

1-1 By: Deuell S.B. No. 568
1-2 (In the Senate - Filed February 16, 2005; March 1, 2005,
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1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
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1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 568 By: Deuell

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

1-10 relating to personal emergency response system providers;
1-11 providing penalties.

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

1-13 SECTION 1. Subchapter N, Chapter 1702, Occupations Code, is
1-14 amended by adding Section 1702.331 to read as follows:

1-15 Sec. 1702.331. PERSONAL EMERGENCY RESPONSE SYSTEMS.

1-16 (a) In this section, "personal emergency response system" means an
1-17 alarm system that is:

1-18 (1) installed in the residence of a person;

1-19 (2) monitored by an alarm systems company;

1-20 (3) designed only to permit the person to signal the
1-21 occurrence of a medical or personal emergency on the part of the
1-22 person so that the company may dispatch appropriate aid; and

1-23 (4) not part of a combination of alarm systems that
1-24 includes a burglar alarm or fire alarm.

1-25 (b) This chapter does not apply to:

1-26 (1) an alarm systems company that sells, installs,
1-27 services, monitors, or responds to only personal emergency response
1-28 systems;

1-29 (2) an alarm systems installer who installs,
1-30 maintains, or repairs only personal emergency response systems;

1-31 (3) a manager or branch office manager of an alarm
1-32 systems company described by Subdivision (1);

1-33 (4) a security salesperson who is employed by an alarm
1-34 systems company described by Subdivision (1) to sell services
1-35 offered by the company; and

1-36 (5) an owner, officer, partner, or shareholder of an
1-37 alarm systems company described by Subdivision (1).

1-38 SECTION 2. Subtitle B, Title 9, Health and Safety Code, is
1-39 amended by adding Chapter 781 to read as follows:

1-40 CHAPTER 781. PERSONAL EMERGENCY RESPONSE SYSTEMS

1-41 SUBCHAPTER A. GENERAL PROVISIONS

1-42 Sec. 781.001. DEFINITIONS. In this chapter:

1-43 (1) "Alarm system" means electronic equipment and
1-44 devices designed to act as a personal emergency response system.

1-45 (2) "Branch office" means an office that:

1-46 (A) is identified to the public as a place from
1-47 which business is conducted, solicited, or advertised; and

1-48 (B) is at a place other than the principal place
1-49 of business as shown in department records.

1-50 (3) "Commissioner" means the executive commissioner
1-51 of the Health and Human Services Commission.

1-52 (4) "Department" means the Department of State Health
1-53 Services.

1-54 (5) "Manager" means an officer or supervisor of a
1-55 corporation or a general partner of a partnership who manages a
1-56 security services contractor.

1-57 (6) "Personal emergency response system" means an
1-58 alarm system that is:

1-59 (A) installed in the residence of a person;

1-60 (B) monitored by an alarm systems company;

1-61 (C) designed only to permit the person to signal
1-62 the occurrence of a medical or personal emergency on the part of the
1-63 person so that the company may dispatch appropriate aid; and

2-1 (D) not part of a combination of alarm systems
2-2 that includes a burglar alarm or fire alarm.

2-3 [Sections 781.002-781.050 reserved for expansion]

2-4 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

2-5 Sec. 781.051. GENERAL POWERS AND DUTIES. (a) The
2-6 department shall perform the functions and duties provided by this
2-7 chapter.

2-8 (b) The commissioner shall adopt rules necessary to
2-9 administer this chapter.

2-10 (c) The commissioner shall establish fees necessary to
2-11 administer this chapter, including fees for processing and issuing
2-12 or renewing a license or registration under this chapter.

2-13 (d) The commissioner shall prescribe forms required by this
2-14 chapter.

2-15 [Sections 781.052-781.100 reserved for expansion]

2-16 SUBCHAPTER C. LICENSING

2-17 Sec. 781.101. SECURITY SERVICES CONTRACTOR LICENSE
2-18 REQUIRED. Unless the person holds a license as a security services
2-19 contractor, a person may not act as or offer to perform the services
2-20 of an alarm systems company.

2-21 Sec. 781.102. ALARM SYSTEMS COMPANY. A person acts as an
2-22 alarm systems company for the purposes of this chapter if the person
2-23 sells, installs, services, monitors, or responds to a personal
2-24 emergency response system.

2-25 Sec. 781.103. APPLICATION FOR LICENSE. An application for
2-26 a license under this chapter must be in the form prescribed by the
2-27 commissioner and include:

2-28 (1) the full name and business address of the
2-29 applicant;

2-30 (2) the name under which the applicant intends to do
2-31 business;

2-32 (3) a statement as to the general nature of the
2-33 business in which the applicant intends to engage;

2-34 (4) if the applicant is an entity other than an
2-35 individual, the full name and residence address of each partner,
2-36 officer, and director of the applicant, and of the applicant's
2-37 manager;

2-38 (5) if the applicant is an individual, two
2-39 classifiable sets of fingerprints of the applicant or, if the
2-40 applicant is an entity other than an individual, of each officer and
2-41 of each partner or shareholder who owns at least a 25 percent
2-42 interest in the applicant;

2-43 (6) a verified statement of the applicant's experience
2-44 qualifications;

2-45 (7) a report from the Department of Public Safety
2-46 stating the applicant's record of any convictions for a Class B
2-47 misdemeanor or equivalent offense or a greater offense;

2-48 (8) the social security number of the individual
2-49 making the application; and

2-50 (9) other information, evidence, statements, or
2-51 documents required by the department.

2-52 Sec. 781.104. ISSUANCE OF BRANCH OFFICE LICENSE. (a) A
2-53 license holder shall notify the department in writing of the
2-54 establishment of a branch office and file in writing with the
2-55 department the address of the branch office.

2-56 (b) On application by a license holder, the department shall
2-57 issue a branch office license.

2-58 Sec. 781.105. FORM OF LICENSE. The commissioner shall
2-59 prescribe the form of a license, including a branch office license.
2-60 The license must include:

2-61 (1) the name of the license holder;

2-62 (2) the name under which the license holder is to
2-63 operate; and

2-64 (3) the license number and the date the license was
2-65 issued.

2-66 Sec. 781.106. GENERAL QUALIFICATIONS FOR LICENSE. (a) An
2-67 applicant for a license or the applicant's manager must be at least
2-68 18 years of age and must not:

2-69 (1) have been convicted in any jurisdiction of a Class

3-1 A misdemeanor or equivalent offense or a greater offense, unless a
 3-2 full pardon has been granted for reasons relating to a wrongful
 3-3 conviction;

3-4 (2) have been convicted in any jurisdiction of a Class
 3-5 B misdemeanor or equivalent offense for which the fifth anniversary
 3-6 of the date of conviction has not occurred before the date of
 3-7 application, unless a full pardon has been granted for reasons
 3-8 relating to a wrongful conviction;

3-9 (3) have been found by a court to be incompetent by
 3-10 reason of a mental defect or disease and not have been restored to
 3-11 competency;

3-12 (4) be suffering from habitual drunkenness or from
 3-13 narcotics addiction or dependence; or

3-14 (5) have been discharged from the United States armed
 3-15 forces under other than honorable conditions.

3-16 (b) The department may deny an application for a license if
 3-17 the applicant has been convicted in any jurisdiction of a Class B
 3-18 misdemeanor or equivalent offense if the fifth anniversary of the
 3-19 date of conviction has occurred before the date of application,
 3-20 unless a full pardon has been granted for reasons relating to a
 3-21 wrongful conviction.

3-22 Sec. 781.107. MANAGER REQUIRED. (a) A license holder's
 3-23 business shall be operated under the direction and control of one
 3-24 manager. A license holder may not apply to designate more than one
 3-25 individual to serve as manager of the license holder's business.

3-26 (b) An individual may not act as a manager until the
 3-27 individual has made a satisfactory showing to the department that
 3-28 the individual:

3-29 (1) satisfies the requirements of Section 781.106; and

3-30 (2) has not engaged in conduct regarding a violation
 3-31 or conviction that is grounds for disciplinary action under Section
 3-32 781.351.

3-33 Sec. 781.108. INSURANCE. (a) A license holder shall
 3-34 maintain on file with the department at all times the certificate of
 3-35 insurance required by this chapter.

3-36 (b) The department shall immediately suspend the license of
 3-37 a license holder who violates Subsection (a).

3-38 (c) The department may rescind the license suspension if the
 3-39 license holder provides proof to the department that the insurance
 3-40 coverage is still in effect. The license holder must provide the
 3-41 proof in a form satisfactory to the department not later than the
 3-42 10th day after the date the license is suspended.

3-43 (d) After suspension of the license, the department may not
 3-44 reinstate the license until an application, in the form prescribed
 3-45 by the commissioner, is filed accompanied by a proper insurance
 3-46 certificate. The department may deny the application
 3-47 notwithstanding the applicant's compliance with this section:

3-48 (1) for a reason that would justify suspending,
 3-49 revoking, or denying a license; or

3-50 (2) if, during the suspension, the applicant performs
 3-51 a practice for which a license is required.

3-52 Sec. 781.109. INSURANCE REQUIREMENT. (a) The department
 3-53 may not issue a license unless the applicant files with the
 3-54 department:

3-55 (1) evidence of a general liability insurance policy
 3-56 on a certificate of insurance form prescribed by the Texas
 3-57 Department of Insurance and countersigned by an insurance agent
 3-58 licensed in this state; or

3-59 (2) a certificate of insurance for surplus lines
 3-60 coverage obtained under Chapter 981, Insurance Code, through a
 3-61 licensed Texas surplus lines agent resident in this state.

3-62 (b) The general liability insurance policy must be
 3-63 conditioned to pay on behalf of the license holder damages that the
 3-64 license holder becomes legally obligated to pay because of bodily
 3-65 injury, property damage, or personal injury, caused by an event
 3-66 involving the principal, or an officer, agent, or employee of the
 3-67 principal, in the conduct of any business licensed under this
 3-68 chapter.

3-69 (c) The insurance policy must contain minimum limits of:

4-1 (1) \$100,000 for each occurrence for bodily injury and
4-2 property damage;

4-3 (2) \$50,000 for each occurrence for personal injury;
4-4 and

4-5 (3) a total aggregate amount of \$200,000 for all
4-6 occurrences.

4-7 (d) An insurance certificate executed and filed with the
4-8 department under this chapter remains in effect until the insurer
4-9 terminates future liability by providing to the department at least
4-10 10 days' notice of the intent to terminate liability.

4-11 Sec. 781.110. LICENSE HOLDER EXEMPTIONS FROM CERTAIN LOCAL
4-12 REGULATIONS. (a) A license holder or an employee of a license
4-13 holder is not required to obtain an authorization, permit,
4-14 franchise, or license from, pay another fee or franchise tax to, or
4-15 post a bond in a municipality, county, or other political
4-16 subdivision of this state to engage in business or perform a service
4-17 authorized under this chapter.

4-18 (b) A municipality, county, or other political subdivision
4-19 of this state may not require a payment for the use of municipal,
4-20 county, or other public facilities in connection with a business or
4-21 service provided by a license holder, except that a municipality
4-22 may impose and collect:

4-23 (1) a reasonable charge for the use of a central alarm
4-24 installation located in a police office that is owned, operated, or
4-25 monitored by the municipality; and

4-26 (2) reasonable inspection and reinspection fees in
4-27 connection with a device that causes at least five false alarms in a
4-28 12-month period.

4-29 (c) A municipality may require, until the device is repaired
4-30 to the satisfaction of the appropriate municipal official,
4-31 discontinuation of service of an alarm signal device that, because
4-32 of mechanical malfunction or faulty equipment, causes at least five
4-33 false alarms in a 12-month period.

4-34 (d) For the purposes of Subsection (c), a false alarm caused
4-35 by human error or an act of God is not considered a mechanical
4-36 malfunction or faulty equipment.

4-37 [Sections 781.111-781.150 reserved for expansion]

4-38 SUBCHAPTER D. REGISTRATION REQUIREMENTS

4-39 Sec. 781.151. REGISTRATION REQUIRED. An individual must
4-40 register with the department if the individual:

4-41 (1) is employed as an alarm systems company, alarm
4-42 systems installer, manager or branch office manager, or security
4-43 salesperson who enters a client's residence at any time while
4-44 performing the salesperson's responsibilities; or

4-45 (2) is an owner, officer, partner, or shareholder of a
4-46 license holder and is responsible for managing the business of the
4-47 license holder.

4-48 Sec. 781.152. ALARM SYSTEMS INSTALLER. An individual acts
4-49 as an alarm systems installer for purposes of this chapter if the
4-50 individual installs, maintains, or repairs a personal emergency
4-51 response system.

4-52 Sec. 781.153. ALARM SYSTEMS MONITOR. (a) An individual
4-53 acts as an alarm systems monitor for purposes of this chapter if the
4-54 individual monitors a personal emergency response system.

4-55 (b) This section does not apply to an individual employed
4-56 exclusively and regularly by an employer, other than a license
4-57 holder, in connection with the affairs of that employer and with
4-58 whom the individual has an employee-employer relationship.

4-59 Sec. 781.154. SECURITY SALESPERSON. An individual acts as
4-60 a security salesperson for purposes of this chapter if the
4-61 individual:

4-62 (1) is employed by a security services contractor to
4-63 sell services offered by the contractor; and

4-64 (2) enters a client's residence at any time during the
4-65 person's employment.

4-66 Sec. 781.155. QUALIFICATIONS FOR REGISTRATION. (a) An
4-67 individual must be at least 18 years of age to be registered.

4-68 (b) The department by rule may adopt additional
4-69 qualifications for an individual to be registered under this

5-1 subchapter.

5-2 Sec. 781.156. APPLICATION FOR REGISTRATION. (a) An
 5-3 application for registration must be verified and include:

5-4 (1) the applicant's full name, residence address,
 5-5 residence telephone number, date and place of birth, and social
 5-6 security number;

5-7 (2) a statement that:

5-8 (A) lists each name used by the applicant, other
 5-9 than the name by which the applicant is known at the time of
 5-10 application, and an explanation stating each place where each name
 5-11 was used, the date of each use, and a full explanation of the
 5-12 reasons the name was used; or

5-13 (B) states that the applicant has never used a
 5-14 name other than the name by which the applicant is known at the time
 5-15 of application;

5-16 (3) the name and address of the applicant's employer
 5-17 and, if applicable, the applicant's consulting firm;

5-18 (4) the date the employment commenced;

5-19 (5) a letter from the license holder requesting that
 5-20 the applicant be registered;

5-21 (6) the title of the position occupied by the
 5-22 applicant and a description of the applicant's duties; and

5-23 (7) any other information, evidence, statement, or
 5-24 document required by the department.

5-25 (b) The employer of the applicant shall make a reasonable
 5-26 attempt to verify the information required under Subsection (a)(1).

5-27 [Sections 781.157-781.200 reserved for expansion]

5-28 SUBCHAPTER E. GENERAL PROVISIONS APPLICABLE TO REGULATED PERSONS

5-29 Sec. 781.201. CRIMINAL HISTORY CHECK. (a) The department
 5-30 shall conduct a criminal history check, including a check of any
 5-31 criminal history record information maintained by the Federal
 5-32 Bureau of Investigation, in the manner provided by Subchapter F,
 5-33 Chapter 411, Government Code, on each applicant for a license or
 5-34 registration. An applicant is not eligible for a license or
 5-35 registration if the check reveals that the applicant has committed
 5-36 an act that constitutes grounds for the denial of the license or
 5-37 registration. Each applicant must include in the application two
 5-38 complete sets of fingerprints on forms prescribed by the
 5-39 commissioner accompanied by the fee set by the commissioner.

5-40 (b) A license or registration issued by the department is
 5-41 conditional on the department's receipt of criminal history record
 5-42 information.

5-43 Sec. 781.202. ALARM SYSTEMS RECORDS CONFIDENTIAL.
 5-44 Information contained in alarm systems records maintained by a
 5-45 governmental body that concerns the location of an alarm system,
 5-46 the name of the occupant of an alarm system location, or the type of
 5-47 alarm system used is confidential and may be disclosed only to the
 5-48 department or as otherwise required by state law or court order.

5-49 Sec. 781.203. FALSE REPRESENTATION. A person may not
 5-50 represent falsely that the person:

5-51 (1) is employed by a license holder; or

5-52 (2) is licensed or registered under this chapter.

5-53 Sec. 781.204. PROHIBITION AGAINST CERTAIN POLITICAL
 5-54 SUBDIVISIONS ACTING AS ALARM SYSTEMS COMPANY. (a) Except as
 5-55 provided by Subsection (b), a political subdivision may not offer
 5-56 alarm system sales, service, installation, or monitoring unless it
 5-57 was providing monitoring services to residences within the
 5-58 boundaries of the political subdivision on September 1, 1999. Any
 5-59 fee charged by the political subdivision may not exceed the cost of
 5-60 the monitoring.

5-61 (b) A political subdivision may:

5-62 (1) offer service, installation, or monitoring for
 5-63 property owned by the political subdivision or another political
 5-64 subdivision;

5-65 (2) allow for the response of an alarm or detection
 5-66 device by a law enforcement agency or by a law enforcement officer
 5-67 acting in an official capacity;

5-68 (3) offer monitoring in connection with a criminal
 5-69 investigation; or

6-1 (4) offer monitoring to a financial institution, as
 6-2 defined by Section 201.101, Finance Code, that requests, in
 6-3 writing, that the political subdivision provide monitoring service
 6-4 to the financial institution.

6-5 (c) The limitations of Subsection (a) do not apply to a
 6-6 political subdivision in a county with a population of less than
 6-7 80,000 or to a political subdivision where monitoring is not
 6-8 otherwise provided or available.

6-9 [Sections 781.205-781.250 reserved for expansion]

6-10 SUBCHAPTER F. EXPIRATION; RENEWAL

6-11 Sec. 781.251. EXPIRATION. (a) A license is valid for two
 6-12 years from the date of issuance. A license expires at midnight on
 6-13 the last day of the 23rd month after the month in which it is issued.

6-14 (b) Registration as a manager, branch office manager, alarm
 6-15 systems installer, or security salesperson expires on the second
 6-16 anniversary of the date of registration.

6-17 (c) Registration as an owner, officer, partner, or
 6-18 shareholder of a license holder expires on the second anniversary
 6-19 of the date of registration.

6-20 Sec. 781.252. LICENSE RENEWAL. (a) A person who is
 6-21 otherwise eligible to renew a license may renew an unexpired
 6-22 license by paying the required renewal fee to the department before
 6-23 the expiration date of the license. A person whose license has
 6-24 expired may not engage in activities that require a license until
 6-25 the license has been renewed.

6-26 (b) A person whose license has been expired for 90 days or
 6-27 less may renew the license by paying to the department a renewal fee
 6-28 that is equal to 1-1/2 times the normally required renewal fee.

6-29 (c) A person whose license has been expired for longer than
 6-30 90 days but less than one year may renew the license by paying to the
 6-31 department a renewal fee that is equal to two times the normally
 6-32 required renewal fee.

6-33 (d) A person whose license has been expired for one year or
 6-34 more may not renew the license. The person may obtain a new license
 6-35 by complying with the requirements and procedures for obtaining an
 6-36 original license.

6-37 (e) Not later than the 30th day before the date a person's
 6-38 license is scheduled to expire, the department shall send written
 6-39 notice of the impending expiration to the person at the person's
 6-40 last known address according to the department's records.

6-41 Sec. 781.253. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE
 6-42 PRACTITIONER. A person who was licensed in this state, moved to
 6-43 another state, and is currently licensed and has been in practice in
 6-44 the other state for the two years preceding the date the person
 6-45 applies for renewal may obtain a new license. The person must pay
 6-46 to the department a fee that is equal to two times the normally
 6-47 required renewal fee for the license.

6-48 Sec. 781.254. STAGGERED RENEWAL; PRORATION OF LICENSE FEE.
 6-49 The department by rule may adopt a system under which licenses
 6-50 expire on various dates during the year. For the year in which the
 6-51 expiration date of a license is changed, the department shall
 6-52 prorate license fees on a monthly basis so that each license holder
 6-53 pays only that portion of the license fee that is allocable to the
 6-54 number of months during which the license is valid. On renewal of
 6-55 the license on the new expiration date, the total license renewal
 6-56 fee is payable.

6-57 Sec. 781.255. EFFECT OF LICENSE RENEWAL ON DISCIPLINARY
 6-58 ACTION. Renewal of a license does not prohibit the bringing of a
 6-59 disciplinary proceeding for an act committed before the effective
 6-60 date of the renewal.

6-61 Sec. 781.256. EFFECT OF SUSPENSION ON LICENSE RENEWAL
 6-62 REQUIREMENTS. A suspended license expires on the license's
 6-63 expiration date and may be renewed as provided by this chapter. The
 6-64 renewal does not entitle the license holder, while the license
 6-65 remains suspended and until the license is reinstated, to engage in
 6-66 the licensed activity or in conduct in violation of the order or
 6-67 judgment by which the license was suspended.

6-68 Sec. 781.257. REGISTRATION RENEWAL. (a) An individual who
 6-69 is otherwise eligible to renew a registration may renew an

7-1 unexpired registration by paying the required renewal fee to the
 7-2 department before the expiration date of the registration. An
 7-3 individual whose registration has expired may not engage in
 7-4 activities that require a registration until the registration has
 7-5 been renewed.

7-6 (b) An individual whose registration has been expired for 90
 7-7 days or less may renew the registration by paying to the department
 7-8 a renewal fee that is equal to 1-1/2 times the normally required
 7-9 renewal fee.

7-10 (c) An individual whose registration has been expired for
 7-11 more than 90 days but less than one year may renew the registration
 7-12 by paying to the department a renewal fee that is equal to two times
 7-13 the normally required renewal fee.

7-14 (d) An individual whose registration has been expired for
 7-15 one year or more may not renew the registration. The individual may
 7-16 obtain a new registration by complying with the requirements and
 7-17 procedures for obtaining an original registration.

7-18 (e) An individual who was registered in this state, moved to
 7-19 another state, and is currently registered and has been in practice
 7-20 in the other state for the two years preceding the date of
 7-21 application may obtain a new registration. The individual must pay
 7-22 to the department a fee that is equal to two times the normally
 7-23 required renewal fee for the registration.

7-24 (f) Not later than the 30th day before the expiration date
 7-25 of an individual's registration, the department shall send written
 7-26 notice of the impending expiration to the individual at the
 7-27 individual's last known address according to department records.

7-28 Sec. 781.258. CONTINUING EDUCATION. (a) The department
 7-29 shall recognize, prepare, or administer continuing education
 7-30 programs for license holders and registrants. The department shall
 7-31 set the minimum number of hours that must be completed and the types
 7-32 of programs that may be offered.

7-33 (b) A license holder or registrant must participate in the
 7-34 programs to the extent required by the department to keep the
 7-35 person's license or registration. A license holder or registrant
 7-36 shall submit evidence of compliance with the department's
 7-37 continuing education requirements in a manner prescribed by the
 7-38 department.

7-39 [Sections 781.259-781.300 reserved for expansion]

7-40 SUBCHAPTER G. EXCEPTIONS

7-41 Sec. 781.301. GOVERNMENT EMPLOYEES. This chapter does not
 7-42 apply to an officer or employee of the United States, this state, or
 7-43 a political subdivision of this state while the officer or employee
 7-44 is performing official duties.

7-45 Sec. 781.302. LAW ENFORCEMENT PERSONNEL. This chapter does
 7-46 not apply to:

7-47 (1) a person who has full-time employment as a peace
 7-48 officer and who receives compensation for private employment on an
 7-49 individual or an independent contractor basis as a patrolman,
 7-50 guard, extra job coordinator, or watchman if the officer:

7-51 (A) is employed in an employee-employer
 7-52 relationship or employed on an individual contractual basis;

7-53 (B) is not in the employ of another peace
 7-54 officer;

7-55 (C) is not a reserve peace officer; and

7-56 (D) works as a peace officer on the average of at
 7-57 least 32 hours a week, is compensated by the state or a political
 7-58 subdivision of the state at least at the minimum wage, and is
 7-59 entitled to all employee benefits offered to a peace officer by the
 7-60 state or political subdivision;

7-61 (2) a reserve peace officer while the reserve officer
 7-62 is performing guard, patrolman, or watchman duties for a county and
 7-63 is being compensated solely by that county;

7-64 (3) a peace officer acting in an official capacity in
 7-65 responding to a burglar alarm or detection device; or

7-66 (4) a person engaged in the business of electronic
 7-67 monitoring of an individual as a condition of that individual's
 7-68 community supervision, parole, mandatory supervision, or release
 7-69 on bail, if the person does not perform any other service that

8-1 requires a license under this chapter.

8-2 Sec. 781.303. MEDICAL ALERT SERVICES. This chapter does
8-3 not apply to an entity that:

8-4 (1) provides personal emergency response services for
8-5 persons who are sick or disabled;

8-6 (2) does not provide any other service that requires a
8-7 license under this chapter; and

8-8 (3) is a hospital or a wholly owned subsidiary or an
8-9 affiliate of a hospital licensed under Chapter 241.

8-10 [Sections 781.304-781.350 reserved for expansion]

8-11 SUBCHAPTER H. DISCIPLINARY PROCEDURES

8-12 Sec. 781.351. GROUNDS FOR DISCIPLINARY ACTION. (a) For a
8-13 violation of this chapter or a rule adopted under this chapter, the
8-14 department may:

8-15 (1) revoke or suspend the person's license or
8-16 registration;

8-17 (2) place on probation the person if the person's
8-18 license or registration has been suspended; or

8-19 (3) reprimand the license holder or registrant.

8-20 (b) The department shall take disciplinary action described
8-21 by Subsection (a) on proof:

8-22 (1) that the applicant, license holder, or registrant
8-23 has:

8-24 (A) violated this chapter or a department rule
8-25 adopted under this chapter;

8-26 (B) been convicted of a Class B misdemeanor or
8-27 equivalent offense if the fifth anniversary of the date of the
8-28 conviction has occurred;

8-29 (C) engaged in fraud, deceit, or
8-30 misrepresentation; or

8-31 (D) made a material misstatement in an
8-32 application for or renewal of a license or registration; or

8-33 (2) that the license holder of a registrant has
8-34 submitted to the department sufficient evidence that the
8-35 registrant:

8-36 (A) engaged in fraud or deceit while employed by
8-37 the license holder; or

8-38 (B) committed theft while performing work as a
8-39 registrant.

8-40 Sec. 781.352. HEARING. (a) If the department proposes to
8-41 revoke or suspend a person's license or registration, the person is
8-42 entitled to a hearing before a hearings officer appointed by the
8-43 State Office of Administrative Hearings.

8-44 (b) The commissioner shall prescribe procedures for
8-45 appealing to the department a decision to revoke or suspend a
8-46 license or registration.

8-47 Sec. 781.353. ADMINISTRATIVE PROCEDURE. A proceeding under
8-48 this chapter to suspend or revoke a license or registration is
8-49 governed by Chapter 2001, Government Code.

8-50 Sec. 781.354. PROBATION. The department may require a
8-51 person whose license or registration suspension is probated to:

8-52 (1) report regularly to the department on matters that
8-53 are the basis of the probation;

8-54 (2) limit practice to areas prescribed by the
8-55 department; or

8-56 (3) continue the person's professional education until
8-57 the license or registration holder attains a degree of skill
8-58 satisfactory to the department in those areas that are the basis of
8-59 the probation.

8-60 Sec. 781.355. EFFECT OF SUSPENSION; MONITORING OF EXISTING
8-61 ALARM CONTRACTS. Subject to expiration of the license under
8-62 Section 781.251, a license holder may continue to monitor under an
8-63 existing alarm contract or contract to monitor under an existing
8-64 alarm contract for 30 days after the date of suspension of the
8-65 person's license.

8-66 [Sections 781.356-781.400 reserved for expansion]

8-67 SUBCHAPTER I. ENFORCEMENT

8-68 Sec. 781.401. INJUNCTION. The department shall prosecute
8-69 or file suit to enjoin a violation of this chapter or a rule adopted

9-1 under this chapter.

9-2 Sec. 781.402. CIVIL PENALTY. (a) A person who violates
 9-3 this chapter or a rule adopted under this chapter is liable for a
 9-4 civil penalty not to exceed \$5,000 a day.

9-5 (b) At the request of the department, the attorney general
 9-6 may bring an action to recover a civil penalty authorized under this
 9-7 section.

9-8 (c) The attorney general may recover reasonable expenses
 9-9 incurred in obtaining a civil penalty under this section, including
 9-10 court costs, reasonable attorney's fees, investigative costs,
 9-11 witness fees, and deposition expenses.

9-12 Sec. 781.403. OFFENSE. (a) A person commits an offense if
 9-13 the person:

9-14 (1) knowingly falsifies fingerprints or photographs
 9-15 submitted to the department;

9-16 (2) contracts with or employs a person who is required
 9-17 to hold a license or registration under this chapter knowing that
 9-18 the person does not hold the required license or registration or who
 9-19 otherwise, at the time of contract or employment, is in violation of
 9-20 this chapter; or

9-21 (3) violates a provision of this chapter.

9-22 (b) An offense under Subsection (a)(1) is a felony of the
 9-23 third degree.

9-24 (c) An offense under Subsection (a)(2) is a Class A
 9-25 misdemeanor.

9-26 (d) An offense under Subsection (a)(3) is a Class A
 9-27 misdemeanor, except that the offense is a felony of the third degree
 9-28 if the person has previously been convicted under this chapter for
 9-29 failing to hold a license or registration that the person is
 9-30 required to hold under this chapter.

9-31 Sec. 781.404. VENUE. An offense under this chapter may be
 9-32 prosecuted in Travis County or in the county in which the offense
 9-33 occurred.

9-34 [Sections 781.405-781.450 reserved for expansion]

9-35 SUBCHAPTER J. ADMINISTRATIVE PENALTY

9-36 Sec. 781.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The
 9-37 department may impose an administrative penalty on a person
 9-38 licensed under this chapter who violates this chapter or a rule or
 9-39 order adopted under this chapter.

9-40 Sec. 781.452. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
 9-41 amount of the administrative penalty may not be less than \$50 or
 9-42 more than \$5,000 for each violation. Each day a violation continues
 9-43 or occurs is a separate violation for the purpose of imposing a
 9-44 penalty.

9-45 (b) The amount shall be based on:

9-46 (1) the seriousness of the violation, including the
 9-47 nature, circumstances, extent, and gravity of the violation;

9-48 (2) the economic harm caused by the violation;

9-49 (3) the history of previous violations;

9-50 (4) the amount necessary to deter a future violation;

9-51 (5) efforts to correct the violation; and

9-52 (6) any other matter that justice may require.

9-53 Sec. 781.453. REPORT AND NOTICE OF VIOLATION AND PENALTY.
 9-54 (a) If the commissioner or the commissioner's designee determines
 9-55 that a violation occurred, the commissioner or the designee may
 9-56 issue to the department a report stating:

9-57 (1) the facts on which the determination is based; and

9-58 (2) the commissioner's or the designee's
 9-59 recommendation on the imposition of an administrative penalty,
 9-60 including a recommendation on the amount of the penalty.

9-61 (b) Within 14 days after the date the report is issued, the
 9-62 commissioner or the commissioner's designee shall give written
 9-63 notice of the report to the person. The notice must:

9-64 (1) include a brief summary of the alleged violation;

9-65 (2) state the amount of the recommended administrative
 9-66 penalty; and

9-67 (3) inform the person of the person's right to a
 9-68 hearing on the occurrence of the violation, the amount of the
 9-69 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 the violation, the amount of the penalty, or both.

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

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

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

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

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

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

(2) a violation did not occur.

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

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

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

(1) pay the administrative penalty; or

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

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

(1) stay enforcement of the penalty by:

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

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

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

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

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

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

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

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

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

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

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

11-1 Sec. 781.459. DETERMINATION BY COURT. (a) If the court
11-2 sustains the determination that a violation occurred, the court may
11-3 uphold or reduce the amount of the administrative penalty and order
11-4 the person to pay the full or reduced amount of the penalty.

11-5 (b) If the court does not sustain the finding that a
11-6 violation occurred, the court shall order that a penalty is not
11-7 owed.

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

11-14 (b) The interest accrues at the rate charged on loans to
11-15 depository institutions by the New York Federal Reserve Bank.

11-16 (c) The interest shall be paid for the period beginning on
11-17 the date the penalty is paid and ending on the date the penalty is
11-18 remitted.

11-19 (d) If the person gave a supersedeas bond and the penalty is
11-20 not upheld by the court, the court shall order, when the court's
11-21 judgment becomes final, the release of the bond.

11-22 (e) If the person gave a supersedeas bond and the amount of
11-23 the penalty is reduced, the court shall order the release of the
11-24 bond after the person pays the reduced amount.

11-25 Sec. 781.461. ADMINISTRATIVE PROCEDURE. A proceeding under
11-26 this subchapter is a contested case under Chapter 2001, Government
11-27 Code.

11-28 SECTION 3. Section 1702.006, Occupations Code, is repealed.

11-29 SECTION 4. (a) A license or registration issued under
11-30 Chapter 1702, Occupations Code, immediately before the effective
11-31 date of this Act to a person listed in Subsection (b) of this
11-32 section shall remain valid under Chapter 781, Health and Safety
11-33 Code, as added by this Act.

11-34 (b) Subsection (a) of this section applies to:

11-35 (1) an alarm systems company that sells, installs,
11-36 services, or responds to only personal emergency response systems;

11-37 (2) an alarm systems installer who installs,
11-38 maintains, or repairs only personal emergency response systems;

11-39 (3) a manager or branch office manager of an alarm
11-40 systems company described by Subdivision (1) of this subsection;

11-41 (4) a security salesperson who is employed by an alarm
11-42 systems company described by Subdivision (1) of this subsection to
11-43 sell services offered by the company; or

11-44 (5) an owner, officer, partner, or shareholder of an
11-45 alarm systems company described by Subdivision (1) of this
11-46 subsection.

11-47 (c) The change in law made by this Act does not affect a
11-48 disciplinary action regarding a personal emergency response system
11-49 pending under Chapter 1702, Occupations Code, on the effective date
11-50 of this Act. The Department of State Health Services shall continue
11-51 the proceeding under that chapter after the effective date of this
11-52 Act, and the former law is continued in effect for that purpose.

11-53 (d) The change in law made by this Act does not affect an
11-54 action involving the prosecution of an offense or any other
11-55 enforcement action under Subchapter P or Q, Chapter 1702,
11-56 Occupations Code, regarding a personal emergency response system
11-57 pending on the effective date of this Act. The prosecution or
11-58 action shall continue under that chapter after the effective date
11-59 of this Act, and the former law is continued in effect for that
11-60 purpose.

11-61 SECTION 5. This Act takes effect September 1, 2005.

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