

By: Eiland

H.B. No. 1291

A BILL TO BE ENTITLED

1 AN ACT
2 relating to regulation of certain disaster remediation
3 contractors; providing penalties.

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

5 ARTICLE 1. REGULATION BY TEXAS DEPARTMENT OF INSURANCE

6 SECTION 1.001. Title 20, Insurance Code, is amended by
7 adding Chapter 6005 to read as follows:

8 CHAPTER 6005. REGULATION OF DISASTER REMEDIATION CONTRACTORS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 6005.001. DEFINITIONS. In this chapter:

11 (1) "Contract holder" means a person who enters into a
12 contract with a disaster remediation contractor for the performance
13 of disaster remediation on property owned or leased by the contract
14 holder.

15 (2) "Council of governments" means a regional planning
16 commission or similar regional planning agency created under
17 Chapter 391, Local Government Code.

18 (3) "Disaster remediation" means the removal,
19 cleaning, sanitizing, demolition, reconstruction, or other
20 treatment of improvements to real property performed because of
21 damage or destruction to that property caused by a natural
22 disaster.

23 (4) "Disaster remediation contractor" means a person
24 who engages in disaster remediation for compensation.

1 (5) "Natural disaster" means the occurrence of
2 widespread or severe damage, injury, or loss of life or property
3 related to any natural cause, including fire, flood, earthquake,
4 wind, storm, or wave action, that results in a disaster declaration
5 by the governor under Chapter 418, Government Code.

6 (6) "Person" means an individual, corporation, trust,
7 partnership, association, or other private legal entity.

8 (7) "Region" has the meaning assigned by Section
9 391.002, Local Government Code.

10 [Sections 6005.002-6005.050 reserved for expansion]

11 SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

12 Sec. 6005.051. GENERAL RULES. The commissioner shall adopt
13 rules as necessary to implement this chapter.

14 Sec. 6005.052. CODE OF PROFESSIONAL RESPONSIBILITY;
15 STANDARDS OF CONDUCT. (a) In cooperation with the attorney
16 general, the commissioner by rule shall adopt a code of
17 professional responsibility to regulate the conduct of a disaster
18 remediation contractor who provides services in this state.

19 (b) The code of professional responsibility must
20 contain standards of conduct that must be followed by a person
21 authorized under this chapter to operate as a disaster remediation
22 contractor in this state in dealing with the public.

23 Sec. 6005.053. COMPLAINT INVESTIGATIONS. (a) The
24 department shall establish procedures for receiving a complaint
25 alleging a violation of the code of professional responsibility
26 established under Section 6005.052.

27 (b) The department may investigate a complaint received by

1 the department under Subsection (a) and may forward results of an
2 investigation conducted under this subsection to the attorney
3 general and appropriate law enforcement authorities.

4 [Sections 6005.054-6005.100 reserved for expansion]

5 SUBCHAPTER C. REGISTRATION REQUIREMENT

6 Sec. 6005.101. REGISTRATION REQUIRED. (a) A person may not
7 engage in disaster remediation for compensation in this state or
8 act as a disaster remediation contractor in this state unless the
9 person holds a certificate of registration issued under this
10 subchapter.

11 (b) A person may not assume or use the title or designation
12 "certified disaster remediation contractor" or any other title,
13 designation, word, letter, abbreviation, sign, card, or device
14 tending to indicate that the person is registered under this
15 chapter, including any reference to the Federal Emergency
16 Management Agency, unless the person holds a certificate of
17 registration under this chapter or is otherwise determined by the
18 commissioner to be authorized to use the title or designation.

19 (c) Each applicant for registration under this chapter must
20 register, in the manner provided by this chapter, with:

21 (1) the department; and

22 (2) the governing body of the council of governments
23 in each region in which the applicant proposes to provide disaster
24 remediation services for compensation.

25 Sec. 6005.102. EXEMPTIONS. (a) A person is not required to
26 register under this chapter to perform disaster remediation for
27 compensation if the person:

1 (1) holds a license, certificate of registration, or
2 other authority issued by the Texas Department of Licensing and
3 Regulation, another licensing agency of this state, or a federal
4 regulatory agency; and

5 (2) provides disaster remediation services for
6 compensation solely within the scope of that authority.

7 (b) A managing agent or employee of a property owner is not
8 required to be licensed under this chapter to perform disaster
9 remediation on property owned by the property owner. This
10 exemption does not apply if the managing agent or employee engages
11 in the business of performing disaster remediation for the public.

12 (c) An employee of a certificate holder is not required to
13 register under this chapter to perform disaster remediation while
14 supervised by the certificate holder, as provided by rules adopted
15 under this chapter.

16 [Sections 6005.103-6005.150 reserved for expansion]

17 SUBCHAPTER D. DEPARTMENT REGISTRATION PROCEDURES

18 Sec. 6005.151. APPLICATION REQUIREMENTS. (a) An applicant
19 for a certificate of registration issued by the department under
20 this chapter must:

21 (1) submit to the department a completed application
22 on a form prescribed by the commissioner;

23 (2) sign a statement agreeing to comply with the code
24 of professional responsibility prescribed by the commissioner;

25 (3) provide evidence of the security required under
26 this subchapter;

27 (4) pay the required fees; and

1 (5) provide any other information required by the
2 commissioner.

3 (b) The department may conduct an examination of any
4 criminal conviction of an applicant, including by obtaining any
5 criminal history record information permitted by law.

6 Sec. 6005.152. RECIPROCAL REGISTRATION. On proper
7 application, the department may issue a certificate of registration
8 to a person who holds a license, certificate of registration, or
9 other authority to perform disaster remediation issued by another
10 state that the commissioner determines has requirements that are
11 equivalent to those of this state.

12 Sec. 6005.153. FEES; SECURITY REQUIREMENTS. (a) The
13 commissioner may adopt fees for registration under this subchapter,
14 including application fees and renewal fees.

15 (b) As a guarantee that a disaster remediation contractor
16 will meet the contractor's obligations to contract holders, the
17 contractor shall maintain with the department a bond or other
18 security accepted by the commissioner.

19 (c) A bond posted as security must:

20 (1) be issued by an insurer authorized to engage in the
21 business of insurance in this state;

22 (2) be continuous;

23 (3) be cancelable by the surety only after at least 90
24 days' notice to the department; and

25 (4) recognize that the obligation continues for the
26 terms of the contracts written by the disaster remediation
27 contractor while the bond is in force.

1 (d) Any security provided under this section in a form other
2 than a bond must be convertible to cash by the department for the
3 benefit of contract holders in this state, without resort to the
4 courts, if the commissioner determines that the disaster
5 remediation contractor is in default of the contractor's financial
6 obligations to contract holders. Any amount remaining after all
7 contract holders' claims are paid must be returned to the disaster
8 remediation contractor not later than the 120th day after the date
9 the last outstanding contract expires.

10 Sec. 6005.154. ISSUANCE OF CERTIFICATE; TERM. (a) On
11 receipt of the application and required fees, and on satisfaction
12 of the security requirement under Section 6005.153, the department
13 shall issue a certificate of registration to an applicant under
14 this subchapter.

15 (b) A certificate of registration expires on the first
16 anniversary of the date of issuance and may be renewed annually in
17 the manner prescribed by the commissioner. An application for
18 renewal must be submitted to the department not later than the 30th
19 day before the expiration date of the certificate.

20 [Sections 6005.155-6005.200 reserved for expansion]

21 SUBCHAPTER E. CONSUMER DISCLOSURE REQUIREMENTS

22 Sec. 6005.201. LIST OF SERVICES. (a) A disaster
23 remediation contractor shall prepare a comprehensive list that
24 describes each service that the contractor offers.

25 (b) The contractor shall provide a written copy of the list
26 to each prospective contract holder.

27 Sec. 6005.202. CONTRACT. Before entering into a contract

1 for disaster remediation services, a disaster remediation
2 contractor must deliver to the prospective contract holder a
3 complete written copy of the contract, accompanied by a written
4 receipt for any payment made by the contract holder under the
5 contract.

6 [Sections 6005.203-6005.250 reserved for expansion]

7 SUBCHAPTER F. REGISTRATION WITH COUNCIL OF GOVERNMENTS

8 Sec. 6005.251. REGISTRATION WITH COUNCIL OF GOVERNMENTS.

9 (a) A person required to hold a certificate of registration under
10 Section 6005.101 must also register with the governing body of the
11 council of governments in each region in which the person proposes
12 to provide disaster remediation services.

13 (b) Registration under Subsection (a) is subject to Section
14 391.0092, Local Government Code.

15 [Sections 6005.252-6005.300 reserved for expansion]

16 SUBCHAPTER G. ENFORCEMENT; CRIMINAL PENALTY

17 Sec. 6005.301. DISCIPLINARY ACTIONS. (a) The commissioner
18 may suspend, revoke, or refuse to issue or renew a certificate of
19 registration under this chapter if, after notice and hearing, the
20 commissioner finds that the applicant or registrant has engaged in
21 acts that:

22 (1) violate this chapter;

23 (2) violate rules or standards adopted under this
24 chapter;

25 (3) violate Section 391.0092, Local Government Code;

26 or

27 (4) constitute misrepresentation made in connection

1 with disaster remediation services.

2 (b) An original or renewal certificate of registration may
3 be denied, suspended, or revoked, if, after notice and hearing, the
4 commissioner determines from the evidence presented at the hearing
5 that this chapter or a rule adopted under this chapter has been
6 violated.

7 Sec. 6005.302. DISCIPLINARY HEARING. (a) If the
8 commissioner proposes to suspend, revoke, or refuse to renew a
9 certificate of registration under this chapter, the holder of the
10 certificate is entitled to a hearing conducted by the State Office
11 of Administrative Hearings.

12 (b) Proceedings for a disciplinary action are governed by
13 Chapter 2001, Government Code.

14 (c) Rules of practice adopted by the commissioner
15 applicable to the proceedings for a disciplinary action may not
16 conflict with rules adopted by the State Office of Administrative
17 Hearings.

18 Sec. 6005.303. DECEPTIVE TRADE PRACTICE. (a) This section
19 applies to:

20 (1) a violation of this chapter;

21 (2) a violation of rules or standards adopted under
22 this chapter;

23 (3) a violation of Section 391.0092, Local Government
24 Code; or

25 (4) an act that constitutes misrepresentation made in
26 connection with disaster remediation services.

27 (b) A violation or act described by Subsection (a)

1 constitutes a deceptive trade practice under Section 17.46,
2 Business & Commerce Code, and is subject to penalties as provided by
3 that section.

4 Sec. 6005.304. CRIMINAL PENALTY. (a) A person commits an
5 offense if the person violates Section 6005.101.

6 (b) An offense under this section is a Class B misdemeanor.

7 (c) Venue for an offense under this section is in Travis
8 County or the county in which the offense is committed.

9 ARTICLE 2. REGISTRATION WITH COUNCIL OF GOVERNMENTS

10 SECTION 2.001. Section 391.005, Local Government Code, is
11 amended by adding Subsection (d) to read as follows:

12 (d) A commission may implement a registration program under
13 Section 391.0092 and may charge a registration fee set in an amount
14 reasonable and necessary to cover the costs of the registration
15 program.

16 SECTION 2.002. Chapter 391, Local Government Code, is
17 amended by adding Section 391.0092 to read as follows:

18 Sec. 391.0092. REGISTRATION OF DISASTER REMEDIATION
19 CONTRACTORS. (a) In this section, "disaster remediation,"
20 "disaster remediation contractor," and "natural disaster" have the
21 meanings assigned by Section 6005.001, Insurance Code.

22 (b) The governing body of each commission located in a
23 region subject to a natural disaster shall, not later than the 15th
24 day after the date of the disaster declaration, establish a
25 registry for disaster remediation contractors who propose to
26 provide disaster remediation services in the region.

27 (c) Each disaster remediation contractor who provides

1 disaster remediation services in the region shall register with the
2 commission in the manner prescribed by the governing body of the
3 commission.

4 (d) A disaster remediation contractor who violates
5 Subsection (c) commits a deceptive trade practice under Section
6 17.46, Business & Commerce Code.

7 ARTICLE 3. DECEPTIVE TRADE PRACTICE

8 SECTION 3.001. Section 17.46(b), Business & Commerce Code,
9 is amended to read as follows:

10 (b) Except as provided in Subsection (d) of this section,
11 the term "false, misleading, or deceptive acts or practices"
12 includes, but is not limited to, the following acts:

13 (1) passing off goods or services as those of another;

14 (2) causing confusion or misunderstanding as to the
15 source, sponsorship, approval, or certification of goods or
16 services;

17 (3) causing confusion or misunderstanding as to
18 affiliation, connection, or association with, or certification by,
19 another;

20 (4) using deceptive representations or designations
21 of geographic origin in connection with goods or services;

22 (5) representing that goods or services have
23 sponsorship, approval, characteristics, ingredients, uses,
24 benefits, or quantities which they do not have or that a person has
25 a sponsorship, approval, status, affiliation, or connection which
26 he does not;

27 (6) representing that goods are original or new if

1 they are deteriorated, reconditioned, reclaimed, used, or
2 secondhand;

3 (7) representing that goods or services are of a
4 particular standard, quality, or grade, or that goods are of a
5 particular style or model, if they are of another;

6 (8) disparaging the goods, services, or business of
7 another by false or misleading representation of facts;

8 (9) advertising goods or services with intent not to
9 sell them as advertised;

10 (10) advertising goods or services with intent not to
11 supply a reasonable expectable public demand, unless the
12 advertisements disclosed a limitation of quantity;

13 (11) making false or misleading statements of fact
14 concerning the reasons for, existence of, or amount of price
15 reductions;

16 (12) representing that an agreement confers or
17 involves rights, remedies, or obligations which it does not have or
18 involve, or which are prohibited by law;

19 (13) knowingly making false or misleading statements
20 of fact concerning the need for parts, replacement, or repair
21 service;

22 (14) misrepresenting the authority of a salesman,
23 representative or agent to negotiate the final terms of a consumer
24 transaction;

25 (15) basing a charge for the repair of any item in
26 whole or in part on a guaranty or warranty instead of on the value of
27 the actual repairs made or work to be performed on the item without

1 stating separately the charges for the work and the charge for the
2 warranty or guaranty, if any;

3 (16) disconnecting, turning back, or resetting the
4 odometer of any motor vehicle so as to reduce the number of miles
5 indicated on the odometer gauge;

6 (17) advertising of any sale by fraudulently
7 representing that a person is going out of business;

8 (18) advertising, selling, or distributing a card
9 which purports to be a prescription drug identification card issued
10 under Section 4151.152, Insurance Code, in accordance with rules
11 adopted by the commissioner of insurance, which offers a discount
12 on the purchase of health care goods or services from a third party
13 provider, and which is not evidence of insurance coverage, unless:

14 (A) the discount is authorized under an agreement
15 between the seller of the card and the provider of those goods and
16 services or the discount or card is offered to members of the
17 seller;

18 (B) the seller does not represent that the card
19 provides insurance coverage of any kind; and

20 (C) the discount is not false, misleading, or
21 deceptive;

22 (19) using or employing a chain referral sales plan in
23 connection with the sale or offer to sell of goods, merchandise, or
24 anything of value, which uses the sales technique, plan,
25 arrangement, or agreement in which the buyer or prospective buyer
26 is offered the opportunity to purchase merchandise or goods and in
27 connection with the purchase receives the seller's promise or

1 representation that the buyer shall have the right to receive
2 compensation or consideration in any form for furnishing to the
3 seller the names of other prospective buyers if receipt of the
4 compensation or consideration is contingent upon the occurrence of
5 an event subsequent to the time the buyer purchases the merchandise
6 or goods;

7 (20) representing that a guarantee or warranty confers
8 or involves rights or remedies which it does not have or involve,
9 provided, however, that nothing in this subchapter shall be
10 construed to expand the implied warranty of merchantability as
11 defined in Sections 2.314 through 2.318 and Sections 2A.212 through
12 2A.216 to involve obligations in excess of those which are
13 appropriate to the goods;

14 (21) promoting a pyramid promotional scheme, as
15 defined by Section 17.461;

16 (22) representing that work or services have been
17 performed on, or parts replaced in, goods when the work or services
18 were not performed or the parts replaced;

19 (23) filing suit founded upon a written contractual
20 obligation of and signed by the defendant to pay money arising out
21 of or based on a consumer transaction for goods, services, loans, or
22 extensions of credit intended primarily for personal, family,
23 household, or agricultural use in any county other than in the
24 county in which the defendant resides at the time of the
25 commencement of the action or in the county in which the defendant
26 in fact signed the contract; provided, however, that a violation of
27 this subsection shall not occur where it is shown by the person

1 filing such suit he neither knew or had reason to know that the
2 county in which such suit was filed was neither the county in which
3 the defendant resides at the commencement of the suit nor the county
4 in which the defendant in fact signed the contract;

5 (24) failing to disclose information concerning goods
6 or services which was known at the time of the transaction if such
7 failure to disclose such information was intended to induce the
8 consumer into a transaction into which the consumer would not have
9 entered had the information been disclosed;

10 (25) using the term "corporation," "incorporated," or
11 an abbreviation of either of those terms in the name of a business
12 entity that is not incorporated under the laws of this state or
13 another jurisdiction;

14 (26) selling, offering to sell, or illegally promoting
15 an annuity contract under Chapter 22, Acts of the 57th Legislature,
16 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil
17 Statutes), with the intent that the annuity contract will be the
18 subject of a salary reduction agreement, as defined by that Act, if
19 the annuity contract is not an eligible qualified investment under
20 that Act or is not registered with the Teacher Retirement System of
21 Texas as required by Section 8A of that Act; or

22 (27) taking advantage of a disaster declared by the
23 governor under Chapter 418, Government Code, by:

24 (A) selling or leasing fuel, food, medicine, or
25 another necessity at an exorbitant or excessive price; [~~or~~]

26 (B) demanding an exorbitant or excessive price in
27 connection with the sale or lease of fuel, food, medicine, or

1 another necessity; or

2 (C) providing services as a disaster remediation
3 contractor for compensation in violation of Chapter 6005, Insurance
4 Code, or Section 391.0092, Local Government Code.

5 ARTICLE 4. TRANSITION; EFFECTIVE DATE

6 SECTION 4.001. The commissioner of insurance shall adopt
7 rules and prescribe standards as required by Subchapter B, Chapter
8 6005, Insurance Code, as added by this Act, not later than December
9 1, 2009.

10 SECTION 4.002. A person is not required to register under
11 Chapter 6005, Insurance Code, as added by this Act, or Section
12 391.0092, Local Government Code, as added by this Act, until
13 January 1, 2010.

14 SECTION 4.003. The following laws take effect January 1,
15 2010:

16 (1) Section 6005.101, Insurance Code, as added by this
17 Act;

18 (2) Subchapter G, Chapter 6005, Insurance Code, as
19 added by this Act;

20 (3) Section 391.0092, Local Government Code, as added
21 by this Act; and

22 (4) Section 17.46(b), Business & Commerce Code, as
23 amended by this Act.

24 SECTION 4.004. Except as otherwise provided by this Act,
25 this Act takes effect September 1, 2009.