

By: Thierry

H.B. No. 4467

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of roofing contractors; providing an administrative penalty; authorizing a fee; creating a criminal offense; requiring an occupational license.

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

SECTION 1. Title 8, Occupations Code, is amended by adding Chapter 1306 to read as follows:

CHAPTER 1306. ROOFING CONTRACTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1306.001. SHORT TITLE. This chapter may be cited as the Roofing Contractor Consumer Protection Act.

Sec. 1306.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the roofing contractors advisory board.

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

(3) "Controlling person" means an individual who:

(A) is an owner, officer, or director of a roofing contractor;

(B) possesses direct or indirect control of at least 10 percent of the voting securities of a roofing contractor that is a corporation;

(C) owns or possesses direct or indirect control of at least \$25,000 of the fair market value of a roofing

1 contractor;

2 (D) directly or indirectly possesses the power to
3 direct or cause the direction of the management or policies of a
4 roofing contractor; or

5 (E) has a direct or indirect interest in at least
6 10 percent of the profits, proceeds, or capital gains of a roofing
7 contractor.

8 (4) "Department" means the Texas Department of
9 Licensing and Regulation.

10 (5) "Executive director" means the executive director
11 of the department.

12 (6) "Roofing contractor" means a person who performs
13 roofing services for compensation.

14 (7) "Roofing product" means any material commonly used
15 in the construction, installation, or replacement of a commercial
16 or residential roof.

17 (8) "Roofing services" means the installation,
18 construction, maintenance, repair, alteration, or modification of
19 a roofing product for a commercial or residential roof.

20 Sec. 1306.003. EXEMPTIONS. (a) This chapter does not apply
21 to:

22 (1) the owner of residential property or property used
23 primarily for agricultural purposes, or an employee of the owner,
24 who physically performs roofing services on the owner's dwelling or
25 on another structure located on the property;

26 (2) an authorized employee or representative of the
27 United States government, this state, or any county, municipality,

1 or other political subdivision of this state acting in an official
2 capacity;

3 (3) a person who furnishes any fabricated or finished
4 roofing product, material, or article of merchandise that is not
5 incorporated into or attached to real property by the person;

6 (4) an employee of a roofing contractor licensed under
7 this chapter; or

8 (5) a person who performs roofing services for the new
9 construction of a commercial or residential structure.

10 (b) Notwithstanding Subsection (a), a person described by
11 Subsection (a)(5) may be subject to the requirements of this
12 chapter to the extent the person provides roofing services other
13 than those described by that subdivision.

14 Sec. 1306.004. CONSTRUCTION OF CHAPTER; CONFLICT WITH OTHER
15 LAW. This chapter shall be construed to be in addition to any
16 required licensure of persons in this state. This chapter is not
17 intended to conflict with or affect the authority of any state or
18 local agency, board, or department that administers or enforces any
19 law or ordinance or that establishes, administers, or enforces a
20 policy, rule, qualification, or standard for a trade or profession.

21 SUBCHAPTER B. ADVISORY BOARD

22 Sec. 1306.051. ROOFING CONTRACTORS ADVISORY BOARD. (a)
23 The advisory board consists of five members appointed by the
24 presiding officer of the commission with the approval of the
25 commission as follows:

26 (1) one general contractor who is not a roofing
27 contractor;

1 (2) three roofing contractors licensed under this
2 chapter; and

3 (3) one public member.

4 (b) For purposes of Subsection (a)(2), the commission may
5 appoint a roofing contractor who is not licensed under this chapter
6 if the contractor has fulfilled the requirements for the issuance
7 of a license and has submitted a complete application to the
8 department. The commission shall remove from the advisory board a
9 roofing contractor appointed under this subsection if the
10 contractor does not receive a license before the 31st day after the
11 date the contractor is appointed to the advisory board.

12 (c) Appointments to the advisory board shall be made without
13 regard to the race, color, disability, sex, religion, age, or
14 national origin of the appointee.

15 (d) Chapter 2110, Government Code, does not apply to the
16 composition or duration of the advisory board.

17 Sec. 1306.052. POWERS AND DUTIES OF ADVISORY BOARD. The
18 advisory board shall provide advice and recommendations to the
19 commission on the adoption of rules governing the repair of a
20 roofing system.

21 Sec. 1306.053. COMPENSATION. Advisory board members may
22 not receive compensation for serving as a member.

23 SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

24 Sec. 1306.101. GENERAL POWERS AND DUTIES. The department,
25 executive director, or commission, as appropriate, may take action
26 as necessary to administer and enforce this chapter.

27 Sec. 1306.102. RULES. The commission shall adopt rules as

necessary to administer this chapter, including rules relating to:

(1) licensing roofing contractors and establishing standards of conduct for license holders, including the display of a license by a license holder;

(2) investigating and resolving complaints filed under this chapter;

(3) establishing the minimum financial responsibility requirements for license holders;

(4) administering a licensing examination; and

(5) prohibiting false, misleading, or deceptive advertising practices by license holders.

Sec. 1306.103. CRIMINAL HISTORY BACKGROUND CHECK. The department may obtain criminal history record information under Subchapter F, Chapter 411, Government Code, for an applicant for or holder of a license under this chapter. For purposes of Section 411.093, Government Code, an applicant for or holder of a license under this chapter includes a controlling person of an applicant or holder.

Sec. 1306.104. LICENSE HOLDER DATABASE. The commission shall make available on its Internet website a publicly accessible list of licensed roofing contractors. The list must contain the following for each licensed roofing contractor:

(1) contact information for the contractor;

(2) a statement indicating whether the contractor is licensed in good standing;

(3) a summary of any disciplinary action taken by the commission against the contractor; and

1 (4) any other information that the commission
2 determines is relevant.

3 SUBCHAPTER D. LICENSE REQUIREMENTS

4 Sec. 1306.151. LICENSE REQUIRED. (a) A person may not act
5 as or offer to act as a roofing contractor unless the person holds a
6 license issued under this chapter.

7 (b) A license:

8 (1) is valid only with respect to the person or company
9 named on the license; and

10 (2) authorizes the license holder to operate one
11 roofing contractor business for each license.

12 (c) A license issued under this chapter is not transferable
13 or assignable.

14 Sec. 1306.152. APPLICATION; APPLICATION FEE. (a) An
15 applicant for a license must:

16 (1) apply to the department on a form prescribed by the
17 executive director and under rules adopted by the commission;

18 (2) submit with the application a nonrefundable
19 application fee in an amount set by the commission; and

20 (3) pass an examination adopted by the department.

21 (b) The commission by rule shall specify the information
22 that must be included on an application submitted to the
23 department. The rules must require each application to include:

24 (1) the name and address of, and an authorization for
25 the department to obtain criminal history record information for,
26 each controlling person; and

27 (2) evidence that the applicant satisfies the minimum

financial responsibility requirements established by commission rule.

Sec. 1306.153. TERM OF LICENSE. A license issued under this chapter is valid for one year.

Sec. 1306.154. EXAMINATION. (a) An examination required by this chapter shall be conducted at locations throughout the state.

(b) The department shall accept, develop, or contract for the examination required by this chapter, including the administration of the examination. Each examination must test the knowledge of the applicant about basic contracting principles and roofing services.

(c) The executive director shall determine uniform standards for acceptable performance on an examination.

SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

Sec. 1306.201. DISPLAY OF LICENSE INFORMATION. (a) A roofing contractor shall display the contractor's business name and the number of the license issued by the executive director on each vehicle owned by the contractor and used in providing roofing services.

(b) The information required to be displayed must be:

(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and

(2) affixed in conspicuous places on both sides of the vehicle.

Sec. 1306.202. COMPLIANCE WITH LOCAL REQUIREMENTS. A

1 roofing contractor shall comply with local ordinances and
2 regulations relating to standards and permits for roofing services.

3 Sec. 1306.203. OBTAINING A LICENSE UNDER ANOTHER NAME
4 PROHIBITED. (a) A person may not attempt to obtain a license under
5 any other name during any period during which the person's roofing
6 contractor license is suspended or revoked.

7 (b) Subsection (a) applies to any controlling person of a
8 business entity or other group whose license is suspended or
9 revoked.

10 Sec. 1306.204. NOTIFICATION OF CHANGE OF INFORMATION. A
11 roofing contractor shall timely notify the department of any change
12 to the name, address, business entity, liability coverage, or legal
13 service agent of the contractor.

14 Sec. 1306.205. PROHIBITED ACTS. A roofing contractor
15 providing roofing services to be paid by a consumer from the
16 proceeds of the consumer's property or casualty insurance policy
17 may not pay or rebate or promise to pay or rebate all or part of any
18 applicable insurance deductible.

19 Sec. 1306.206. CONFLICTS OF INTEREST PROHIBITED. (a) In
20 this section, "public insurance adjuster" has the meaning assigned
21 by Section [4102.001](#), Insurance Code.

22 (b) A roofing contractor may not act as a public insurance
23 adjuster for any property for which the contractor is providing
24 roofing services, regardless of whether the contractor holds a
25 license under Chapter [4102](#), Insurance Code.

26 (c) A roofing contractor is subject to the prohibitions
27 under Section [4102.158](#), Insurance Code.

SUBCHAPTER F. ENFORCEMENT

Sec. 1306.251. INVESTIGATION OF COMPLAINTS. (a) The department shall investigate any complaint alleging that a violation of this chapter or a rule adopted under this chapter has occurred.

(b) A complaint must be filed in a manner prescribed by the department.

Sec. 1306.252. ADMINISTRATIVE PENALTY. The commission or executive director may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a license under this chapter, if the person violates:

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

(2) a rule or order of the commission or executive director.

Sec. 1306.253. SANCTIONS. The commission may impose sanctions as provided by Section 51.353.

Sec. 1306.254. CRIMINAL OFFENSE. (a) A person commits an offense if the person:

(1) violates the licensing requirements of this chapter; or

(2) performs roofing services without a license required by this chapter.

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

SECTION 2. Not later than February 1, 2020, the Texas Commission of Licensing and Regulation, the Texas Department of Licensing and Regulation, and the executive director of the Texas

1 Department of Licensing and Regulation, as appropriate, shall adopt
2 rules and forms necessary to implement Chapter 1306, Occupations
3 Code, as added by this Act.

4 SECTION 3. The Texas Department of Licensing and Regulation
5 shall issue a roofing contractor license under Chapter 1306,
6 Occupations Code, as added by this Act, to an applicant who:

7 (1) applies for a license under this section not later
8 than June 1, 2020;

9 (2) submits to the department the information required
10 by rule;

11 (3) has at least 10 years of experience performing
12 roofing services as defined by Section 1306.002, Occupations Code,
13 as added by this Act; and

14 (4) pays the application fee established by the Texas
15 Commission of Licensing and Regulation.

16 SECTION 4. (a) Except as provided by Subsection (b) of this
17 section, this Act takes effect September 1, 2019.

18 (b) Section 1306.151, Occupations Code, and Subchapters E
19 and F, Chapter 1306, Occupations Code, as added by this Act, take
20 effect September 1, 2020.