

By: Flores

H.B. No. 2793

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of roofing contractors; providing penalties.

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

SECTION 1. Title 7, Occupations Code, is amended by adding Subtitle D to read as follows:

SUBTITLE D. REGULATION OF CONSTRUCTION OF HOUSING AND BUILDINGS

CHAPTER 1251. ROOFING CONTRACTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1251.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Roofing Contractors Advisory Board.

(2) "Commercial roofing" means the exterior roof, cover, or skin of the roof assembly consisting of membrane, metal panels, sheets, shingles, tiles, slate, or other materials on any building or structure other than residential buildings or structures.

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

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

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

(6) "Qualifying party" means an individual who

1 possesses all the necessary qualifications for a license and who is  
2 a principal of a business entity licensed under this chapter.

3 (7) "Residential roofing" means any material applied  
4 to the exterior roof framing, whether of wood or steel, on a  
5 single-family home, duplex, triplex, or fourplex.

6 (8) "Roofing contracting" means performing or  
7 offering to perform the installation, construction, maintenance,  
8 service, repair, alteration, or modification of a roofing product  
9 or equipment in roofs.

10 Sec. 1251.002. EXEMPTIONS. (a) This chapter does not  
11 apply to a person:

12 (1) while the person performs roofing contracting:

13 (A) on new residential construction of a  
14 single-family home, duplex, triplex, or fourplex;

15 (B) under the direct supervision of an individual  
16 license holder;

17 (C) on property owned by the person and used as  
18 the person's residence;

19 (D) on a dwelling owned by a member of the  
20 person's family;

21 (E) on property that is primarily for  
22 agricultural use; or

23 (F) on property that is a portable building or a  
24 garage that is not connected to a dwelling;

25 (2) who is registered and regulated as a manufacturer,  
26 retailer, or installer under Chapter 1201 while the person performs  
27 roofing contracting in the building or installation of manufactured

1 homes or in providing retailer or manufacturer warranty services  
2 free of charge to the consumer; or

3 (3) who is a maintenance engineer while the person  
4 performs roofing contracting as an employee of the property owner,  
5 the property lessee, or the management company managing the  
6 property where the roofing contracting is being performed.

7 (b) This chapter does not restrict the practice of  
8 architecture or engineering by a person licensed in this state to  
9 practice that profession.

10 [Sections 1251.003-1251.050 reserved for expansion]

11 SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

12 Sec. 1251.051. ADMINISTRATION; ENFORCEMENT. (a) The  
13 department shall administer this chapter.

14 (b) The department may contract with another state agency or  
15 with a political subdivision of the state for the enforcement of  
16 this chapter and the rules adopted and orders issued under this  
17 chapter.

18 Sec. 1251.052. RULES; STANDARDS. (a) The department may  
19 adopt rules to enforce this chapter.

20 (b) The department shall adopt rules for the practice of  
21 roofing contracting consistent with this chapter. The standards  
22 prescribed by rule must be substantially the same as the standards  
23 set forth in the roofing manufacturers' standard requirements.

24 Sec. 1251.053. FORMS. The department shall prescribe  
25 application forms for original and renewal licenses and shall  
26 design the licenses.

27 Sec. 1251.054. ON-LINE DIRECTORY. (a) The department

1 shall make available on-line a directory of persons licensed under  
2 this chapter.

3 (b) The department may not charge for access to the on-line  
4 directory.

5 Sec. 1251.055. CONSUMER COMPLAINT INVESTIGATION. (a) The  
6 department shall investigate consumer complaints filed with the  
7 department. If the department determines after investigation that  
8 a license holder has violated this chapter or a rule adopted under  
9 this chapter, the department may take appropriate action under  
10 Subchapter F.

11 (b) The department shall maintain a file on each written  
12 complaint filed with the department. The file must include:

13 (1) the name of the person who filed the complaint;

14 (2) the date the complaint is received by the  
15 department;

16 (3) the subject matter of the complaint;

17 (4) the name of each person contacted in relation to  
18 the complaint;

19 (5) a summary of the results of the review or  
20 investigation of the complaint; and

21 (6) an explanation of the reason the file was closed,  
22 if the department closed the file without taking action other than  
23 to investigate the complaint.

24 (c) The department shall provide to the person filing the  
25 complaint and to each person who is a subject of the complaint a  
26 copy of the department's policies and procedures relating to  
27 complaint investigation and resolution.

1       (d) The department, at least quarterly until final  
2 disposition of the complaint, shall notify the person filing the  
3 complaint and each person who is a subject of the complaint of the  
4 status of the investigation unless the notice would jeopardize an  
5 undercover investigation.

6       [Sections 1251.056-1251.100 reserved for expansion]

7                   SUBCHAPTER C. ADVISORY BOARD

8       Sec. 1251.101. ADVISORY BOARD. (a) The Roofing  
9 Contractors Advisory Board is created to advise the department in:

- 10           (1) adopting rules;  
11           (2) enforcing and administering this chapter; and  
12           (3) determining the content of examinations.

13       (b) The advisory board shall advise the commission in  
14 setting fees.

15       Sec. 1251.102. COMPOSITION. (a) The advisory board is  
16 composed of six members appointed by the executive director who are  
17 experienced in roofing contracting.

18       (b) The executive director or the executive director's  
19 designee shall serve as an ex officio, nonvoting member of the  
20 advisory board.

21       Sec. 1251.103. APPOINTMENT. The executive director shall  
22 appoint the advisory board members as follows:

23           (1) three members must be full-time licensed roofing  
24 contractors with at least 10 years' experience in roofing  
25 contracting and must hold the following licenses:

- 26                   (A) one member must hold a commercial license;  
27                   (B) one member must hold a residential license;

1 and

2 (C) one member must hold a commercial and a  
3 residential license; and

4 (2) three members must be public representatives.

5 Sec. 1251.104. TERM. Members of the advisory board hold  
6 office for staggered terms of six years, with two terms expiring on  
7 February 1 of each odd-numbered year.

8 Sec. 1251.105. PRESIDING OFFICER. The executive director  
9 shall designate a member of the advisory board to serve as presiding  
10 officer.

11 Sec. 1251.106. VACANCIES. If a vacancy occurs on the  
12 advisory board, the executive director shall appoint a member who  
13 represents the same interests as the former member to serve the  
14 unexpired term.

15 Sec. 1251.107. MEETINGS. The advisory board shall meet at  
16 least once every six months and may meet at other times at the call  
17 of the presiding officer and at a place in this state designated by  
18 the presiding officer.

19 Sec. 1251.108. VOTES. A decision of the advisory board is  
20 not effective unless it receives the affirmative vote of at least a  
21 majority of the members present.

22 Sec. 1251.109. COMPENSATION NOT ALLOWED. An advisory board  
23 member serves without compensation.

24 [Sections 1251.110-1251.150 reserved for expansion]

25 SUBCHAPTER D. LICENSE REQUIREMENTS

26 Sec. 1251.151. LICENSE REQUIRED; CITATION. (a) Unless  
27 exempted under Section 1251.002, a person may not perform roofing

1 contracting without a license issued under this chapter.

2 (b) A business entity that holds a license must have at  
3 least one qualifying party.

4 (c) The license holder and the license holder's qualifying  
5 party shall comply with the requirements of this chapter.

6 (d) The commission or a municipal official may issue a  
7 citation to a person who performs roofing contracting without a  
8 license issued under this chapter.

9 Sec. 1251.152. SCOPE OF LICENSE. A license is valid  
10 throughout this state, and the license holder is not required to  
11 hold a municipal license or certificate to practice roofing  
12 contracting in any municipality in this state.

13 Sec. 1251.153. ROOFING CONTRACTOR LICENSE CLASSES. Roofing  
14 contractor licenses are as follows:

15 (1) a Class I license entitles the license holder to  
16 perform commercial and residential roofing services;

17 (2) a Class II license entitles the license holder to  
18 perform only commercial roofing services; and

19 (3) a Class III license entitles the license holder to  
20 perform only residential roofing services.

21 Sec. 1251.154. APPLICATION; ELIGIBILITY. (a) A license  
22 application must be made on a form prescribed by the department and  
23 must specify the class of license the applicant seeks.

24 (b) To be eligible for a license, the qualifying party must  
25 be at least 18 years old and must present to the department  
26 satisfactory evidence of at least three years of practical  
27 experience in roofing contracting in the previous five years.

1        (c) The qualifying party's application must be accompanied  
2 by:

3            (1) a statement of the applicant's practical  
4 experience;

5            (2) evidence of the insurance coverage required under  
6 this chapter; and

7            (3) the examination fee.

8        Sec. 1251.155. EXAMINATIONS. (a) The department shall  
9 prescribe the method and content of examinations administered under  
10 this chapter and shall set compliance requirements for the  
11 examinations. The examination shall be offered at least quarterly  
12 at various locations around the state as determined by the  
13 commission.

14        (b) The department shall prescribe separate examinations  
15 for each class of license. For a Class I license, the department  
16 shall prescribe separate examinations for commercial and  
17 residential services.

18        (c) The qualifying party must pass the examination before a  
19 license may be issued.

20        (d) The qualifying party may retake the examination.

21        Sec. 1251.156. ISSUANCE; TERM. (a) The department shall  
22 issue a license to a person who qualifies for a license under this  
23 chapter.

24        (b) A license is valid for one year from the date of  
25 issuance.

26        Sec. 1251.157. RENEWAL; CONTINUING EDUCATION. (a) To  
27 renew a license, a qualifying party of the license holder must

1 complete eight hours of continuing education annually.

2 (b) The department shall recognize, prepare, or administer  
3 a continuing education program for the qualifying parties of  
4 license holders. The department may recognize a course offered by  
5 an appropriate trade association as satisfaction of the continuing  
6 education required under this section.

7 Sec. 1251.158. INSURANCE REQUIREMENT. (a) A license  
8 holder shall maintain general liability insurance coverage in the  
9 following amounts:

10 (1) for a Class I license, \$250,000 per occurrence,  
11 with a minimum total aggregate of \$500,000;

12 (2) for a Class II license, \$250,000 per occurrence,  
13 with a minimum total aggregate of \$500,000; and

14 (3) for a Class III license, \$100,000 minimum total  
15 aggregate.

16 (b) Each applicant for a license, and each license holder,  
17 on renewal of the license, shall provide to the department a  
18 certificate of insurance that shows the license holder's name,  
19 business name, and address as it appears on the license. The  
20 certificate form submitted must be the form furnished by the  
21 department. Each certificate of insurance shall reflect all  
22 assumed names used by the license holder and registered with the  
23 department. The department may not accept an insurance binder or an  
24 interim certificate valid for less than 60 days.

25 (c) The department shall adopt rules regarding requirements  
26 for the certificates of insurance. The rules must require the  
27 insurance carrier to notify the department regarding cancellation

1 or nonrenewal of the insurance coverage by the insurance carrier.

2 (d) Insurance must be obtained from an insurer authorized to  
3 engage in the business of insurance in this state or from an  
4 eligible surplus lines insurer, as defined by Chapter 981,  
5 Insurance Code.

6 (e) The department shall notify a license holder whose proof  
7 of insurance has expired that the license holder has an insurance  
8 violation.

9 Sec. 1251.159. USE, DISPLAY, AND ADVERTISEMENT OF LICENSE;  
10 RULES. With the advice of the advisory board, the department shall  
11 adopt rules relating to the use, display, and advertisement of a  
12 license issued under this chapter.

13 Sec. 1251.160. DISPOSAL OF ROOFING MATERIALS; RULES. The  
14 department shall adopt rules that require a license holder to  
15 obtain a permit from an approved landfill to dispose of roofing  
16 materials. The rules must include a requirement that a license  
17 holder maintain a record for each disposal of roofing materials by  
18 the license holder.

19 Sec. 1251.161. RECIPROCITY. The department may waive any  
20 prerequisite, except an insurance requirement, to obtaining a  
21 license for an applicant who holds a license issued by another  
22 jurisdiction with which this state has a reciprocity agreement.  
23 The commission may make an agreement, subject to the approval of the  
24 governor, with another state to allow for licensing by reciprocity.

25 Sec. 1251.162. TEMPORARY LICENSE. (a) The department may  
26 issue a temporary license to a license holder for a principal of a  
27 license holder to serve as that license holder's qualifying party

1 if the original qualifying party for the license holder:

2 (1) becomes incapacitated and unable to serve in the  
3 normal capacity of principal of the license holder; or

4 (2) is no longer available due to the dissolution of a  
5 partnership, corporation, or other legal entity.

6 (b) The applicant for the temporary license shall apply to  
7 the department on a form prescribed by the department and pay the  
8 required fee.

9 (c) The temporary license is valid for 30 days beyond the  
10 date of the next examination or six months, whichever is less. The  
11 temporary license must be of the same class as the license being  
12 replaced.

13 (d) A temporary license is not renewable, but a second  
14 temporary license may be issued if the license holder's qualifying  
15 party becomes unavailable in circumstances that make the license  
16 holder again eligible to receive a temporary license.

17 [Sections 1251.163-1251.200 reserved for expansion]

18 SUBCHAPTER E. PROHIBITED ACTIVITIES

19 Sec. 1251.201. PROPER ROOFING INSTALLATION REQUIRED. (a)

20 In this section, "mechanical integrity" means physical  
21 installation of products, systems, or equipment in accordance with  
22 their intended purpose and according to industry standards at least  
23 as strict as the roofing manufacturers' specifications.

24 (b) The failure to provide proper installation consistent  
25 with the manufacturer's specifications or consistent with commonly  
26 accepted roofing practices, proper service, and mechanical  
27 integrity under this chapter violates this chapter.

1       Sec. 1251.202. MISREPRESENTATION OF ROOFING CONTRACTING  
2 SERVICES. An intentional or knowing misrepresentation of a  
3 necessary roofing contracting service, roofing contracting service  
4 to be provided, or a roofing contracting service that has been  
5 provided, violates this chapter.

6       Sec. 1251.203. CERTAIN ADVERTISING PROHIBITED. A person  
7 may not advertise to the public that the person is engaged in the  
8 business of roofing contracting unless the person holds a license  
9 issued under this chapter.

10       [Sections 1251.204-1251.250 reserved for expansion]

11               SUBCHAPTER F. PENALTIES AND ENFORCEMENT

12       Sec. 1251.251. DENIAL, SUSPENSION, OR REVOCATION OF  
13 CERTIFICATE. (a) A violation of this chapter, a rule adopted under  
14 this chapter, or an order issued under this chapter is a ground for  
15 the denial, suspension, or revocation of a license and a ground for  
16 the imposition of an administrative penalty under Subchapter F,  
17 Chapter 51.

18       (b) The department may place on probation a person whose  
19 license is suspended. If a license suspension is probated, the  
20 department may require the person to:

21               (1) report regularly to the department on matters that  
22 are the basis of the probation;

23               (2) limit practice to the areas prescribed by the  
24 department; or

25               (3) continue or review professional education until  
26 the person or the person's qualifying party attains a degree of  
27 skill satisfactory to the department in those areas that are the

1 basis of the probation.

2 Sec. 1251.252. EMERGENCY ORDERS. (a) The department may  
3 issue an emergency order as necessary to enforce this chapter if the  
4 department determines that an emergency exists or formerly existed  
5 requiring immediate temporary action to protect the public health  
6 and safety. The order may be issued without notice and hearing or  
7 with notice and hearing as the department considers practicable  
8 under the circumstances.

9 (b) If an emergency order is issued under this section  
10 without a hearing, the department shall set the time and place for a  
11 hearing to affirm, modify, or set aside the emergency order.

12 Sec. 1251.253. CEASE AND DESIST ORDERS. The commission may  
13 issue cease and desist orders.

14 Sec. 1251.254. MUNICIPAL REGULATION. (a) A municipality  
15 may by ordinance adopt and enforce standards for roofing  
16 contractors that are consistent with the standards established  
17 under this chapter.

18 (b) A municipality may not impose a license or registration  
19 fee on a roofing contractor licensed under this chapter.

20 (c) The municipality may report a violation of this chapter  
21 to the commission. If the municipality elects to report the  
22 violation, it shall do so not later than the 10th day after the date  
23 on which it discovers the violation.

24 (d) Conviction of an offense under the municipal ordinance  
25 is a ground for the denial, suspension, or revocation of a license  
26 under Section 1251.251.

27 Sec. 1251.255. ENFORCEMENT OF CONTRACTS. (a) A person who

1 performs roofing contracting without holding the appropriate  
2 license may not collect a fee or otherwise enforce a contract for  
3 the roofing service performed. To enforce a contract for the  
4 performance of roofing contracting, the person performing the  
5 service must present proof that the person held a license at the  
6 time the contract was signed and the work was performed.

7 (b) The department director shall adopt rules relating to  
8 the manner in which proof may be presented under this section.

9 Sec. 1251.256. OFFENSE; CRIMINAL PENALTY. (a) A person  
10 commits an offense if the person knowingly or intentionally engages  
11 in roofing contracting without holding a license.

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

13 SECTION 2. (a) The Texas Department of Licensing and  
14 Regulation shall issue a roofing contracting license under  
15 Subchapter D, Chapter 1251, Occupations Code, as added by this Act,  
16 without an examination for the qualifying party, if the qualifying  
17 party:

18 (1) is, on the effective date of this Act, a certified  
19 roofing contractor in good standing as tested and approved by an  
20 appropriate roofing trade association recognized by the  
21 department;

22 (2) applies to the executive director of the Texas  
23 Department of Licensing and Regulation not later than September 1,  
24 2004;

25 (3) pays the required fee;

26 (4) shows evidence of insurance coverage required  
27 under Section 1251.158, Occupations Code, as added by this Act; and

1           (5) submits a copy of the contractor's certification  
2 that has been attested to by the trade association.

3           (b) The class of a license issued under this section is  
4 based on the classification of certification that is currently held  
5 by the contractor and must correspond as follows:

6           (1) a certified commercial and residential roofing  
7 contractor shall receive a Class I license;

8           (2) a certified commercial roofing contractor shall  
9 receive a Class II license; and

10          (3) a certified residential roofing contractor shall  
11 receive a Class III license.

12          (c) A person who is issued a license under this section and  
13 the qualifying party for that license holder are subject to all  
14 other provisions of Chapter 1251, Occupations Code, as added by  
15 this Act, including provisions for the renewal of the roofing  
16 contractor license.

17          SECTION 3. (a) The Texas Department of Licensing and  
18 Regulation shall issue a license under Chapter 1251, Occupations  
19 Code, as added by this Act, to a qualifying party without requiring  
20 the qualifying party to pass the examination required under Section  
21 1251.155, Occupations Code, as added by this Act, if the qualifying  
22 party:

23           (1) provides proof satisfactory to the department that  
24 the qualifying party has been engaged in the business of roofing  
25 contracting during the five years preceding the date of the license  
26 application; and

27           (2) otherwise satisfies the requirements of Chapter

1 1251, Occupations Code, as added by this Act.

2 (b) A qualifying party who is issued a license under this  
3 section must pass the examination administered under Section  
4 1251.155, Occupations Code, as added by this Act, not later than  
5 September 1, 2005.

6 SECTION 4. In making the initial appointments to the  
7 Roofing Contractors Advisory Board, the executive director of the  
8 Texas Department of Licensing and Regulation shall designate two  
9 members for terms expiring on February 1, 2005, two members for  
10 terms expiring on February 1, 2007, and two members for terms  
11 expiring on February 1, 2009. An initial board member appointed  
12 under Section 1251.103(1), Occupations Code, as added by this Act,  
13 is not required to hold a license until September 1, 2004, but must  
14 be eligible to hold a license under Chapter 1251, Occupations Code,  
15 as added by this Act, as of the time of the initial appointment.

16 SECTION 5. (a) Except as provided by Subsection (b) of this  
17 section, this Act takes effect September 1, 2003.

18 (b) Section 1251.151 and Subchapters E and F, Chapter 1251,  
19 Occupations Code, as added by this Act, take effect September 1,  
20 2004.