

1-1 By: Carona S.B. No. 617
 1-2 (In the Senate - Filed February 18, 2013; February 25, 2013,
 1-3 read first time and referred to Committee on Business and Commerce;
 1-4 April 2, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 1; April 2, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12		X		
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 617 By: Carona

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the regulation of energy efficiency professionals;
 1-22 providing penalties.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Title 8, Occupations Code, is amended by adding
 1-25 Chapter 1307 to read as follows:

1-26 CHAPTER 1307. ENERGY EFFICIENCY PROFESSIONALS

1-27 SUBCHAPTER A. GENERAL PROVISIONS

1-28 Sec. 1307.001. SHORT TITLE. This chapter may be cited as
 1-29 the Energy Efficiency Professionals Act.

1-30 Sec. 1307.002. DEFINITIONS. In this chapter:

1-31 (1) "ACCA" means the Air Conditioning Contractors of
 1-32 America.

1-33 (2) "ANSI" means the American National Standards
 1-34 Institute.

1-35 (3) "Commission" means the Texas Commission of
 1-36 Licensing and Regulation.

1-37 (4) "Covered premises" means a new home, existing
 1-38 home, or light commercial building.

1-39 (5) "Department" means the Texas Department of
 1-40 Licensing and Regulation.

1-41 (6) "Direct, on-site supervision" means supervision
 1-42 by an energy efficiency professional who is physically present on
 1-43 the premises where the work is performed at the time the work is
 1-44 performed.

1-45 (7) "Energy efficiency evaluation" means an analysis,
 1-46 assessment, or audit of the energy consumption and efficiency of a
 1-47 building.

1-48 (8) "Energy efficiency evaluation training or
 1-49 certification program" means a program accredited by a state or
 1-50 national organization that trains or certifies individuals to
 1-51 perform energy efficiency evaluations for covered premises.

1-52 (9) "Energy efficiency professional" means an
 1-53 individual who is registered with the department under this
 1-54 chapter.

1-55 (10) "Energy efficiency report" means a report or any
 1-56 recommendations provided to a consumer or building owner based on
 1-57 an energy efficiency evaluation.

1-58 (11) "Environmental air conditioning" has the meaning
 1-59 assigned by Section 1302.002.

1-60 (12) "Executive director" means the executive

- 2-1 director of the department.
- 2-2 (13) "Existing home" means a residential building that
 2-3 was built for the purpose of housing an individual and is occupied
 2-4 or has been previously occupied.
- 2-5 (14) "HVAC system" means a building's heating,
 2-6 ventilation, and air conditioning system.
- 2-7 (15) "HVAC system design training program" means a
 2-8 program accredited by a state or national organization that trains
 2-9 individuals on:
- 2-10 (A) the material covered by the ACCA manuals D,
 2-11 J, N, S, and T, as those manuals existed on September 1, 2013, and
 2-12 the ANSI/ACCA 5 Standard, as that standard existed on September 1,
 2-13 2013; and
- 2-14 (B) making HVAC system design recommendations
 2-15 for covered premises.
- 2-16 (16) "Light commercial building" means a commercial
 2-17 building that:
- 2-18 (A) is three stories or less in height; and
 2-19 (B) uses an HVAC system with a unit having a size
 2-20 of five tons or 60,000 British thermal units per hour or less.
- 2-21 (17) "New home" means a residential building that was
 2-22 built for the purpose of housing an individual and is not occupied
 2-23 and has not been previously occupied.
- 2-24 (18) "Performance testing" means the physical testing
 2-25 methodologies used in diagnosing or determining the conditions of a
 2-26 building, including:
- 2-27 (A) the condition of a blower door or duct
 2-28 blower;
- 2-29 (B) duct system leakage, air flow, and balance;
 2-30 (C) humidity readings;
 2-31 (D) static pressures;
 2-32 (E) thermal imaging;
 2-33 (F) supply and return temperature;
 2-34 (G) combustion safety; and
 2-35 (H) noninvasive refrigerant pressure readings.
- 2-36 (19) "Process cooling or heating" has the meaning
 2-37 assigned by Section 1302.002.
- 2-38 Sec. 1307.003. APPLICABILITY. (a) This chapter applies
 2-39 to:
- 2-40 (1) an energy efficiency evaluation performed on a
 2-41 covered premises;
- 2-42 (2) an energy efficiency report based on an energy
 2-43 efficiency evaluation described by Subdivision (1); and
- 2-44 (3) a recommendation made as a result of an energy
 2-45 efficiency evaluation.
- 2-46 (b) A registered energy efficiency professional who
 2-47 performs an energy efficiency evaluation and produces an energy
 2-48 efficiency report or provides HVAC system design recommendations is
 2-49 not engaged in air conditioning and refrigeration contracting as
 2-50 defined by Section 1302.002.
- 2-51 Sec. 1307.004. EXEMPTIONS. (a) This chapter does not
 2-52 apply to an individual who performs an energy efficiency
 2-53 evaluation, provides an energy efficiency report, or makes an HVAC
 2-54 system design recommendation and who:
- 2-55 (1) is licensed as or employed by:
- 2-56 (A) an engineer licensed under Chapter 1001;
 2-57 (B) an architect licensed under Chapter 1051; or
 2-58 (C) an air conditioning and refrigeration
 2-59 contractor licensed under Chapter 1302; or
- 2-60 (2) is employed by:
- 2-61 (A) an electric utility, power generation
 2-62 company, retail electric provider, electric cooperative, or
 2-63 municipally owned utility; or
- 2-64 (B) a utility program management firm for the
 2-65 purposes of performing quality assurance.
- 2-66 (b) An individual is not required to be registered under
 2-67 this chapter if the individual is working under the direct, on-site
 2-68 supervision of an energy efficiency professional.
- 2-69 (c) An exemption under this section does not exempt an

3-1 individual from complying with the requirements of Chapter 1302.
3-2 (d) An individual who is otherwise exempt under this section
3-3 is required to obtain a registration under this chapter if the
3-4 individual performs or offers to perform an energy efficiency
3-5 evaluation, provides an energy efficiency report, or makes HVAC
3-6 system design recommendations for the public not in the scope of the
3-7 individual's employment.

3-8 (e) This chapter does not apply to a building code
3-9 compliance inspector who reviews or inspects a building for
3-10 building code compliance in the scope of the individual's
3-11 employment or contract while employed by or under contract with a
3-12 local governmental entity or building contractor.

3-13 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

3-14 Sec. 1307.051. RULES. The commission shall adopt rules
3-15 providing for:

3-16 (1) the requirements for registration, registration
3-17 renewal, and reinstatement of a registration issued under this
3-18 chapter;

3-19 (2) the requirements for obtaining and renewing
3-20 endorsements on a registration issued under this chapter;

3-21 (3) the standards of conduct for an energy efficiency
3-22 professional;

3-23 (4) the criteria for recognizing an energy efficiency
3-24 evaluation training and certification program;

3-25 (5) the criteria for recognizing HVAC system design
3-26 training programs;

3-27 (6) the applicable standards for:

3-28 (A) conducting energy efficiency evaluations;

3-29 (B) providing energy efficiency reports; and

3-30 (C) providing HVAC design recommendations;

3-31 (7) fees reasonable and necessary to administer this
3-32 chapter; and

3-33 (8) other rules necessary for the implementation and
3-34 administration of this chapter.

3-35 Sec. 1307.052. INSURANCE REQUIREMENTS. (a) The
3-36 commission by rule shall establish minimum general liability
3-37 insurance requirements for an energy efficiency professional.

3-38 (b) An energy efficiency professional must maintain
3-39 insurance as prescribed by commission rule during the entire term
3-40 of the person's registration.

3-41 Sec. 1307.053. LIST OF RECOGNIZED PROGRAMS. The department
3-42 shall maintain and make available to the public a list of:

3-43 (1) energy efficiency evaluation training or
3-44 certification programs recognized by the department; and

3-45 (2) HVAC system design training programs recognized by
3-46 the department.

3-47 Sec. 1307.054. LIST OF ENERGY EFFICIENCY PROFESSIONALS.
3-48 The department shall maintain and make available to the public a
3-49 directory of all individuals registered under this chapter.

3-50 Sec. 1307.055. CRIMINAL BACKGROUND CHECKS. The department
3-51 may, as permitted by law:

3-52 (1) examine any criminal conviction, guilty plea, or
3-53 deferred adjudication of an applicant for the issuance or renewal
3-54 of a registration issued under this chapter; and

3-55 (2) obtain any criminal history record information of
3-56 the applicant.

3-57 SUBCHAPTER C. REGISTRATION

3-58 Sec. 1307.101. REGISTRATION REQUIRED. An individual may
3-59 not perform an energy efficiency evaluation, provide an energy
3-60 efficiency report, or provide a recommendation regarding HVAC
3-61 system design on covered premises unless the individual is
3-62 registered by the department as an energy efficiency professional.

3-63 Sec. 1307.102. QUALIFICATIONS; TERM OF REGISTRATION.

3-64 (a) The department shall register an applicant who:

3-65 (1) holds an appropriate certification from an energy
3-66 efficiency evaluation training or certification program recognized
3-67 by the department;

3-68 (2) performs at least five energy efficiency
3-69 evaluations under the direct, on-site supervision of an energy

4-1 efficiency professional;
4-2 (3) demonstrates proof of:
4-3 (A) completion of an HVAC system design training
4-4 program, if applicable; and
4-5 (B) insurance as required by commission rule;
4-6 (4) submits the application and fees required by the
4-7 commission; and
4-8 (5) passes a criminal history record information
4-9 check.
4-10 (b) The department may credit towards the requirement of
4-11 Subsection (a)(2) an applicant's verified experience in performing
4-12 energy efficiency evaluations earned while working in another
4-13 jurisdiction, during military training or service, or through other
4-14 experience as determined by the executive director.
4-15 (c) A registration issued under this chapter expires on the
4-16 first anniversary of the date the registration was issued.
4-17 (d) An energy efficiency professional shall maintain the
4-18 certification described by Subsection (a)(1) in good standing in
4-19 order to retain a registration issued under this chapter.
4-20 Sec. 1307.103. ENDORSEMENT REQUIRED. An energy efficiency
4-21 professional may not perform an energy efficiency evaluation,
4-22 provide an energy efficiency report, or provide recommendations for
4-23 a type of covered premises for which the registration holder does
4-24 not hold an endorsement.
4-25 Sec. 1307.104. PREMISES ENDORSEMENTS. (a) The department
4-26 may issue a premises endorsement to a registration issued under
4-27 this chapter based on a certification that satisfies the
4-28 requirement of Section 1307.102(a)(1).
4-29 (b) A registration must be endorsed with one or more of the
4-30 following premises endorsements:
4-31 (1) new home;
4-32 (2) existing home; or
4-33 (3) light commercial building.
4-34 (c) The premises endorsement allows the holder to perform an
4-35 energy efficiency evaluation or provide an energy efficiency report
4-36 for the type of covered premises listed on the endorsement.
4-37 Sec. 1307.105. HVAC SYSTEM DESIGN ENDORSEMENT. The HVAC
4-38 system design endorsement allows the holder to provide
4-39 recommendations regarding the HVAC system design of covered
4-40 premises. The department may issue an HVAC system design
4-41 endorsement to a registration holder if the holder:
4-42 (1) satisfies the requirement of Section
4-43 1307.102(a)(1);
4-44 (2) provides proof that the applicant has successfully
4-45 completed at least 80 hours of training from an HVAC design training
4-46 program recognized by the department; and
4-47 (3) has been issued a premises endorsement under
4-48 Section 1307.104(b).
4-49 Sec. 1307.106. RENEWAL OF REGISTRATION AND ENDORSEMENTS.
4-50 An energy efficiency professional may renew a registration or
4-51 endorsement issued under this chapter by completing the
4-52 registration and endorsement renewal requirements, including the
4-53 payment of a required fee, established by commission rule.
4-54 SUBCHAPTER D. PRACTICE OF ENERGY EFFICIENCY PROFESSIONALS
4-55 Sec. 1307.151. SCOPE OF PRACTICE. (a) An energy
4-56 efficiency professional shall conduct an energy efficiency
4-57 evaluation for a covered premises consistent with the scope of the
4-58 energy efficiency professional's registration and endorsements.
4-59 (b) An energy efficiency professional shall provide an
4-60 energy efficiency report to a consumer based on the information
4-61 discovered in an energy efficiency evaluation and consistent with
4-62 the energy efficiency professional's registration and
4-63 endorsements.
4-64 (c) An energy efficiency professional shall provide
4-65 recommendations regarding HVAC system design consistent with the
4-66 energy efficiency professional's registration and endorsements and
4-67 based on the ACCA manuals, as applicable.
4-68 Sec. 1307.152. CONDUCTING ENERGY EFFICIENCY EVALUATIONS.
4-69 (a) An energy efficiency evaluation may include the inspection,

5-1 testing, investigation, or surveying of a building to evaluate,
5-2 measure, or quantify the building's energy consumption and
5-3 efficiency, including:
5-4 (1) verification of the building's HVAC system;
5-5 (2) inspection of the integrity of the building
5-6 envelope, including air leakage, durability, and insulation;
5-7 (3) inspection and evaluation of the efficiency of the
5-8 building's lighting, electronics, and appliances; and
5-9 (4) performance testing.
5-10 (b) The following are the minimum standards applicable to an
5-11 energy efficiency evaluation:
5-12 (1) the International Energy Conservation Code, as
5-13 adopted by the International Code Council and the State Energy
5-14 Conservation Office under Section 388.003, Health and Safety Code;
5-15 (2) the International Residential Code for One- and
5-16 Two-Family Dwellings, Chapter 11, as adopted by the International
5-17 Code Council and the State Energy Conservation Office under Section
5-18 388.003, Health and Safety Code;
5-19 (3) the Residential Energy Services Network Mortgage
5-20 Industry National Home Energy Rating Systems Standards, Chapters 3,
5-21 6, 7, 8, and 9, as those chapters existed on September 1, 2013;
5-22 (4) ANSI/ACCA Standards 5, 9, and 12, as those
5-23 standards existed on September 1, 2013;
5-24 (5) the residential environmental air conditioning
5-25 system design standards under ACCA manuals D, J, N, S, and T, as
5-26 those standards existed on September 1, 2013;
5-27 (6) the Texas Home Energy Rating Organization's Texas
5-28 Home Energy Audit Technical Standard, as that standard existed on
5-29 September 1, 2013;
5-30 (7) the Building Performance Institute, Inc., Home
5-31 Energy Auditing Standard, as that standard existed on September 1,
5-32 2013; and
5-33 (8) the American Society of Heating, Refrigerating,
5-34 and Air-Conditioning Engineers Procedures for Commercial Building
5-35 Energy Audits, as those procedures existed on September 1, 2013.
5-36 (c) The commission by rule may review and adopt any
5-37 subsequent revisions or replacements to the standards under
5-38 Subsection (b) if the commission determines that adoption of the
5-39 revision or replacement is in the best interest of the public
5-40 health, safety, or welfare.
5-41 (d) The commission by rule may review and adopt any other
5-42 standards for performing energy efficiency evaluations for covered
5-43 premises if the commission determines that adoption of the standard
5-44 is in the best interest of the public health, safety, or welfare.
5-45 (e) The commission by rule shall identify whether the
5-46 standards under this section are applicable to new homes, existing
5-47 homes, or light commercial buildings.
5-48 Sec. 1307.153. ACCESS TO ELECTRICAL PANELS. (a) An energy
5-49 efficiency professional may open electrical panels and connect
5-50 temporary measurement or monitoring devices as needed in order to
5-51 test efficiency and capacity.
5-52 (b) An energy efficiency professional shall make an
5-53 electrical connection described by Subsection (a) in accordance
5-54 with standards at least as stringent as the National Electrical
5-55 Code as adopted under Chapter 1305.
5-56 Sec. 1307.154. FLUE GAS PIPE TESTING. An energy efficiency
5-57 professional may test flue gas piping for environmental air
5-58 conditioning, commercial refrigeration, or process cooling or
5-59 heating systems for flue gas concentration, spillage, and draft in
5-60 accordance with standards adopted under this chapter.
5-61 Sec. 1307.155. REQUIRED DISCLOSURES. (a) An energy
5-62 efficiency report that contains a recommendation regarding an HVAC
5-63 system must contain the following disclosure in at least 12-point
5-64 type: "Final HVAC system design and installation must be performed
5-65 by a licensed air conditioning and refrigeration contractor in
5-66 accordance with Chapter 1302, Texas Occupations Code. Design
5-67 recommendations may vary depending on the equipment manufacturer,
5-68 final designer, and design layout."
5-69 (b) An energy efficiency report that includes

6-1 recommendations for repairs, modifications, or other improvements
6-2 in which the energy efficiency professional or an individual
6-3 associated with the energy efficiency professional has a financial
6-4 interest must include the following disclosure in at least 12-point
6-5 type: "Recommendations in this report are made by an energy
6-6 efficiency professional with a potential financial interest in the
6-7 installation, repair, or general construction of energy efficiency
6-8 improvement measures contained in this report."

6-9 SUBCHAPTER E. ENFORCEMENT

6-10 Sec. 1307.201. PROHIBITED PRACTICES. An individual
6-11 registered under this chapter may not perform, offer to perform, or
6-12 attempt to perform an act that is:

6-13 (1) defined as the practice of engineering under
6-14 Chapter 1001, unless the individual holds a license under that
6-15 chapter; or

6-16 (2) defined as the practice of architecture under
6-17 Chapter 1051, unless the individual holds a license under that
6-18 chapter.

6-19 Sec. 1307.202. DISCIPLINARY ACTION. A person is subject to
6-20 any disciplinary action that may be imposed on a license holder
6-21 under Subchapter G, Chapter 51, if the person:

6-22 (1) violates this chapter or a rule adopted under this
6-23 chapter; or

6-24 (2) obtains a registration by fraud or false
6-25 representation.

6-26 Sec. 1307.203. ADMINISTRATIVE SANCTIONS. The commission or
6-27 executive director may impose a sanction under Subchapter G,
6-28 Chapter 51, on a registration holder if the individual violates
6-29 this chapter, a rule adopted under this chapter, or an order of the
6-30 commission or executive director.

6-31 Sec. 1307.204. ADMINISTRATIVE PENALTY. The commission or
6-32 executive director may impose an administrative penalty in the
6-33 manner provided by Subchapter F, Chapter 51, on a person if the
6-34 person violates:

6-35 (1) this chapter or a rule adopted under this chapter;
6-36 or

6-37 (2) an order of the commission or executive director.

6-38 Sec. 1307.205. CEASE AND DESIST; CIVIL PENALTY; INJUNCTION.
6-39 (a) The executive director may issue a cease and desist order if
6-40 the executive director determines that an order is necessary to:

6-41 (1) prevent a violation of this chapter or a rule
6-42 adopted under this chapter; or

6-43 (2) protect the public health and safety.

6-44 (b) The attorney general or the executive director may
6-45 institute an action for an injunction or a civil penalty as provided
6-46 by Section 51.352.

6-47 SUBCHAPTER F. INITIAL REGISTRATION

6-48 Sec. 1307.251. INITIAL REGISTRATION. The department shall
6-49 issue a registration as an energy efficiency professional to a
6-50 qualified applicant who:

6-51 (1) submits an application to the department not later
6-52 than September 1, 2014;

6-53 (2) submits evidence satisfactory to the department
6-54 that the applicant has been actively engaged in performing energy
6-55 efficiency evaluations for at least 36 months; and

6-56 (3) complies with the registration requirements under
6-57 Section 1307.102, other than Section 1307.102(a)(2).

6-58 Sec. 1307.252. ENDORSEMENT OF INITIAL REGISTRATION.
6-59 (a) The department shall issue an appropriate endorsement for a
6-60 specific covered premises to an individual holding a registration
6-61 issued under this subchapter.

6-62 (b) The commission shall adopt rules to determine which
6-63 endorsement an individual holding a registration issued under this
6-64 subchapter shall be issued based on the certification and training
6-65 of the registration holder.

6-66 Sec. 1307.253. TERM. A registration issued under this
6-67 subchapter expires on the first anniversary of the date the
6-68 registration was issued.

6-69 Sec. 1307.254. REQUIREMENT TO MAINTAIN CERTIFICATION. An

7-1 energy efficiency professional shall maintain the certification
7-2 required by Section 1307.102(a)(1) in good standing in order to
7-3 retain a registration issued under this subchapter.

7-4 Sec. 1307.255. EXPIRATION OF SUBCHAPTER. This subchapter
7-5 expires October 1, 2015.

7-6 SECTION 2. Not later than March 1, 2014, the Texas
7-7 Commission of Licensing and Regulation shall adopt rules required
7-8 by Chapter 1307, Occupations Code, as added by this Act.

7-9 SECTION 3. (a) Except as provided by Subsection (b) of
7-10 this section, this Act takes effect September 1, 2013.

7-11 (b) Section 1307.101 and Subchapter D, Chapter 1307,
7-12 Occupations Code, as added by this Act, take effect September 1,
7-13 2014.

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