Passed by the House on April 28, 2009: Yeas 149, Nays 0, 1 present, not voting; that the
House refused to concur in Senate amendments to H.B. No. 2644 on May 29, 2009,
and requested the appointment of a conference committee to consider the differ-
ences between the two houses; the House adopted the conference committee
report on H.B. No. 2644 on May 31, 2009: Yeas 142, Nays 0, 2 present, not voting;
passed by the Senate, with amendments, on May 27, 2009: Yeas 31, Nays 0; at the
request of the House, the Senate appointed a conference committee to consider the
differences between the two houses; the Senate adopted the conference committee
report on H.B. No. 2644 on May 31, 2009: Yeas 31, Nays 0.

Approved June 19, 2009.

Effective September 1, 2009.

CHAPTER 1316

H.B. No. 2667

AN ACT

relating to performance standards for plumbing fixtures sold in this state.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 372.001, Health and Safety Code, is amended to read as follows:

Sec. 372.001. DEFINITIONS. In this chapter:

(1) “Commercial prerinse spray valve” means a handheld device that is designed and
marketed for use with commercial dishwashing and ware washing equipment and that is
used to spray water on dishes, flatware, and other food service items to remove food
residue before the items are cleaned in a dishwasher or ware washer or by hand.

(2) “Commission” means the Texas [Natural Resource Conservation] Commission on
Environmental Quality.

(3) “Executive director” means the executive director of the commission.

(4) “Plumbing fixture” means a device that receives water, waste, or both and
discharges the water, waste, or both into a drainage system. The term includes a kitchen
sink, utility sink, lavatory, bidet, bathtub, shower [a sink faucet, lavatory faucet, faucet
aerator, shower head], urinal, toilet, [flush valve toilet,] or drinking water fountain.

(5) “Plumbing fixture fitting” means a device that controls and directs the flow of water.
The term includes a sink faucet, lavatory faucet, shower head, or bath filler.

(6) “Pressurized flushing device” means a device that contains a valve that:

(A) is attached to a pressurized water supply pipe that is of sufficient size to deliver
water at the necessary rate of flow to ensure flushing when the valve is open; and

(B) opens on actuation to allow water to flow into the fixture at a rate and in a
quantity necessary for the proper operation of the fixture and gradually closes to avoid
water hammer.

(7) “Toilet” means a [toilet or] water closet [except a wall-mounted toilet that
employs a flushometer or flush valve].

(8) “Water closet” means a plumbing fixture that has a water-containing receptor that
receives liquid and solid body waste and, on actuation, conveys the waste through an
exposed integral trap seal into a drainage system.

(5) “Commercial prerinse spray valve” means a handheld device that is designed and
marketed for use with commercial dishwashing and ware washing equipment and that is
used to spray water on dishes, flatware, and other food service items to remove food
residue before the items are cleaned in a dishwasher or ware washer or by hand.

SECTION 2. Section 372.002, Health and Safety Code, is amended by amending Subsec-
tions (b), (c), and (f) and adding Subsections (g) and (h) to read as follows:
(b) The water saving performance standards for a plumbing fixture are those established by the American National Standards Institute or the following standards, whichever are more restrictive:

(1) for a sink or lavatory faucet or a faucet aerator, maximum flow may not exceed 2.2 gallons of water per minute at a pressure of 60 pounds per square inch when tested according to testing procedures adopted by the commission;

(2) for a shower head, maximum flow may not exceed 2.5 gallons of water per minute at a constant pressure over 80 pounds per square inch when tested according to testing procedures adopted by the commission;

(3) for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state before January 1, 2014:
   (A) maximum flow may not exceed an average of one gallon of water per flush when tested according to the hydraulic performance requirements adopted by the commission; and
   (B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 “Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals”;

(4) except as provided by Subsection (g), for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014:
   (A) maximum flow may not exceed an average of 0.5 gallons of water per flush; and
   (B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:
      (i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 “Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals”; or
      (ii) American Society of Mechanical Engineers Standard A112.19.19-2006 “Vitreous China Nonwater Urinals”;

(5) for a toilet sold, offered for sale, or distributed in this state before January 1, 2014:
   (A) maximum flow may not exceed an average of 1.6 gallons of water per flush when tested according to the hydraulic performance requirements adopted by the commission; and
   (B) the toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:
      (i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 “Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals”; and

(6) except as provided by Subsection (h), for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014:
   (A) the toilet must be a dual flush water closet that meets the following standards:
      (i) the average flush volume of two reduced flushes and one full flush may not exceed 1.28 gallons; and
      (ii) the toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:
         (a) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 “Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals”; and
         (b) American Society of Mechanical Engineers Standard A112.19.14-2006 “Six-Liter Water Closets Equipped With a Dual Flushing Device”;
   or
(B) the toilet must be a single flush water closet that meets the following standards:
   (i) the average flush volume may not exceed 1.28 gallons; and
   (ii) the toilet must meet the performance, testing, and labeling requirements
       prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008
       and Canadian Standards Association Standard B45.1-2008 “Vitreous China Plumb-
       ing Fixtures and Hydraulic Requirements for Water Closets and Urinals”;

   (6) for a wall-mounted toilet that employs a flushometer or flush valve, maximum flow
       may not exceed an average of two gallons of water per flushing or the flow rate established
       by the American National Standards Institute for ultra-low flush toilets, whichever is
       lower;

   (7) a drinking water fountain must be self-closing.

(c) The commission shall make and maintain a current list of plumbing fixtures that are
    certified to the commission by the manufacturer or importer to meet the water saving
    performance standards established by Subsection (b). To have a plumbing fixture included
    on the list, a manufacturer or importer must supply to the commission, in the form
    prescribed by the commission:
    (1) the identification and the performance specifications of the plumbing fixture; and
    (2) certified test results from a laboratory accredited by the American National Stan-
        dards Institute verifying that the plumbing fixture meets the water saving performance
        standards established by Subsection (b). [The commission may test a listed fixture to
determine the accuracy of the manufacturer’s or importer’s certification and shall remove
from the list a fixture the commission finds to be inaccurately certified.]

(f) This section does not apply to:
   (1) a plumbing fixture that has been ordered by or is in the inventory of a building
       contractor or a wholesaler or retailer of plumbing fixtures on January 1, 1992;
   (2) a fixture, such as a safety shower or aspirator faucet, that, because of the fixture’s
       specialized function, cannot meet the standards provided by this section;
   (3) a fixture originally installed before January 1, 1992, that is removed and reinstalled
       in the same building on or after that date; [or]
   (4) a fixture imported only for use at the importer’s domicile;
   (5) a nonwater-supplied urinal; or
   (6) a plumbing fixture that has been certified by the United States Environmental
       Protection Agency under the WaterSense Program.

(g) The water saving performance standards for a urinal and the associated flush valve, if
    any, sold, offered for sale, or distributed in this state on or after January 1, 2014, are the
    standards prescribed by Subsection (b)(3) if the urinal was designed for heavy-duty
    commercial applications.

(h) The water saving performance standards for a toilet sold, offered for sale, or distribut-
    ed in this state on or after January 1, 2014, are the standards prescribed by Subsection (b)(5)
    if the toilet is a water closet that has a design not typically found in a residential application
    or that is designed for a specialized application, including a water closet that:
   (1) is mounted on the wall and discharges to the drainage system through the floor;
   (2) is located in a correctional facility, as defined by Section 1.07, Penal Code;
   (3) is used in a bariatric application;
   (4) is used by children at a day-care facility; or
   (5) consists of a non-tank type commercial bowl connected to the plumbing system
       through a pressurized flushing device.

SECTION 3. Chapter 372, Health and Safety Code, is amended by adding Sections
372.0025, 372.0045, and 372.006 to read as follows:

Sec. 372.0025. EXCEPTION: ACTION BY MUNICIPALITY OR COUNTY. The govern-

ing body of a municipality or county by ordinance or order may allow the sale in the
municipality or county of a urinal or toilet that does not comply with Section 372.002(b)(4)

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or (6), respectively, if the governing body finds that to flush a public sewer system located in
the municipality or county in a manner consistent with public health, a greater quantity of
water is required because of the configuration of the drainage systems of buildings located in
the municipality or county or the public sewer system.

Sec. 372.0045. PHASE-IN OF WATER SAVING PERFORMANCE STANDARDS. (a) Notwithstanding Sections
372.002(b)(3) and (5), at least the following percentage of the
models of urinals and of the models of toilets offered for sale by a manufacturer in this state
must meet the requirements of Sections 372.002(b)(4) and (6), respectively:

(1) 50 percent of the models of urinals and of the models of toilets offered for sale on
January 1, 2010;
(2) 67 percent of the models of urinals and of the models of toilets offered for sale on
January 1, 2011;
(3) 75 percent of the models of urinals and of the models of toilets offered for sale on
January 1, 2012; and
(4) 85 percent of the models of urinals and of the models of toilets offered for sale on
January 1, 2013.

(b) Not later than January 31 of each year, a manufacturer that offers urinals or toilets
for sale in this state shall notify the commission in writing of the percentage of the models of
urinals and of the models of toilets offered for sale by the manufacturer in this state that
meet the requirements of Sections 372.002(b)(4) and (6), respectively.

(c) This section expires September 1, 2013.

Sec. 372.006. NONWATER-SUPPLIED URINAL PERFORMANCE STANDARDS. (a) A person may not sell, offer for sale, or distribute in this state a nonwater-supplied
urinal for use in this state unless the nonwater-supplied
urinal:

(1) meets the performance, testing, and labeling requirements prescribed by the following
standards, as applicable:
   (A) American Society of Mechanical Engineers Standard A112.19.19-2006 “Vitreous
       China Nonwater Urinals”; or
   (B) International Association of Plumbing and Mechanical Officials Standard ANSI
       Z124.9-2004 “Plastic Urinal Fixtures”;
(2) provides a trap seal that complies with the building code of the local government in
which the urinal is installed; and
(3) permits the uninhibited flow of waste through the urinal to the sanitary drainage
system.

(b) The manufacturer or importer must submit to the commission certified test results
from a laboratory accredited by the American National Standards Institute verifying that
the nonwater-supplied urinal conforms to the requirements described by Subsection (a)(1).

(c) A person who installs a nonwater-supplied urinal shall install water distribution and
fixture supply piping sized to accommodate a water-supplied urinal to an in-wall point
immediately adjacent to the nonwater-supplied urinal location so that the nonwater-
supplied urinal can be replaced with a water-supplied urinal if desired by the owner or
required by a code enforcement officer.

(d) A person who owns a nonwater-supplied urinal shall clean and maintain the
nonwater-supplied urinal in accordance with the manufacturer’s instructions.

SECTION 4. Section 5.701(q), Water Code, is amended to read as follows:
(q) Notwithstanding any other law, fees collected for deposit to the water resource
management account under the following statutes may be appropriated and used to protect
water resources in this state, including assessment of water quality, reasonably related to the
activities of any of the persons required to pay a fee under:

(1) Subsections (b) and (c), to the extent those fees are collected in connection with water
use or water quality permits;
(2) Subsections (h)–(l);
(3) Section 11.138(g);
(4) Section 11.145;
(5) Section 26.0135(h);
(6) Sections 26.0291, 26.044, and 26.0461; or
(7) Sections 341.041, 366.058, and 366.059, Health and Safety Code;
(8) Section 372.002(d), Health and Safety Code.

SECTION 5. Section 13.506(b), Water Code, is amended to read as follows:

(b) Not later than the first anniversary of the date an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium begins to bill for submetered or allocated water service under Subsection (a), the owner or manager shall:

(1) remove any toilets that exceed a maximum flow of 3.5 gallons of water per flushing; and
(2) install 1.6-gallon toilets that meet the standards prescribed by Section 372.002, Health and Safety Code.

SECTION 6. Sections 372.002(d) and (e) and 372.003(a) and (b), Health and Safety Code, are repealed.

SECTION 7. The change in law made by Section 372.002, Health and Safety Code, as amended by this Act, applies only to a plumbing fixture sold, offered for sale, or distributed in this state on or after September 1, 2009. A plumbing fixture sold, offered for sale, or distributed in this state before that date is governed by the law in effect on the date the sale, offer, or distribution occurred, and that law is continued in effect for that purpose.

SECTION 8. The change in law made by Section 372.006, Health and Safety Code, as added by this Act, applies only to a nonwater-supplied urinal sold, offered for sale, distributed, or installed in this state on or after September 1, 2009. A nonwater-supplied urinal sold, offered for sale, distributed, or installed in this state before that date is governed by the law in effect on the date the sale, offer, distribution, or installation occurred, and that law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 2009.

Passed by the House on April 28, 2009: Yeas 114, Nays 33, 1 present, not voting; passed by the Senate on May 21, 2009: Yeas 31, Nays 0.

Approved June 19, 2009.

Effective September 1, 2009.

CHAPTER 1317

H.B. No. 2774

AN ACT
relating to self-directed and semi-independent status of state financial regulatory agencies and the licensing and regulation of certain persons involved in residential mortgage lending; making an appropriation; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 156.101, Finance Code, is amended by adding Subsection (d) to read as follows:

(d) The commissioner shall participate in the Nationwide Mortgage Licensing System and Registry as provided by Chapter 180.

SECTION 2. Section 156.102, Finance Code, is amended by adding Subsections (a–1) and (b–1) to read as follows:

(a–1) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110–289).