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S.B. No. 617

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of energy efficiency professionals;
providing penalties.

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

SECTION 1. Title 8, Occupations Code, is amended by adding
Chapter 1307 to read as follows:

CHAPTER 1307. ENERGY EFFICIENCY PROFESSIONALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1307.001. SHORT TITLE. This chapter may be cited as
the Energy Efficiency Professionals Act.

Sec. 1307.002. DEFINITIONS. In this chapter:

(1) "ACCA" means the Air Conditioning Contractors of
America.

(2) "ANSI" means the American National Standards
Institute.

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

(4) "Covered premises" means a new home, existing
home, or light commercial building.

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

(6) "Direct, on-site supervision" means supervision
by an energy efficiency professional who is physically present on
the premises where the work is performed at the time the work is

1 performed.

2 (7) "Energy efficiency evaluation" means an analysis,
3 assessment, or audit of the energy consumption and efficiency of a
4 building.

5 (8) "Energy efficiency evaluation training or
6 certification program" means a program accredited by a state or
7 national organization that trains or certifies individuals to
8 perform energy efficiency evaluations for covered premises.

9 (9) "Energy efficiency professional" means an
10 individual who is registered with the department under this
11 chapter.

12 (10) "Energy efficiency report" means a report or any
13 recommendations provided to a consumer or building owner based on
14 an energy efficiency evaluation.

15 (11) "Environmental air conditioning" has the meaning
16 assigned by Section 1302.002.

17 (12) "Executive director" means the executive
18 director of the department.

19 (13) "Existing home" means a residential building that
20 was built for the purpose of housing an individual and is occupied
21 or has been previously occupied.

22 (14) "HVAC system" means a building's heating,
23 ventilation, and air conditioning system.

24 (15) "HVAC system design training program" means a
25 program accredited by a state or national organization that trains
26 individuals on:

27 (A) the material covered by the ACCA manuals D,

1 J, N, S, and T, as those manuals existed on September 1, 2013, and
2 the ANSI/ACCA 5 Standard, as that standard existed on September 1,
3 2013; and

4 (B) making HVAC system design recommendations
5 for covered premises.

6 (16) "Light commercial building" means a commercial
7 building that:

8 (A) is three stories or less in height; and

9 (B) uses an HVAC system with a unit having a size
10 of five tons or 60,000 British thermal units per hour or less.

11 (17) "New home" means a residential building that was
12 built for the purpose of housing an individual and is not occupied
13 and has not been previously occupied.

14 (18) "Performance testing" means the physical testing
15 methodologies used in diagnosing or determining the conditions of a
16 building, including:

17 (A) the condition of a blower door or duct
18 blower;

19 (B) duct system leakage, air flow, and balance;

20 (C) humidity readings;

21 (D) static pressures;

22 (E) thermal imaging;

23 (F) supply and return temperature;

24 (G) combustion safety; and

25 (H) noninvasive refrigerant pressure readings.

26 (19) "Process cooling or heating" has the meaning
27 assigned by Section 1302.002.

1 Sec. 1307.003. APPLICABILITY. (a) This chapter applies
2 to:

3 (1) an energy efficiency evaluation performed on a
4 covered premises;

5 (2) an energy efficiency report based on an energy
6 efficiency evaluation described by Subdivision (1); and

7 (3) a recommendation made as a result of an energy
8 efficiency evaluation.

9 (b) A registered energy efficiency professional who
10 performs an energy efficiency evaluation and produces an energy
11 efficiency report or provides HVAC system design recommendations is
12 not engaged in air conditioning and refrigeration contracting as
13 defined by Section 1302.002.

14 Sec. 1307.004. EXEMPTIONS. (a) This chapter does not
15 apply to an individual who performs an energy efficiency
16 evaluation, provides an energy efficiency report, or makes an HVAC
17 system design recommendation and who:

18 (1) is licensed as or employed by:

19 (A) an engineer licensed under Chapter 1001;

20 (B) an architect licensed under Chapter 1051; or

21 (C) an air conditioning and refrigeration
22 contractor licensed under Chapter 1302; or

23 (2) is employed by:

24 (A) an electric utility, power generation
25 company, retail electric provider, electric cooperative, or
26 municipally owned utility; or

27 (B) a utility program management firm for the

1 purposes of performing quality assurance.

2 (b) An individual is not required to be registered under
3 this chapter if the individual is working under the direct, on-site
4 supervision of an energy efficiency professional.

5 (c) An exemption under this section does not exempt an
6 individual from complying with the requirements of Chapter 1302.

7 (d) An individual who is otherwise exempt under this section
8 is required to obtain a registration under this chapter if the
9 individual performs or offers to perform an energy efficiency
10 evaluation, provides an energy efficiency report, or makes HVAC
11 system design recommendations for the public not in the scope of the
12 individual's employment.

13 (e) This chapter does not apply to a building code
14 compliance inspector who reviews or inspects a building for
15 building code compliance in the scope of the individual's
16 employment or contract while employed by or under contract with a
17 local governmental entity or building contractor.

18 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

19 Sec. 1307.051. RULES. The commission shall adopt rules
20 providing for:

21 (1) the requirements for registration, registration
22 renewal, and reinstatement of a registration issued under this
23 chapter;

24 (2) the requirements for obtaining and renewing
25 endorsements on a registration issued under this chapter;

26 (3) the standards of conduct for an energy efficiency
27 professional;

1 (4) the criteria for recognizing an energy efficiency
2 evaluation training and certification program;

3 (5) the criteria for recognizing HVAC system design
4 training programs;

5 (6) the applicable standards for:

6 (A) conducting energy efficiency evaluations;

7 (B) providing energy efficiency reports; and

8 (C) providing HVAC design recommendations;

9 (7) fees reasonable and necessary to administer this
10 chapter; and

11 (8) other rules necessary for the implementation and
12 administration of this chapter.

13 Sec. 1307.052. INSURANCE REQUIREMENTS. (a) The
14 commission by rule shall establish minimum general liability
15 insurance requirements for an energy efficiency professional.

16 (b) An energy efficiency professional must maintain
17 insurance as prescribed by commission rule during the entire term
18 of the person's registration.

19 Sec. 1307.053. LIST OF RECOGNIZED PROGRAMS. The department
20 shall maintain and make available to the public a list of:

21 (1) energy efficiency evaluation training or
22 certification programs recognized by the department; and

23 (2) HVAC system design training programs recognized by
24 the department.

25 Sec. 1307.054. LIST OF ENERGY EFFICIENCY PROFESSIONALS.
26 The department shall maintain and make available to the public a
27 directory of all individuals registered under this chapter.

1 Sec. 1307.055. CRIMINAL BACKGROUND CHECKS. The department
2 may, as permitted by law:

3 (1) examine any criminal conviction, guilty plea, or
4 deferred adjudication of an applicant for the issuance or renewal
5 of a registration issued under this chapter; and

6 (2) obtain any criminal history record information of
7 the applicant.

8 SUBCHAPTER C. REGISTRATION

9 Sec. 1307.101. REGISTRATION REQUIRED. An individual may
10 not perform or offer to perform an energy efficiency evaluation,
11 provide an energy efficiency report, or provide a recommendation
12 regarding HVAC system design on covered premises unless the
13 individual is registered by the department as an energy efficiency
14 professional.

15 Sec. 1307.102. QUALIFICATIONS; TERM OF REGISTRATION.

16 (a) The department shall register an applicant who:

17 (1) holds an appropriate certification from an energy
18 efficiency evaluation training or certification program recognized
19 by the department;

20 (2) performs at least five energy efficiency
21 evaluations under the direct, on-site supervision of an energy
22 efficiency professional;

23 (3) demonstrates proof of:

24 (A) completion of an HVAC system design training
25 program, if applicable; and

26 (B) insurance as required by commission rule;

27 (4) submits the application and fees required by the

1 commission; and

2 (5) passes a criminal history record information
3 check.

4 (b) The department may credit towards the requirement of
5 Subsection (a)(2) an applicant's verified experience in performing
6 energy efficiency evaluations earned while working in another
7 jurisdiction, during military training or service, or through other
8 experience as determined by the executive director.

9 (c) A registration issued under this chapter expires on the
10 first anniversary of the date the registration was issued.

11 (d) An energy efficiency professional shall maintain the
12 certification described by Subsection (a)(1) in good standing in
13 order to retain a registration issued under this chapter.

14 Sec. 1307.103. ENDORSEMENT REQUIRED. An energy efficiency
15 professional may not perform an energy efficiency evaluation,
16 provide an energy efficiency report, or provide recommendations for
17 a type of covered premises for which the registration holder does
18 not hold an endorsement.

19 Sec. 1307.104. PREMISES ENDORSEMENTS. (a) The department
20 may issue a premises endorsement to a registration issued under
21 this chapter based on a certification that satisfies the
22 requirement of Section 1307.102(a)(1).

23 (b) A registration must be endorsed with one or more of the
24 following premises endorsements:

25 (1) new home;

26 (2) existing home; or

27 (3) light commercial building.

1 (c) The premises endorsement allows the holder to perform an
2 energy efficiency evaluation or provide an energy efficiency report
3 for the type of covered premises listed on the endorsement.

4 Sec. 1307.105. HVAC SYSTEM DESIGN ENDORSEMENT. The HVAC
5 system design endorsement allows the holder to provide
6 recommendations regarding the HVAC system design of covered
7 premises. The department may issue an HVAC system design
8 endorsement to a registration holder if the holder:

9 (1) satisfies the requirement of Section
10 1307.102(a)(1);

11 (2) provides proof that the applicant has successfully
12 completed at least 80 hours of training from an HVAC design training
13 program recognized by the department; and

14 (3) has been issued a premises endorsement under
15 Section 1307.104(b).

16 Sec. 1307.106. RENEWAL OF REGISTRATION AND ENDORSEMENTS.
17 An energy efficiency professional may renew a registration or
18 endorsement issued under this chapter by completing the
19 registration and endorsement renewal requirements, including the
20 payment of a required fee, established by commission rule.

21 SUBCHAPTER D. PRACTICE OF ENERGY EFFICIENCY PROFESSIONALS

22 Sec. 1307.151. SCOPE OF PRACTICE. (a) An energy
23 efficiency professional shall conduct an energy efficiency
24 evaluation for a covered premises consistent with the scope of the
25 energy efficiency professional's registration and endorsements.

26 (b) An energy efficiency professional shall provide an
27 energy efficiency report to a consumer based on the information

1 discovered in an energy efficiency evaluation and consistent with
2 the energy efficiency professional's registration and
3 endorsements.

4 (c) An energy efficiency professional shall provide
5 recommendations regarding HVAC system design consistent with the
6 energy efficiency professional's registration and endorsements and
7 based on the ACCA manuals, as applicable.

8 Sec. 1307.152. CONDUCTING ENERGY EFFICIENCY EVALUATIONS.

9 (a) An energy efficiency evaluation may include the inspection,
10 testing, investigation, or surveying of a building to evaluate,
11 measure, or quantify the building's energy consumption and
12 efficiency, including:

- 13 (1) verification of the building's HVAC system;
14 (2) inspection of the integrity of the building
15 envelope, including air leakage, durability, and insulation;
16 (3) inspection and evaluation of the efficiency of the
17 building's lighting, electronics, and appliances; and
18 (4) performance testing.

19 (b) The following are the minimum standards applicable to an
20 energy efficiency evaluation:

- 21 (1) the International Energy Conservation Code, as
22 adopted by the International Code Council and the State Energy
23 Conservation Office under Section 388.003, Health and Safety Code;
24 (2) the International Residential Code for One- and
25 Two-Family Dwellings, Chapter 11, as adopted by the International
26 Code Council and the State Energy Conservation Office under Section
27 388.003, Health and Safety Code;

1 (3) the Residential Energy Services Network Mortgage
2 Industry National Home Energy Rating Systems Standards, Chapters 3,
3 6, 7, 8, and 9, as those chapters existed on September 1, 2013;

4 (4) ANSI/ACCA Standards 5, 9, and 12, as those
5 standards existed on September 1, 2013;

6 (5) the residential environmental air conditioning
7 system design standards under ACCA manuals D, J, N, S, and T, as
8 those standards existed on September 1, 2013;

9 (6) the Texas Home Energy Rating Organization's Texas
10 Home Energy Audit Technical Standard, as that standard existed on
11 September 1, 2013;

12 (7) the Building Performance Institute, Inc., Home
13 Energy Auditing Standard, as that standard existed on September 1,
14 2013; and

15 (8) the American Society of Heating, Refrigerating,
16 and Air-Conditioning Engineers Procedures for Commercial Building
17 Energy Audits, as those procedures existed on September 1, 2013.

18 (c) The commission by rule may review and adopt any
19 subsequent revisions or replacements to the standards under
20 Subsection (b) if the commission determines that adoption of the
21 revision or replacement is in the best interest of the public
22 health, safety, or welfare.

23 (d) The commission by rule may review and adopt any other
24 standards for performing energy efficiency evaluations for covered
25 premises if the commission determines that adoption of the standard
26 is in the best interest of the public health, safety, or welfare.

27 (e) The commission by rule shall identify whether the

1 standards under this section are applicable to new homes, existing
2 homes, or light commercial buildings.

3 Sec. 1307.153. ACCESS TO ELECTRICAL PANELS. (a) An energy
4 efficiency professional may open electrical panels and connect
5 temporary measurement or monitoring devices as needed in order to
6 test efficiency and capacity.

7 (b) An energy efficiency professional shall make an
8 electrical connection described by Subsection (a) in accordance
9 with standards at least as stringent as the National Electrical
10 Code as adopted under Chapter 1305.

11 Sec. 1307.154. FLUE GAS PIPE TESTING. An energy efficiency
12 professional may test flue gas piping for environmental air
13 conditioning, commercial refrigeration, or process cooling or
14 heating systems for flue gas concentration, spillage, and draft in
15 accordance with standards adopted under this chapter.

16 Sec. 1307.155. REQUIRED DISCLOSURES. (a) An energy
17 efficiency report that contains a recommendation regarding an HVAC
18 system must contain the following disclosure in at least 12-point
19 type: "Final HVAC system design and installation must be performed
20 by a licensed air conditioning and refrigeration contractor in
21 accordance with Chapter 1302, Texas Occupations Code. Design
22 recommendations may vary depending on the equipment manufacturer,
23 final designer, and design layout."

24 (b) An energy efficiency report that includes
25 recommendations for repairs, modifications, or other improvements
26 in which the energy efficiency professional or an individual
27 associated with the energy efficiency professional has a financial

1 interest must include the following disclosure in at least 12-point
2 type: "Recommendations in this report are made by an energy
3 efficiency professional with a potential financial interest in the
4 installation, repair, or general construction of energy efficiency
5 improvement measures contained in this report."

6 SUBCHAPTER E. ENFORCEMENT

7 Sec. 1307.201. PROHIBITED PRACTICES. An individual
8 registered under this chapter may not perform, offer to perform, or
9 attempt to perform an act that is:

10 (1) defined as the practice of engineering under
11 Chapter 1001, unless the individual holds a license under that
12 chapter; or

13 (2) defined as the practice of architecture under
14 Chapter 1051, unless the individual holds a license under that
15 chapter.

16 Sec. 1307.202. DISCIPLINARY ACTION. A person is subject to
17 any disciplinary action that may be imposed on a license holder
18 under Subchapter G, Chapter 51, if the person:

19 (1) violates this chapter or a rule adopted under this
20 chapter; or

21 (2) obtains a registration by fraud or false
22 representation.

23 Sec. 1307.203. ADMINISTRATIVE SANCTIONS. The commission or
24 executive director may impose a sanction under Subchapter G,
25 Chapter 51, on a registration holder if the individual violates
26 this chapter, a rule adopted under this chapter, or an order of the
27 commission or executive director.

1 Sec. 1307.204. ADMINISTRATIVE PENALTY. The commission or
2 executive director may impose an administrative penalty in the
3 manner provided by Subchapter F, Chapter 51, on a person if the
4 person violates:

5 (1) this chapter or a rule adopted under this chapter;

6 or

7 (2) an order of the commission or executive director.

8 Sec. 1307.205. CEASE AND DESIST; CIVIL PENALTY; INJUNCTION.

9 (a) The executive director may issue a cease and desist order if
10 the executive director determines that an order is necessary to:

11 (1) prevent a violation of this chapter or a rule
12 adopted under this chapter; or

13 (2) protect the public health and safety.

14 (b) The attorney general or the executive director may
15 institute an action for an injunction or a civil penalty as provided
16 by Section 51.352.

17 SUBCHAPTER F. INITIAL REGISTRATION

18 Sec. 1307.251. INITIAL REGISTRATION. The department shall
19 issue a registration as an energy efficiency professional to a
20 qualified applicant who:

21 (1) submits an application to the department not later
22 than September 1, 2014;

23 (2) submits evidence satisfactory to the department
24 that the applicant has been actively engaged in performing energy
25 efficiency evaluations for at least 36 months; and

26 (3) complies with the registration requirements under
27 Section 1307.102, other than Section 1307.102(a)(2).

1 Sec. 1307.252. ENDORSEMENT OF INITIAL REGISTRATION. (a)

2 The department shall issue an appropriate endorsement for a
3 specific covered premises to an individual holding a registration
4 issued under this subchapter.

5 (b) The commission shall adopt rules to determine which
6 endorsement an individual holding a registration issued under this
7 subchapter shall be issued based on the certification and training
8 of the registration holder.

9 Sec. 1307.253. TERM. A registration issued under this
10 subchapter expires on the first anniversary of the date the
11 registration was issued.

12 Sec. 1307.254. REQUIREMENT TO MAINTAIN CERTIFICATION. An
13 energy efficiency professional shall maintain the certification
14 required by Section 1307.102(a)(1) in good standing in order to
15 retain a registration issued under this subchapter.

16 Sec. 1307.255. EXPIRATION OF SUBCHAPTER. This subchapter
17 expires October 1, 2015.

18 SECTION 2. Not later than March 1, 2014, the Texas
19 Commission of Licensing and Regulation shall adopt rules required
20 by Chapter 1307, Occupations Code, as added by this Act.

21 SECTION 3. (a) Except as provided by Subsection (b) of this
22 section, this Act takes effect September 1, 2013.

23 (b) Section 1307.101 and Subchapters D and E, Chapter 1307,
24 Occupations Code, as added by this Act, take effect September 1,
25 2014.