

By: Patrick
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S.B. No. 1399

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of foundation repair contractors;
providing penalties.

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

SECTION 1. Subtitle A, Title 6, Occupations Code, is
amended by adding Chapter 1003 to read as follows:

CHAPTER 1003. FOUNDATION REPAIR CONTRACTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1003.001. SHORT TITLE. This chapter may be cited as
the Foundation Repair Contractors Act.

Sec. 1003.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Foundation Repair
Contractors Advisory Board.

(2) "Commission" means the Texas Commission of
Licensing and Regulation.

(3) "Department" means the Texas Department of
Licensing and Regulation.

(4) "Executive director" means the executive director
of the department.

(5) "Foundation" means that portion of a structure
that serves the function of:

(A) supporting an overlying structure;

(B) providing a base for an overlying structure;

or

1 (C) transmitting loads from an overlying
2 structure to the underlying soils.

3 (6) "Foundation repair" means the performance of or an
4 offer to perform the design, installation, or construction
5 functions in connection with the repair or maintenance of a
6 foundation.

7 (7) "Foundation repair contracting company" means an
8 individual or business engaged in foundation repair contracting for
9 the public.

10 (8) "Laborer" means an individual who, under the
11 supervision of a person licensed under this chapter, performs
12 manual labor, including digging holes, pouring foundations,
13 tunneling, and installing underpinning.

14 (9) "Manager" means an individual who oversees
15 activities related to foundation repair, including foundation
16 installation, foundation lifting, customer service, and sales.

17 (10) "Mobile structure" means a structure that has
18 wheels attached for the purpose of moving the structure from one
19 location to another.

20 Sec. 1003.003. EXEMPTIONS. (a) This chapter does not
21 apply to:

22 (1) an individual homeowner who, without paid help,
23 repairs the foundation of the individual's residence;

24 (2) an individual licensed as an engineer under
25 Chapter 1001 who engages in foundation repair in connection with
26 the business in which the individual is employed but who does not
27 engage in that work for the public;

1 (3) an individual or entity that engages in foundation
2 repair for a mobile structure;

3 (4) an individual or entity that performs foundation
4 repair only on nonresidential properties; or

5 (5) an individual or entity that, for compensation:

6 (A) sells, constructs, or remodels a
7 single-family house or duplex;

8 (B) supervises or manages the construction or
9 remodeling of a single-family house or duplex; or

10 (C) contracts for the supervision or management
11 of the construction or remodeling of a single-family house or
12 duplex.

13 (b) A laborer is not required to hold a license under this
14 chapter if the laborer is engaged in foundation repair under the
15 supervision of a license holder under this chapter.

16 Sec. 1003.004. APPLICATION OF MUNICIPAL ORDINANCES.
17 Foundation repair by an individual or entity, including an
18 individual or entity that is exempt under this chapter, is subject
19 to a permit, inspection, or approval requirement established by a
20 municipal ordinance.

21 [Sections 1003.005-1003.050 reserved for expansion]

22 SUBCHAPTER B. FOUNDATION REPAIR CONTRACTORS ADVISORY BOARD

23 Sec. 1003.051. ADVISORY BOARD MEMBERSHIP. The Foundation
24 Repair Contractors Advisory Board consists of seven members
25 appointed by the presiding officer of the commission, with the
26 commission's approval.

27 Sec. 1003.052. MEMBERS. (a) Each advisory board member,

1 other than the public member, must be experienced in the design,
2 installation, construction, maintenance, service, repair, or
3 modification of a foundation.

4 (b) The members shall be appointed as follows:

5 (1) one member who is an official of a municipality;

6 (2) one member who is an engineer licensed under
7 Chapter 1001;

8 (3) four members who are licensed foundation repair
9 master license holders, of whom two must be members of a statewide
10 foundation repair organization; and

11 (4) one member who represents the public and is not
12 affiliated with any foundation repair contracting company.

13 Sec. 1003.053. ADVISORY BOARD DUTIES. The advisory board
14 shall provide advice and recommendations to the department and
15 commission on technical matters relevant to the administration and
16 enforcement of this chapter, including examination content,
17 licensing standards, fees, rules, and continuing education
18 requirements.

19 Sec. 1003.054. TERMS; VACANCY. (a) Advisory board members
20 shall serve staggered six-year terms. The terms of two or three
21 members expire on February 1 of each odd-numbered year.

22 (b) If a vacancy occurs during a member's term, the
23 presiding officer of the commission, with the commission's
24 approval, shall fill the vacancy for the remainder of the unexpired
25 term with an individual having the same qualifications as the
26 predecessor.

27 Sec. 1003.055. PRESIDING OFFICER. The presiding officer of

1 the commission, with the commission's approval, shall designate one
2 member of the advisory board to serve as presiding officer of the
3 board for a two-year term.

4 Sec. 1003.056. COMPENSATION; REIMBURSEMENT. An advisory
5 board member serves without compensation but is entitled to
6 reimbursement for actual and necessary expenses incurred in
7 performing functions as an advisory board member, as provided by
8 the General Appropriations Act and the budget of the department.

9 Sec. 1003.057. MEETINGS. (a) The advisory board shall
10 meet at least annually and may meet at other times at the call of the
11 presiding officer of the commission or the executive director.

12 (b) The advisory board shall meet in this state at a place
13 designated by the executive director.

14 [Sections 1003.058-1003.100 reserved for expansion]

15 SUBCHAPTER C. POWERS AND DUTIES

16 Sec. 1003.101. RULES. The commission shall adopt rules as
17 necessary to implement this chapter.

18 Sec. 1003.102. INSURANCE REQUIREMENTS. The commission by
19 rule shall establish minimum liability insurance requirements for a
20 foundation repair contracting company under this chapter.

21 Sec. 1003.103. CONTRACTS FOR ENFORCEMENT. The department
22 may contract with another state agency or political subdivision of
23 the state to enforce this chapter and rules adopted under this
24 chapter.

25 Sec. 1003.104. PERSONNEL. The department may employ
26 personnel necessary to administer this chapter.

27 Sec. 1003.105. DIRECTORY OF LICENSE HOLDERS. The

1 department shall maintain a directory of license holders and make
2 the directory available to the public.

3 [Sections 1003.106-1003.150 reserved for expansion]

4 SUBCHAPTER D. LICENSE REQUIREMENTS

5 Sec. 1003.151. LICENSE REQUIRED. (a) An individual or
6 entity may not engage in foundation repair unless the individual or
7 entity holds the appropriate license under this chapter.

8 (b) An individual or entity that holds a license issued
9 under this chapter is not required to hold a license issued by a
10 municipality to engage in foundation repair in the municipality.

11 Sec. 1003.152. LICENSE CLASSIFICATIONS. The department
12 shall issue contracting company, master, journeyman, estimator,
13 and foreman licenses.

14 Sec. 1003.153. CONTRACTING COMPANY LICENSE. (a) A
15 contracting company license entitles the license holder to engage
16 in business as a foundation repair contracting company.

17 (b) A foundation repair contracting company shall employ at
18 least one full-time license holder who holds a master license.

19 (c) A foundation repair contracting company that does not
20 employ a license holder as required by Subsection (b) at the time
21 the services are performed may not collect a fee or otherwise
22 enforce the contract.

23 (d) A foundation repair contracting company shall maintain
24 at all times insurance as required by commission rule.

25 Sec. 1003.154. MASTER LICENSE. (a) A master license
26 entitles the license holder to engage in foundation repair.

27 (b) An applicant for a master license under this chapter

1 must:

2 (1) be at least 21 years of age;

3 (2) have at least 60 months of documented, practical
4 work experience in foundation repair under the supervision of a
5 master license holder during the preceding seven years or
6 substantially equivalent experience;

7 (3) have a high school diploma or its equivalent; and

8 (4) pass an examination administered by the
9 department.

10 Sec. 1003.155. JOURNEYMAN LICENSE. (a) A journeyman
11 license entitles the license holder to engage in the design and sale
12 of foundation repair and the lifting, lowering, and adjusting of
13 buildings under the supervision of a master license holder.

14 (b) An applicant for a journeyman license under this chapter
15 must:

16 (1) be at least 21 years of age;

17 (2) have at least 24 months of documented, practical
18 work experience in foundation repair under the supervision of a
19 master license holder during the preceding five years or
20 substantially equivalent experience;

21 (3) have a high school diploma or its equivalent; and

22 (4) pass an examination administered by the
23 department.

24 Sec. 1003.156. ESTIMATOR LICENSE. (a) An estimator
25 license entitles the license holder to engage in providing
26 estimates or designs for foundation repair under the supervision of
27 a master or journeyman license holder.

1 (b) An applicant for an estimator license under this chapter
2 must:

- 3 (1) be at least 21 years of age;
4 (2) have a high school diploma or its equivalent; and
5 (3) pass an examination administered by the
6 department.

7 Sec. 1003.157. FOREMAN LICENSE. (a) A foreman license
8 entitles the license holder to supervise laborers and to engage in
9 foundation repair under the supervision of a master or journeyman
10 license holder.

11 (b) An applicant for a foreman license under this chapter
12 must be at least 18 years of age.

13 Sec. 1003.158. PRACTICAL EXPERIENCE. For purposes of
14 determining an applicant's practical experience under this
15 subchapter, a four-year degree in engineering is equivalent to two
16 years of practical experience if the degree is from an institution
17 of higher education.

18 Sec. 1003.159. APPLICATION. (a) An applicant for a
19 license must submit an application on the form prescribed by the
20 department.

21 (b) The application must specify the class of license for
22 which the applicant is applying and include the required fees.

23 (c) The application for a master, journeyman, estimator, or
24 foreman license must include a statement containing evidence
25 satisfactory to the department of the applicant's required
26 practical experience. An application for a contracting company
27 license must include proof of insurance as required by commission

1 rule.

2 (d) The department may conduct a criminal background check
3 on an applicant.

4 Sec. 1003.160. EXAMINATIONS. (a) The department shall
5 prescribe a separate examination for each class of license under
6 this chapter, except that an examination is not required for a
7 foreman or contracting company license.

8 (b) The department shall prescribe the method and content of
9 an examination administered under this chapter.

10 (c) The examination:

11 (1) must be offered on a monthly basis or more
12 frequently as determined by the executive director;

13 (2) must be offered at locations throughout the state
14 as determined by the executive director; and

15 (3) may be offered online as determined by the
16 executive director.

17 Sec. 1003.161. ISSUANCE AND TERM OF LICENSE. (a) The
18 department shall issue a license to an applicant who:

19 (1) submits a verified application on a form
20 prescribed by the department;

21 (2) provides evidence of insurance coverage required
22 by commission rule, if applicable;

23 (3) passes an examination, if applicable;

24 (4) pays the required fees; and

25 (5) meets the requirements of this chapter and rules
26 adopted under this chapter.

27 (b) A license issued under this chapter expires at the end

1 of the license period set by the commission.

2 Sec. 1003.162. RENEWAL OF LICENSE. To renew a license, the
3 license holder must:

4 (1) submit a renewal application in the form
5 prescribed by the executive director;

6 (2) pay the required fee;

7 (3) show evidence of insurance required by commission
8 rule, if applicable; and

9 (4) show evidence of having completed the continuing
10 education requirements established by the commission, as
11 applicable.

12 Sec. 1003.163. DISPLAY OF LICENSE. The commission, with
13 the advice of the advisory board, shall adopt rules relating to the
14 use, display, and advertisement of a license.

15 Sec. 1003.164. NOTICE TO MUNICIPALITIES. (a) An
16 individual who obtains a license under this chapter shall provide a
17 notice to the municipal authority that enforces foundation repair
18 regulations in each municipality in which the individual engages in
19 foundation repair.

20 (b) The notice must be in the form required by the
21 municipality and inform the municipality that the individual has
22 obtained a license under this chapter.

23 (c) A municipality may charge a fee to an individual who
24 provides the notice required by this section. The municipality
25 shall set the fee in an amount reasonable and necessary to
26 administer this section.

27 Sec. 1003.165. PROHIBITED PRACTICES. (a) A license holder

1 may not perform or offer or attempt to perform an act, service, or
2 function that is:

3 (1) defined as the practice of engineering under
4 Chapter 1001, unless the individual holds a license under that
5 chapter;

6 (2) defined as the practice of architecture under
7 Chapter 1051, unless the individual holds a license under that
8 chapter;

9 (3) regulated under Chapter 113, Natural Resources
10 Code, unless the individual holds a license or is exempt by rule
11 under that chapter; or

12 (4) defined as plumbing under Chapter 1301, unless the
13 individual holds a license under that chapter.

14 (b) A license holder may not:

15 (1) fail to provide services for which payment has
16 been made or fail to honor the terms of a contract in the absence of
17 a good faith dispute;

18 (2) intentionally or knowingly misrepresent a
19 necessary service, service to be provided, or service that has been
20 provided; or

21 (3) make a fraudulent promise to induce an individual
22 to contract for a service.

23 (c) A laborer may not supervise any individual who is
24 performing work related to foundation repair.

25 [Sections 1003.166-1003.200 reserved for expansion]

26 SUBCHAPTER E. DISCIPLINARY ACTION; PENALTY

27 Sec. 1003.201. DISCIPLINARY ACTION. The commission or

1 executive director may impose an administrative penalty or take
2 disciplinary action under Chapter 51 or this chapter if a license
3 holder violates this chapter, a rule adopted under this chapter, or
4 an order of the commission or the executive director.

5 Sec. 1003.202. CRIMINAL PENALTY. (a) A person commits an
6 offense if the person knowingly engages in foundation repair
7 without holding a license required by this chapter.

8 (b) An offense under this section is a Class C misdemeanor.

9 [Sections 1003.203-1003.250 reserved for expansion]

10 SUBCHAPTER F. INITIAL LICENSES

11 Sec. 1003.251. WAIVER OF EXAMINATION REQUIREMENT. (a) The
12 department shall waive the examination requirement of Section
13 1003.154(b) for a master license for an applicant who has been an
14 owner or manager of a foundation repair contracting company for at
15 least 60 months before September 1, 2012.

16 (b) The department shall waive the examination requirement
17 of Section 1003.155(b) for a journeyman license for an applicant
18 who has worked for a foundation repair contracting company as a
19 salesperson, estimator, foreman, or manager for at least 24 months
20 before September 1, 2012.

21 Sec. 1003.252. INITIAL LICENSING. (a) The department
22 shall issue a master license to a qualified applicant who:

23 (1) submits an application not later than September 1,
24 2012;

25 (2) is at least 21 years of age;

26 (3) has been an owner or manager of a foundation repair
27 contracting company for at least 60 months; and

1 (4) has a high school diploma or its equivalent.

2 (b) The department shall issue a journeyman license to a
3 qualified applicant who:

4 (1) submits an application not later than September 1,
5 2012;

6 (2) is at least 21 years of age;

7 (3) has worked for a foundation repair contracting
8 company as a salesperson, estimator, foreman, or manager for at
9 least 24 months; and

10 (4) has a high school diploma or its equivalent.

11 Sec. 1003.253. RENEWAL OF LICENSE. To qualify to renew an
12 initial license issued under this subchapter, the license holder
13 must comply with the requirements of Section 1003.162.

14 Sec. 1003.254. EXPIRATION OF SUBCHAPTER. This subchapter
15 expires October 1, 2012.

16 SECTION 2. (a) Notwithstanding the requirement of
17 Subdivision (3), Subsection (b), Section 1003.052, Occupations
18 Code, as added by this Act, the Texas Commission of Licensing and
19 Regulation shall appoint persons who meet the practical experience
20 requirement for an initial master license to serve as initial
21 members of the Foundation Repair Contractors Advisory Board as soon
22 as practicable after the effective date of this Act.

23 (b) The Texas Commission of Licensing and Regulation shall
24 determine with respect to the members of the Foundation Repair
25 Contractors Advisory Board appointed under Chapter 1003,
26 Occupations Code, as added by this Act, which terms of two members
27 expire February 1, 2013, which terms of two members expire February

1 1, 2015, and which terms of three members expire February 1, 2017.

2 (c) The changes in law made by Section 1003.153, Occupations
3 Code, as added by this Act, apply only to a contract for foundation
4 repair entered into or renewed on or after September 1, 2012. A
5 contract for foundation repair entered into or renewed before
6 September 1, 2012, is governed by the law as it existed on the date
7 the contract was entered into, and the former law is continued in
8 effect for that purpose.

9 SECTION 3. (a) The Texas Commission of Licensing and
10 Regulation shall adopt rules to implement Chapter 1003, Occupations
11 Code, as added by this Act, not later than February 1, 2012.

12 (b) A person is not required to obtain a license to engage in
13 foundation repair under Chapter 1003, Occupations Code, as added by
14 this Act, before September 1, 2012.

15 SECTION 4. (a) Except as provided by Subsection (b) of
16 this section, this Act takes effect September 1, 2011.

17 (b) Sections 1003.151, 1003.201, and 1003.202, Occupations
18 Code, as added by this Act, take effect September 1, 2012.