of this state while the officer or employee
15 is performing official duties.

16 Sec. 781.302. LAW ENFORCEMENT PERSONNEL. This chapter does
17 not apply to:

18 (1) a person who has full-time employment as a peace
19 officer and who receives compensation for private employment on an
20 individual or an independent contractor basis as a patrolman,
21 guard, extra job coordinator, or watchman if the officer:

22 (A) is employed in an employee-employer
23 relationship or employed on an individual contractual basis;

24 (B) is not in the employ of another peace
25 officer;

26 (C) is not a reserve peace officer; and

27 (D) works as a peace officer on the average of at

1 least 32 hours a week, is compensated by the state or a political
2 subdivision of the state at least at the minimum wage, and is
3 entitled to all employee benefits offered to a peace officer by the
4 state or political subdivision;

5 (2) a reserve peace officer while the reserve officer
6 is performing guard, patrolman, or watchman duties for a county and
7 is being compensated solely by that county;

8 (3) a peace officer acting in an official capacity in
9 responding to a burglar alarm or detection device; or

10 (4) a person engaged in the business of electronic
11 monitoring of an individual as a condition of that individual's
12 community supervision, parole, mandatory supervision, or release
13 on bail, if the person does not perform any other service that
14 requires a license under this chapter.

15 Sec. 781.303. MEDICAL ALERT SERVICES. This chapter does
16 not apply to an entity that is a hospital or a wholly owned
17 subsidiary or an affiliate of a hospital licensed under Chapter
18 241.

19 [Sections 781.304-781.350 reserved for expansion]

20 SUBCHAPTER H. DISCIPLINARY PROCEDURES

21 Sec. 781.351. GROUNDS FOR DISCIPLINARY ACTION. (a) For a
22 violation of this chapter or a rule adopted under this chapter, the
23 department may:

24 (1) revoke or suspend the person's license or
25 registration;

26 (2) place on probation the person if the person's
27 license or registration has been suspended; or

1 (3) reprimand the license holder or registrant.

2 (b) The department shall take disciplinary action described
3 by Subsection (a) on proof:

4 (1) that the applicant, license holder, or registrant
5 has:

6 (A) violated this chapter or a department rule
7 adopted under this chapter;

8 (B) been convicted of a Class B misdemeanor or
9 equivalent offense if the fifth anniversary of the date of the
10 conviction has occurred;

11 (C) engaged in fraud, deceit, or
12 misrepresentation; or

13 (D) made a material misstatement in an
14 application for or renewal of a license or registration; or

15 (2) that the license holder of a registrant has
16 submitted to the department sufficient evidence that the
17 registrant:

18 (A) engaged in fraud or deceit while employed by
19 the license holder; or

20 (B) committed theft while performing work as a
21 registrant.

22 Sec. 781.352. HEARING. (a) If the department proposes to
23 revoke or suspend a person's license or registration, the person is
24 entitled to a hearing before a hearings officer appointed by the
25 State Office of Administrative Hearings.

26 (b) The commissioner shall prescribe procedures for
27 appealing to the department a decision to revoke or suspend a

1 license or registration.

2 Sec. 781.353. ADMINISTRATIVE PROCEDURE. A proceeding under
3 this chapter to suspend or revoke a license or registration is
4 governed by Chapter 2001, Government Code.

5 Sec. 781.354. PROBATION. The department may require a
6 person whose license or registration suspension is probated to:

7 (1) report regularly to the department on matters that
8 are the basis of the probation;

9 (2) limit practice to areas prescribed by the
10 department; or

11 (3) continue the person's professional education until
12 the license or registration holder attains a degree of skill
13 satisfactory to the department in those areas that are the basis of
14 the probation.

15 Sec. 781.355. EFFECT OF SUSPENSION; MONITORING OF EXISTING
16 ALARM CONTRACTS. Subject to expiration of the license under
17 Section 781.251, a license holder may continue to monitor under an
18 existing alarm contract or contract to monitor under an existing
19 alarm contract for 30 days after the date of suspension of the
20 person's license.

21 [Sections 781.356-781.400 reserved for expansion]

22 SUBCHAPTER I. ENFORCEMENT

23 Sec. 781.401. INJUNCTION. The department shall prosecute
24 or file suit to enjoin a violation of this chapter or a rule adopted
25 under this chapter.

26 Sec. 781.402. CIVIL PENALTY. (a) A person who violates
27 this chapter or a rule adopted under this chapter is liable for a

1 civil penalty not to exceed \$5,000 a day.

2 (b) At the request of the department, the attorney general
3 may bring an action to recover a civil penalty authorized under this
4 section.

5 (c) The attorney general may recover reasonable expenses
6 incurred in obtaining a civil penalty under this section, including
7 court costs, reasonable attorney's fees, investigative costs,
8 witness fees, and deposition expenses.

9 Sec. 781.403. OFFENSE. (a) A person commits an offense if
10 the person:

11 (1) knowingly falsifies fingerprints or photographs
12 submitted to the department;

13 (2) contracts with or employs a person who is required
14 to hold a license or registration under this chapter knowing that
15 the person does not hold the required license or registration or who
16 otherwise, at the time of contract or employment, is in violation of
17 this chapter; or

18 (3) violates a provision of this chapter.

19 (b) An offense under Subsection (a)(1) is a felony of the
20 third degree.

21 (c) An offense under Subsection (a)(2) is a Class A
22 misdemeanor.

23 (d) An offense under Subsection (a)(3) is a Class A
24 misdemeanor, except that the offense is a felony of the third degree
25 if the person has previously been convicted under this chapter for
26 failing to hold a license or registration that the person is
27 required to hold under this chapter.

1 Sec. 781.404. VENUE. An offense under this chapter may be
2 prosecuted in Travis County or in the county in which the offense
3 occurred.

4 [Sections 781.405-781.450 reserved for expansion]

5 SUBCHAPTER J. ADMINISTRATIVE PENALTY

6 Sec. 781.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The
7 department may impose an administrative penalty on a person
8 licensed under this chapter who violates this chapter or a rule or
9 order adopted under this chapter.

10 Sec. 781.452. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
11 amount of the administrative penalty may not be less than \$50 or
12 more than \$5,000 for each violation. Each day a violation continues
13 or occurs is a separate violation for the purpose of imposing a
14 penalty.

15 (b) The amount shall be based on:

16 (1) the seriousness of the violation, including the
17 nature, circumstances, extent, and gravity of the violation;

18 (2) the economic harm caused by the violation;

19 (3) the history of previous violations;

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

21 (5) efforts to correct the violation; and

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

23 Sec. 781.453. REPORT AND NOTICE OF VIOLATION AND PENALTY.

24 (a) If the commissioner or the commissioner's designee determines
25 that a violation occurred, the commissioner or the designee may
26 issue to the department a report stating:

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

1 (2) the commissioner's or the designee's
2 recommendation on the imposition of an administrative penalty,
3 including a recommendation on the amount of the penalty.

4 (b) Within 14 days after the date the report is issued, the
5 commissioner or the commissioner's designee shall give written
6 notice of the report to the person. The notice must:

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

8 (2) state the amount of the recommended administrative
9 penalty; and

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

13 Sec. 781.454. PENALTY TO BE PAID OR HEARING REQUESTED.

14 (a) Within 10 days after the date the person receives the notice,
15 the person in writing may:

16 (1) accept the determination and recommended
17 administrative penalty of the commissioner or the commissioner's
18 designee; or

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

21 (b) If the person accepts the determination and recommended
22 penalty of the commissioner or the commissioner's designee, the
23 department by order shall approve the determination and impose the
24 recommended penalty.

25 Sec. 781.455. HEARING. (a) If the person requests a
26 hearing or fails to respond in a timely manner to the notice, the
27 commissioner or the commissioner's designee shall set a hearing and

1 give written notice of the hearing to the person.

2 (b) An administrative law judge of the State Office of
3 Administrative Hearings shall hold the hearing.

4 (c) The administrative law judge shall make findings of fact
5 and conclusions of law and promptly issue to the department a
6 proposal for a decision about the occurrence of the violation and
7 the amount of a proposed administrative penalty.

8 Sec. 781.456. DECISION BY DEPARTMENT. (a) Based on the
9 findings of fact, conclusions of law, and proposal for decision,
10 the department by order may determine that:

11 (1) a violation occurred and impose an administrative
12 penalty; or

13 (2) a violation did not occur.

14 (b) The notice of the department's order given to the person
15 must include a statement of the right of the person to judicial
16 review of the order.

17 Sec. 781.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

18 (a) Within 30 days after the date the department's order becomes
19 final, the person shall:

20 (1) pay the administrative penalty; or

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

23 (b) Within the 30-day period prescribed by Subsection (a), a
24 person who files a petition for judicial review may:

25 (1) stay enforcement of the penalty by:

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

1 (B) giving the court a supersedeas bond approved
2 by the court that:

3 (i) is for the amount of the penalty; and
4 (ii) is effective until all judicial review
5 of the department's order is final; or

6 (2) request the court to stay enforcement of the
7 penalty by:

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

11 (B) giving a copy of the affidavit to the
12 commissioner or the commissioner's designee by certified mail.

13 (c) If the commissioner or the commissioner's designee
14 receives a copy of an affidavit under Subsection (b)(2), the
15 commissioner or the designee may file with the court, within five
16 days after the date the copy is received, a contest to the
17 affidavit.

18 (d) The court shall hold a hearing on the facts alleged in
19 the affidavit as soon as practicable and shall stay the enforcement
20 of the penalty on finding that the alleged facts are true. The
21 person who files an affidavit has the burden of proving that the
22 person is financially unable to pay the penalty and to give a
23 supersedeas bond.

24 Sec. 781.458. COLLECTION OF PENALTY. (a) If the person
25 does not pay the administrative penalty and the enforcement of the
26 penalty is not stayed, the penalty may be collected.

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

1 Sec. 781.459. DETERMINATION BY COURT. (a) If the court
2 sustains the determination that a violation occurred, the court may
3 uphold or reduce the amount of the administrative penalty and order
4 the person to pay the full or reduced amount of the penalty.

5 (b) If the court does not sustain the finding that a
6 violation occurred, the court shall order that a penalty is not
7 owed.

8 Sec. 781.460. REMITTANCE OF PENALTY AND INTEREST. (a) If
9 the person paid the administrative penalty and if the amount of the
10 penalty is reduced or the penalty is not upheld by the court, the
11 court shall order, when the court's judgment becomes final, that
12 the appropriate amount plus accrued interest be remitted to the
13 person.

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

16 (c) The interest shall be paid for the period beginning on
17 the date the penalty is paid and ending on the date the penalty is
18 remitted.

19 (d) If the person gave a supersedeas bond and the penalty is
20 not upheld by the court, the court shall order, when the court's
21 judgment becomes final, the release of the bond.

22 (e) If the person gave a supersedeas bond and the amount of
23 the penalty is reduced, the court shall order the release of the
24 bond after the person pays the reduced amount.

25 Sec. 781.461. ADMINISTRATIVE PROCEDURE. A proceeding under
26 this subchapter is a contested case under Chapter 2001, Government
27 Code.

1 SECTION 3. Section 1702.006, Occupations Code, is repealed.

2 SECTION 4. (a) A license or registration issued under
3 Chapter 1702, Occupations Code, immediately before the effective
4 date of this Act to a person listed in Subsection (b) of this
5 section shall remain valid under Chapter 781, Health and Safety
6 Code, as added by this Act.

7 (b) Subsection (a) of this section applies to:

8 (1) an alarm systems company that sells, installs,
9 services, or responds to only personal emergency response systems;

10 (2) an alarm systems installer who installs,
11 maintains, or repairs only personal emergency response systems;

12 (3) a manager or branch office manager of an alarm
13 systems company described by Subdivision (1) of this subsection;

14 (4) a security salesperson who is employed by an alarm
15 systems company described by Subdivision (1) of this subsection to
16 sell services offered by the company; or

17 (5) an owner, officer, partner, or shareholder of an
18 alarm systems company described by Subdivision (1) of this
19 subsection.

20 (c) The change in law made by this Act does not affect a
21 disciplinary action regarding a personal emergency response system
22 pending under Chapter 1702, Occupations Code, on the effective date
23 of this Act. The Department of State Health Services shall continue
24 the proceeding under that chapter after the effective date of this
25 Act, and the former law is continued in effect for that purpose.

26 (d) The change in law made by this Act does not affect an
27 action involving the prosecution of an offense or any other

1 enforcement action under Subchapter P or Q, Chapter 1702,
2 Occupations Code, regarding a personal emergency response system
3 pending on the effective date of this Act. The prosecution or
4 action shall continue under that chapter after the effective date
5 of this Act, and the former law is continued in effect for that
6 purpose.

7 SECTION 5. This Act takes effect September 1, 2005.