By: _____ 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

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

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

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

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

(1) while the person performs roofing contracting:

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

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

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

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

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

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

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

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

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

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

[Sections 1251.003-1251.050 reserved for expansion]

SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

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

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

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

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

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

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

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

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

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

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

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

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

(3) the subject matter of the complaint;

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

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

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

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

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

[Sections 1251.056-1251.100 reserved for expansion]

SUBCHAPTER C. ADVISORY BOARD

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

(1) adopting rules;

(2) enforcing and administering this chapter; and

(3) determining the content of examinations.

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

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

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

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

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

(A) one member must hold a commercial license;

(B) one member must hold a residential license;

and

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

(2) three members must be public representatives.

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

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

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

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

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

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

[Sections 1251.110-1251.150 reserved for expansion]

SUBCHAPTER D. LICENSE REQUIREMENTS

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

contracting without a license issued under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) the examination fee.

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

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

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

(d) The qualifying party may retake the examination.

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

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

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

complete eight hours of continuing education annually.

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

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

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

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

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

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

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

or nonrenewal of the insurance coverage by the insurance carrier.

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

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

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

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

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

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

if the original qualifying party for the license holder:

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

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

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

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

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

[Sections 1251.163-1251.200 reserved for expansion]

SUBCHAPTER E. PROHIBITED ACTIVITIES

Sec. 1251.201. PROPER ROOFING INSTALLATION REQUIRED. (a) In this section, "mechanical integrity" means physical installation of products, systems, or equipment in accordance with their intended purpose and according to industry standards at least as strict as the roofing manufacturers' specifications.

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

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

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

[Sections 1251.204-1251.250 reserved for expansion]

SUBCHAPTER F. PENALTIES AND ENFORCEMENT

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

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

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

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

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

basis of the probation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) pays the required fee;

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

1251, Occupations Code, as added by this Act.

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

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

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

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

for chief clerk use only
Bill or Resolution Number: HB-2793

JOINT AUTHOR AUTHORIZATION

As primary author of HB 2793 I hereby authorize the following joint author(s):
(bill or resolution #)

John Davis
printed name of joint author #1

signature of joint author #1

MAR 18 2003

printed name of joint author #2

signature of joint author #2

printed name of joint author #3

signature of joint author #3

printed name of joint author #4

signature of joint author #4

signature of primary author

3/16/03
date

H.B. No. 2793 By [signature]

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of roofing contractors; providing penalties.

MAR 1 3 2003 Filed with the Chief Clerk

MAR 2 5 2003 Read first time and referred to Committee on Licensing & Administrative Procedures

_____ Reported ___favorably (as amended)
(as substituted)

_____ Sent to Committee on (Calendars)
(Local & Consent Calendars)

_____ Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not voting

_____ Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Engrossed

_____ Sent to Senate

_____
CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

_____ Received from the House

_____ Read and referred to Committee on _____

_____ Reported favorably _____

_____ Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

_____ Ordered not printed

_____ Laid before the Senate

_____ Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
(_____ yeas, _____ nays)

_____ Read second time, _____, and passed to third reading by (unanimous consent)
(a viva voce vote)
(_____ yeas, _____ nays)

_____ Senate and Constitutional 3 Day Rules suspended by a vote of _____ yeas, _____ nays

_____ Read third time, _____, and passed by (a viva voce vote)
(_____ yeas, _____ nays)

_____ Returned to the House

_____
SECRETARY OF THE SENATE

OTHER SENATE ACTION:

_____ Returned from the Senate (as substituted)
(with amendments)

_____ House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House refused to concur in Senate amendments and requested the appointment of a conference committee by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House conferees appointed: _____, Chair; _____,

_____, _____, _____

_____ Senate granted House request. Senate conferees appointed: _____, Chair;

_____, _____, _____, _____

_____ Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)