

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 has the
24 experience required by Section 781.107 to manage a security
25 services contractor.

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

- 1 (A) installed in the residence of a person;
- 2 (B) monitored by an alarm systems company;
- 3 (C) designed only to permit the person to signal
4 the occurrence of a medical or personal emergency on the part of the
5 person so that the company may dispatch appropriate aid; and
- 6 (D) not part of a combination of alarm systems
7 that includes a burglar alarm or fire alarm.

8 [Sections 781.002-781.050 reserved for expansion]

9 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

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

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

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

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

20 [Sections 781.052-781.100 reserved for expansion]

21 SUBCHAPTER C. LICENSING

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

26 Sec. 781.102. ALARM SYSTEMS COMPANY. A person acts as an
27 alarm systems company for the purposes of this chapter if the person

1 sells, installs, services, monitors, or responds to a personal
2 emergency response system.

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

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

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

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

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

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

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

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

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

1 (9) other information, evidence, statements, or
2 documents required by the department.

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

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

9 Sec. 781.105. FORM OF LICENSE. The commissioner shall
10 prescribe the form of a license, including a branch office license.
11 The license must include:

12 (1) the name of the license holder;

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

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

17 Sec. 781.106. GENERAL QUALIFICATIONS FOR LICENSE. (a) An
18 applicant for a license or the applicant's manager must be at least
19 18 years of age and must not:

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

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

1 relating to a wrongful conviction;

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

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

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

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

15 Sec. 781.107. EXAMINATION. (a) The department shall
16 require an applicant or the applicant's manager to demonstrate
17 qualifications, including knowledge of applicable state laws and
18 department rules, by taking an examination to be determined by the
19 department.

20 (b) Payment of the application fee entitles the applicant or
21 the applicant's manager to take one examination without additional
22 charge. A person who fails the examination must pay a reexamination
23 fee to take a subsequent examination.

24 (c) The commissioner shall set the reexamination fee in an
25 amount not to exceed the amount of the renewal fee for the license
26 classification for which application was made.

27 (d) The department shall develop and provide to a person who

1 applies to take the examination under Subsection (a) material
2 containing all applicable state laws and department rules.

3 Sec. 781.108. MANAGER REQUIRED. (a) A license holder's
4 business shall be operated under the direction and control of one
5 manager. A license holder may not apply to designate more than one
6 individual to serve as manager of the license holder's business.

7 (b) An individual may not act as a manager until the
8 individual has made a satisfactory showing to the department that
9 the individual:

10 (1) satisfies the requirements of Section 781.106;
11 and

12 (2) has not engaged in conduct regarding a violation
13 or conviction that is grounds for disciplinary action under Section
14 781.351.

15 Sec. 781.109. INSURANCE; BOND. (a) A license holder shall
16 maintain on file with the department at all times the surety bond
17 and certificate of insurance required by this chapter.

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

20 (c) The department may rescind the license suspension if the
21 license holder provides proof to the department that the bond or the
22 insurance coverage is still in effect. The license holder must
23 provide the proof in a form satisfactory to the department not later
24 than the 10th day after the date the license is suspended.

25 (d) After suspension of the license, the department may not
26 reinstate the license until an application, in the form prescribed
27 by the commissioner, is filed accompanied by a proper bond or

1 insurance certificate, or both. The department may deny the
2 application notwithstanding the applicant's compliance with this
3 section:

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

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

8 Sec. 781.110. INSURANCE REQUIREMENT. (a) The department
9 may not issue a license unless the applicant files with the
10 department:

11 (1) evidence of a general liability insurance policy
12 on a certificate of insurance form prescribed by the Texas
13 Department of Insurance and countersigned by an insurance agent
14 licensed in this state; or

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

18 (b) The general liability insurance policy must be
19 conditioned to pay on behalf of the license holder damages that the
20 license holder becomes legally obligated to pay because of bodily
21 injury, property damage, or personal injury, caused by an event
22 involving the principal, or an officer, agent, or employee of the
23 principal, in the conduct of any business licensed under this
24 chapter.

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

26 (1) \$100,000 for each occurrence for bodily injury and
27 property damage;

1 (2) \$50,000 for each occurrence for personal injury;
2 and

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

5 (d) An insurance certificate executed and filed with the
6 department under this chapter remains in effect until the insurer
7 terminates future liability by providing to the department at least
8 10 days' notice of the intent to terminate liability.

9 Sec. 781.111. BOND REQUIREMENT. (a) The department may not
10 issue a license unless the applicant files a bond with the
11 department in an amount prescribed by the commissioner.

12 (b) A bond executed and filed with the department under this
13 chapter remains in effect until the surety terminates future
14 liability by providing to the department at least 30 days' notice of
15 the intent to terminate liability.

16 Sec. 781.112. LICENSE HOLDER EXEMPTIONS FROM CERTAIN LOCAL
17 REGULATIONS. (a) A license holder or an employee of a license
18 holder is not required to obtain an authorization, permit,
19 franchise, or license from, pay another fee or franchise tax to, or
20 post a bond in a municipality, county, or other political
21 subdivision of this state to engage in business or perform a service
22 authorized under this chapter.

23 (b) A municipality, county, or other political subdivision
24 of this state may not require a payment for the use of municipal,
25 county, or other public facilities in connection with a business or
26 service provided by a license holder, except that a municipality
27 may impose and collect:

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

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

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

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

15 [Sections 781.113-781.150 reserved for expansion]

16 SUBCHAPTER D. REGISTRATION REQUIREMENTS

17 Sec. 781.151. REGISTRATION REQUIRED. An individual must
18 register with the department if the individual:

19 (1) is employed as an alarm systems company, alarm
20 systems installer, alarm systems monitor, manager or branch office
21 manager, or security salesperson; or

22 (2) is an owner, officer, partner, or shareholder of a
23 license holder.

24 Sec. 781.152. ALARM SYSTEMS INSTALLER. An individual acts
25 as an alarm systems installer for purposes of this chapter if the
26 individual installs, maintains, or repairs a personal emergency
27 response system.

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

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

8 Sec. 781.154. SECURITY SALESPERSON. An individual acts as
9 a security salesperson for purposes of this chapter if the
10 individual is employed by a security services contractor to sell
11 services offered by the contractor.

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

14 (b) The department by rule may adopt additional
15 qualifications for an individual to be registered under this
16 subchapter.

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

19 (1) the applicant's full name, residence address,
20 residence telephone number, date and place of birth, and social
21 security number;

22 (2) a statement that:

23 (A) lists each name used by the applicant, other
24 than the name by which the applicant is known at the time of
25 application, and an explanation stating each place where each name
26 was used, the date of each use, and a full explanation of the
27 reasons the name was used; or

1 (B) states that the applicant has never used a
2 name other than the name by which the applicant is known at the time
3 of application;

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

6 (4) the date the employment commenced;

7 (5) a letter from the license holder requesting that
8 the applicant be registered;

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

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

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

15 Sec. 781.157. TRAINING REQUIREMENTS FOR ALARM SYSTEMS
16 INSTALLER AND SECURITY SALESPERSON; EXAMINATION. (a) The
17 department may require that an individual employed as an alarm
18 systems installer or security salesperson hold a certification by a
19 department-approved training program to renew an initial
20 registration. The department may approve only nationally
21 recognized training programs that consist of at least 16 hours of
22 classroom study in the areas of work allowed by the registration.
23 To be approved, a training program must offer at least two
24 certification programs each year, sufficient to complete the
25 requirements of this subsection, within 100 miles of each county in
26 the state that has a population of more than 500,000.

27 (b) The department may require an individual who has

1 completed a training program under Subsection (a) to pass an
2 examination given by the department or by a person approved by the
3 department. The department may approve examinations in conjunction
4 with training programs approved under Subsection (a). The
5 individual's performance on the examination must demonstrate the
6 individual's qualifications to perform the duties allowed by the
7 individual's registration.

8 (c) If the department requires certification or examination
9 under this section, the department shall implement rules to require
10 that to renew a registration, an individual who is employed as an
11 alarm systems installer or a security salesperson and who has
12 already once renewed the registration must obtain continuing
13 education credits related to the line of work for which the
14 individual is licensed. If the department requires the continuing
15 education, the commissioner must approve classes offered by
16 nationally recognized organizations, and participants in the
17 classes must qualify according to department rules.

18 [Sections 781.158-781.200 reserved for expansion]

19 SUBCHAPTER E. GENERAL PROVISIONS APPLICABLE TO REGULATED PERSONS

20 Sec. 781.201. CRIMINAL HISTORY CHECK. (a) The department
21 shall conduct a criminal history check, including a check of any
22 criminal history record information maintained by the Federal
23 Bureau of Investigation, in the manner provided by Subchapter F,
24 Chapter 411, Government Code, on each applicant for a license or
25 registration. An applicant is not eligible for a license or
26 registration if the check reveals that the applicant has committed
27 an act that constitutes grounds for the denial of the license or

1 registration. Each applicant must include in the application two
2 complete sets of fingerprints on forms prescribed by the
3 commissioner accompanied by the fee set by the commissioner.

4 (b) A license or registration issued by the department is
5 conditional on the department's receipt of criminal history record
6 information.

7 Sec. 781.202. ALARM SYSTEMS RECORDS CONFIDENTIAL.

8 Information contained in alarm systems records maintained by a
9 governmental body that concerns the location of an alarm system,
10 the name of the occupant of an alarm system location, or the type of
11 alarm system used is confidential and may be disclosed only to the
12 department or as otherwise required by state law or court order.

13 Sec. 781.203. FALSE REPRESENTATION. A person may not
14 represent falsely that the person:

15 (1) is employed by a license holder; or

16 (2) is licensed or registered under this chapter.

17 Sec. 781.204. PROHIBITION AGAINST CERTAIN POLITICAL

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

25 (b) A political subdivision may:

26 (1) offer service, installation, or monitoring for
27 property owned by the political subdivision or another political

1 subdivision;

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

5 (3) offer monitoring in connection with a criminal
6 investigation; or

7 (4) offer monitoring to a financial institution, as
8 defined by Section 201.101, Finance Code, that requests, in
9 writing, that the political subdivision provide monitoring service
10 to the financial institution.

11 (c) The limitations of Subsection (a) do not apply to a
12 political subdivision in a county with a population of less than
13 80,000 or to a political subdivision where monitoring is not
14 otherwise provided or available.

15 [Sections 781.205-781.250 reserved for expansion]

16 SUBCHAPTER F. EXPIRATION; RENEWAL

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

20 (b) Registration as a manager, branch office manager, alarm
21 systems installer, security salesperson, or alarm systems monitor
22 expires on the second anniversary of the date of registration.

23 (c) Registration as an owner, officer, partner, or
24 shareholder of a license holder expires on the second anniversary
25 of the date of registration.

26 Sec. 781.252. LICENSE RENEWAL. (a) A person who is
27 otherwise eligible to renew a license may renew an unexpired

1 license by paying the required renewal fee to the department before
2 the expiration date of the license. A person whose license has
3 expired may not engage in activities that require a license until
4 the license has been renewed.

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

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

12 (d) A person whose license has been expired for one year or
13 more may not renew the license. The person may obtain a new license
14 by complying with the requirements and procedures, including the
15 examination requirements, for obtaining an original license.

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

20 Sec. 781.253. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE
21 PRACTITIONER. A person who was licensed in this state, moved to
22 another state, and is currently licensed and has been in practice in
23 the other state for the two years preceding the date the person
24 applies for renewal may obtain a new license without reexamination.
25 The person must pay to the department a fee that is equal to two
26 times the normally required renewal fee for the license.

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

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

9 Sec. 781.255. EFFECT OF LICENSE RENEWAL ON DISCIPLINARY
10 ACTION. Renewal of a license does not prohibit the bringing of a
11 disciplinary proceeding for an act committed before the effective
12 date of the renewal.

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

20 Sec. 781.257. REGISTRATION RENEWAL. (a) An individual who
21 is otherwise eligible to renew a registration may renew an
22 unexpired registration by paying the required renewal fee to the
23 department before the expiration date of the registration. An
24 individual whose registration has expired may not engage in
25 activities that require a registration until the registration has
26 been renewed.

27 (b) An individual whose registration has been expired for 90

1 days or less may renew the registration by paying to the department
2 a renewal fee that is equal to 1-1/2 times the normally required
3 renewal fee.

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

8 (d) An individual whose registration has been expired for
9 one year or more may not renew the registration. The individual may
10 obtain a new registration by complying with the requirements and
11 procedures, including any examination required by the department,
12 for obtaining an original registration.

13 (e) An individual who was registered in this state, moved to
14 another state, and is currently registered and has been in practice
15 in the other state for the two years preceding the date of
16 application may obtain a new registration without reexamination.
17 The individual must pay to the department a fee that is equal to two
18 times the normally required renewal fee for the registration.

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

23 Sec. 781.258. CONTINUING EDUCATION. (a) The department
24 shall recognize, prepare, or administer continuing education
25 programs for license holders and registrants. The department shall
26 set the minimum number of hours that must be completed and the types
27 of programs that may be offered.

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

7 [Sections 781.259-781.300 reserved for expansion]

8 SUBCHAPTER G. EXCEPTIONS

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

13 Sec. 781.302. LAW ENFORCEMENT PERSONNEL. This chapter does
14 not apply to:

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

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

21 (B) is not in the employ of another peace
22 officer;

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

24 (D) works as a peace officer on the average of at
25 least 32 hours a week, is compensated by the state or a political
26 subdivision of the state at least at the minimum wage, and is
27 entitled to all employee benefits offered to a peace officer by the

1 state or political subdivision;

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

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

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

12 Sec. 781.303. MEDICAL ALERT SERVICES. (a) This chapter
13 does not apply to an entity that:

14 (1) provides medical alert services for persons who
15 are sick or disabled;

16 (2) does not provide any other service that requires a
17 license under this chapter; and

18 (3) is:

19 (A) a hospital or a wholly owned subsidiary or an
20 affiliate of a hospital licensed under Chapter 241; or

21 (B) a charitable or a nonprofit entity that
22 provides the services in the manner required by Subsection (b) and
23 that is exempt from the payment of federal income taxes under
24 Section 501(a) of the Internal Revenue Code of 1986 by being listed
25 as an exempt entity under Section 501(c)(3) of that code.

26 (b) A charitable or nonprofit entity that provides medical
27 alert services must provide those services through a licensed

1 person, licensed nurse, or licensed physician assistant or through
2 a hospital, subsidiary, or affiliate described by Subsection
3 (a)(3)(A).

4 [Sections 781.304-781.350 reserved for expansion]

5 SUBCHAPTER H. DISCIPLINARY PROCEDURES

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

9 (1) revoke or suspend the person's license or
10 registration;

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

13 (3) reprimand the license or registration holder.

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

16 (1) that the applicant, license holder, or registrant
17 has:

18 (A) violated this chapter or a department rule
19 adopted under this chapter;

20 (B) been convicted of a Class B misdemeanor or
21 equivalent offense if the fifth anniversary of the date of the
22 conviction has occurred;

23 (C) engaged in fraud, deceit, or
24 misrepresentation; or

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

27 (2) that the license holder of a registrant has

1 submitted to the department sufficient evidence that the
2 registrant:

3 (A) engaged in fraud or deceit while employed by
4 the license holder; or

5 (B) committed theft while performing work as a
6 registrant.

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

11 (b) The commissioner shall prescribe procedures for
12 appealing to the department a decision to revoke or suspend a
13 license or registration.

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

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

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

21 (2) limit practice to areas prescribed by the
22 department; or

23 (3) continue the person's professional education until
24 the license or registration holder attains a degree of skill
25 satisfactory to the department in those areas that are the basis of
26 the probation.

27 Sec. 781.355. EFFECT OF SUSPENSION; MONITORING OF EXISTING

1 ALARM CONTRACTS. Subject to expiration of the license under
2 Section 781.251, a license holder may continue to monitor under an
3 existing alarm contract or contract to monitor under an existing
4 alarm contract for 30 days after the date of suspension of the
5 person's license.

6 [Sections 781.356-781.400 reserved for expansion]

7 SUBCHAPTER I. ENFORCEMENT

8 Sec. 781.401. INJUNCTION. The department shall prosecute
9 or file suit to enjoin a violation of this chapter or a rule adopted
10 under this chapter.

11 Sec. 781.402. CIVIL PENALTY. (a) A person who violates
12 this chapter or a rule adopted under this chapter is liable for a
13 civil penalty not to exceed \$5,000 a day.

14 (b) At the request of the department, the attorney general
15 shall bring an action to recover a civil penalty authorized under
16 this section.

17 Sec. 781.403. OFFENSE. (a) A person commits an offense if
18 the person:

19 (1) knowingly falsifies fingerprints or photographs
20 submitted to the department;

21 (2) contracts with or employs a person who is required
22 to hold a license or registration under this chapter knowing that
23 the person does not hold the required license or registration or who
24 otherwise, at the time of contract or employment, is in violation of
25 this chapter; or

26 (3) violates a provision of this chapter.

27 (b) An offense under Subsection (a)(1) is a felony of the

1 third degree.

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

4 (d) An offense under Subsection (a)(3) is a Class A
5 misdemeanor, except that the offense is a felony of the third degree
6 if the person has previously been convicted under this chapter for
7 failing to hold a license or registration that the person is
8 required to hold under this chapter.

9 Sec. 781.404. VENUE. An offense under this chapter may be
10 prosecuted in Travis County or in the county in which the offense
11 occurred.

12 [Sections 781.405-781.450 reserved for expansion]

13 SUBCHAPTER J. ADMINISTRATIVE PENALTY

14 Sec. 781.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The
15 department may impose an administrative penalty on a person
16 licensed under this chapter who violates this chapter or a rule or
17 order adopted under this chapter.

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

23 (b) The amount shall be based on:

24 (1) the seriousness of the violation, including the
25 nature, circumstances, extent, and gravity of the violation;

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

27 (3) the history of previous violations;

- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

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

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

- (1) the facts on which the determination is based; and
- (2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

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

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

Sec. 781.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

- (1) accept the determination and recommended administrative penalty of the commissioner or the commissioner's designee; or
- (2) make a request for a hearing on the occurrence of

1 the violation, the amount of the penalty, or both.

2 (b) If the person accepts the determination and recommended
3 penalty of the commissioner or the commissioner's designee, the
4 department by order shall approve the determination and impose the
5 recommended penalty.

6 Sec. 781.455. HEARING. (a) If the person requests a
7 hearing or fails to respond in a timely manner to the notice, the
8 commissioner or the commissioner's designee shall set a hearing and
9 give written notice of the hearing to the person.

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

12 (c) The administrative law judge shall make findings of fact
13 and conclusions of law and promptly issue to the department a
14 proposal for a decision about the occurrence of the violation and
15 the amount of a proposed administrative penalty.

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

19 (1) a violation occurred and impose an administrative
20 penalty; or

21 (2) a violation did not occur.

22 (b) The notice of the department's order given to the person
23 must include a statement of the right of the person to judicial
24 review of the order.

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

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

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

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

6 (1) stay enforcement of the penalty by:

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

9 (B) giving the court a supersedeas bond approved
10 by the court that:

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

12 (ii) is effective until all judicial review
13 of the department's order is final; or

14 (2) request the court to stay enforcement of the
15 penalty by:

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

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

21 (c) If the commissioner or the commissioner's designee
22 receives a copy of an affidavit under Subsection (b)(2), the
23 commissioner or the designee may file with the court, within five
24 days after the date the copy is received, a contest to the
25 affidavit.

26 (d) The court shall hold a hearing on the facts alleged in
27 the affidavit as soon as practicable and shall stay the enforcement

1 of the penalty on finding that the alleged facts are true. The
2 person who files an affidavit has the burden of proving that the
3 person is financially unable to pay the penalty and to give a
4 supersedeas bond.

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

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

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

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

16 Sec. 781.460. REMITTANCE OF PENALTY AND INTEREST. (a) If
17 the person paid the administrative penalty and if the amount of the
18 penalty is reduced or the penalty is not upheld by the court, the
19 court shall order, when the court's judgment becomes final, that
20 the appropriate amount plus accrued interest be remitted to the
21 person.

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

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

27 (d) If the person gave a supersedeas bond and the penalty is

1 not upheld by the court, the court shall order, when the court's
2 judgment becomes final, the release of the bond.

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

6 Sec. 781.461. ADMINISTRATIVE PROCEDURE. A proceeding under
7 this subchapter is a contested case under Chapter 2001, Government
8 Code.

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

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

15 (b) Subsection (a) applies to:

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

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

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

23 (4) a security salesperson who is employed by an alarm
24 systems company described by Subdivision (1) to sell services
25 offered by the company; or

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

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

7 (d) The change in law made by this Act does not affect an
8 action involving the prosecution of an offense or any other
9 enforcement action under Subchapter P or Q, Chapter 1702,
10 Occupations Code, regarding a personal emergency response system
11 pending on the effective date of this Act. The prosecution or
12 action shall continue under that chapter after the effective date
13 of this Act, and the former law is continued in effect for that
14 purpose.

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