

BILL ANALYSIS

Senate Research Center

C.S.S.B. 305
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The windshield, along with seat belts and airbags, are the primary occupant safety components engineered into today's vehicles to protect the driver and passengers. The windshield is expected to keep occupants inside the passenger compartment relatively safe; to provide structural support to prevent roof crush; and to aid in the deployment of many passenger side airbags. If the windshield separates from the vehicle during an accident, it cannot perform any of these critical functions.

The National Glass Association's Coalition for Auto Glass Safety and Public Awareness (CASPA) commissioned a study, in December of 2004, of vehicle accident and injury statistics maintained by the National Highway Traffic Safety Administration between 2000 and 2003, inclusive. This study showed the following number of fatalities attributed to occupant ejection through the windshield: 666 (2000); 635 (2001); 732 (2002) and 630 (2003). That constitutes 2,663 lives lost during this four-year period. Fatalities attributed to occupant ejection through a door, side glass, or back glass were counted in separate categories and not included in the above numbers.

A second CASPA study is nearing completion that will report the number of persons injured and killed when a vehicle's windshield becomes detached from the vehicle during a rollover accident, allowing the roof to crush vehicle occupants.

The technology exists and the industry's "best practices" have been articulated to ensure that a windshield stays firmly anchored to the vehicle in crashes. The "wild card" in the safe windshield replacement equation is the training, knowledge, and commitment to excellence of the automobile glass installer. Currently, Texas has no requirements relative to technician training, knowledge testing, certification, or the mastery of technological innovation (technician recertification).

C.S.S.B. 305 is intended to protect public safety and provide a safer environment for the consumer by requiring and enforcing the licensing and certification of glaziers and automobile glass technicians.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Glass Technicians Board of Examiners in SECTION 1 (Sections 1306.101, 1306.102, 1306.105, 1306.202, 1306.204, 1306.257, 1306.303, 1306.305, 1306.307, 1306.352, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 8, Occupations Code, by adding Chapter 1306, as follows:

CHAPTER 1306. GLASS TECHNICIANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1306.001. SHORT TITLE. Authorizes this chapter to be cited as the Glass Technicians License Act.

Sec. 1306.002. DEFINITIONS. Defines "automotive glass work," "board," "glazing," "licensed automotive glass repair technician," "licensed automotive glass replacement technician," "licensed glazier," and "trainee."

Sec.1306.003. EXEMPTIONS. Sets forth certain persons who are exempt from licensing under this chapter.

Sec. 1306.004. APPLICATION OF SUNSET ACT. Provides that the Glass Technicians Board of Examiners (board) is subject to Chapter 325, Sunset Law, Government Code, and is abolished September 1, 2017, unless continued in existence as provided by that chapter.

[Reserves Sections 1306.005-1306.050 for expansion.]

SUBCHAPTER B. GLASS TECHNICIANS BOARD OF EXAMINERS

Sections 1306.051 through 1306.061 set forth standard Sunset Advisory Commission language regarding the board, including:

Sec.1306.051. BOARD; MEMBERSHIP.

Sec. 1306.052. MEMBER ELIGIBILITY.

Sec. 1306.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

Sec. 1306.054. TERMS; VACANCIES.

Sec. 1306.055. PRESIDING OFFICER.

Sec. 1306.056. MEETINGS; OFFICIAL RECORD.

Sec. 1306.057. GROUNDS FOR REMOVAL.

Sec. 1306.058. TRAINING.

Sec. 1306.059. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION.

Sec. 1306.060. REIMBURSEMENT.

Sec. 1306.061. APPLICATION OF OPEN MEETINGS, OPEN RECORDS, AND ADMINISTRATIVE PROCEDURE LAWS.

[Reserves Sections 1306.062-1306.100 for expansion.]

SUBCHAPTER C. BOARD POWERS AND DUTIES

Sec. 1306.101. RULES. Requires the board to adopt rules consistent with this chapter for the administration of this chapter and the operation of the board.

Sec. 1306.102. GENERAL POWERS AND DUTIES. Sets forth the general powers and duties of the board.

Sec. 1306.103. FEES. Requires the board to set and collect application, license, renewal, and other necessary fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing this chapter.

Sec. 1306.104. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. Prohibits the board from adopting rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or

deceptive practices by that person. Sets forth certain prohibitions in the board's attempts to restrict said deceptive practices.

Sec. 1306.105. **RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.** Requires the board to adopt rules necessary to comply with Chapter 53 (Consequences of Criminal Conviction). Requires the board, in its rules under this section, to list the specific offenses for which a conviction would constitute grounds for the board to take action under Section 53.021 (Authority to Revoke, Suspend, or Deny License).

Sec. 1306.106. **SUBPOENA.** Authorizes the board to request and, if necessary, compel by subpoena the attendance of a witness for examination under oath and the production for inspection and copying of records and other evidence relevant to the investigation of an alleged violation of this chapter. Authorizes the board, if a person fails to comply with a subpoena, through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing by the board may be held. Requires the court to order a person to comply with the subpoena if the court determines that good cause exists for issuing such.

Sec. 1306.107. **USE OF TECHNOLOGY.** Requires the board to implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. Requires that policy to ensure that the public is able to interact with the board on the Internet.

Sec. 1306.108. **NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY.** Requires the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of board rules and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution For Use By Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction. Requires the board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. Requires the board to designate a trained person to coordinate the implementation of policy adopted under Subsection (a), serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by the board.

Sec. 1306.109. **COMMITTEES.** Authorizes the board to appoint committees that it considers necessary to carry out its duties.

Sec. 1306.110. **ANNUAL REPORT.** Requires the board to file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all money received and disbursed by the board during the preceding fiscal year. Requires the annual report to be in the form and be reported in the time provided by the General Appropriations Act.

[Reserves Sections 1306.111-1306.150 for expansion.]

SUBCHAPTER D. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 1306.151. **EXECUTIVE DIRECTOR.** Requires the board to employ an executive director. Provides that the executive director is the executive head of the board and performs its administrative duties. Requires the board to set the compensation of the executive director.

Sec. 1306.152. **PERSONNEL.** Authorizes the executive director to employ personnel as necessary to implement this chapter.

Sec. 1306.153. **EQUAL EMPLOYMENT OPPORTUNITY POLICY.** Requires the executive director or executive director's designee to prepare and maintain a written

policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. Provides specific information which must be included in the policy statement. Requires that the policy statement be updated annually, be reviewed by the civil rights division of the Texas Workforce Commission (commission), and be filed with the governor's office.

Sec. 1306.154. STATE EMPLOYEE INCENTIVE PROGRAM. Requires the executive director or the executive director's designee to provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program.

Sec. 1306.155. DIVISION OF RESPONSIBILITIES. Requires the board to develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

[Reserves Sections 1306.156-1306.200 for expansion.]

SUBCHAPTER E. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1306.201. PUBLIC INTEREST INFORMATION. Requires the board to prepare and disseminate consumer information that describes the regulatory functions of the board and the procedures by which consumer complaints are filed with and resolved by the board. Requires the board to make this information available to the public and the appropriate state agencies.

Sec. 1306.202. COMPLAINTS. Requires the board, by rule, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. Sets forth ways in which the board may provide for such notice and requires the board to list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a glass technician.

Sec. 1306.203. RECORDS OF COMPLAINTS. Requires the board to maintain a system to promptly and efficiently act on complaints filed with the board. Requires specific information to be maintained by the board. Requires the board to make information available describing its procedures for complaint investigation and resolution and to periodically notify the parties of the status of the complaint until final disposition of the complaint.

Sec. 1306.204. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. Requires the board to adopt specific rules concerning the investigation of a complaint filed with the board.

Sec. 1306.205. DISPOSITION OF COMPLAINT. Requires the board to dispose of each complaint in a timely manner and establish a schedule for conducting each phase of the complaint that is under the control of the board within thirty days of receiving the complaint. Requires the board to notify each party of the projected time requirements for pursuing the complaint and of any change in the schedule within seven days of making that change. Requires the executive director to notify the board of a complaint that is not resolved within the time set by the board for resolving the complaint.

Sec. 1306.206. PUBLIC PARTICIPATION. Requires the board to develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction. Requires the board to prepare and maintain a written plan that describes how a non-English speaking person may be provided reasonable access to the board's programs.

Sec. 1306.207. INFORMAL SETTLEMENT CONFERENCE. Requires the board to establish guidelines for an informal settlement conference related to a complaint filed with the board.

[Reserves Sections 1306.208-1306.250 for expansion.]

SUBCHAPTER F. LICENSING REQUIREMENTS

Sec. 1306.251. **LICENSE REQUIRED.** Prohibits a person from practicing automotive glass work or glazing, using the title, or representing or implying that the person has the title "licensed automotive glass replacement technician" or "licensed glazier" unless that person holds a license issued by the board under this chapter. Provides certain exceptions and maintains that a license under this chapter is nontransferable.

Sec. 1306.252. **ELIGIBILITY REQUIREMENTS.** Sets forth specific requirements for applicants for an automotive glass replacement technician license, an automotive glass repair technician license, and a glazier license, including completion of certain training courses, completion of specific quantity of repairs, and working as a trainee in the appropriate field for a specific time period.

Sec. 1306.253. **EXAMINATION.** Requires an examination for the issuance of a license under this chapter to test entry level knowledge of automotive glass replacement work, automotive glass repair work, or glazing, including U.S. Occupational Safety and Health Administration (OSHA) standards and industry safety standards such as the Auto Glass Relacement Safety Standard developed by the American National Standards Institute.

Sec. 1306.254. **EXAMINATION RESULTS.** Requires the board to notify each applicant of the results of a licensing examination within thirty days of the date the board receives the results.

Sec. 1306.255. **REEXAMINATION.** Prohibits an applicant who fails to pass a required examination from applying to retake the examination until one month after the date the applicant was notified of the results. Prohibits an applicant who fails to pass the required examination three times from applying to retake the examination until the applicant has successfully completed additional training required by the board and until it has been at least 180 days since the applicant was notified of the results of the most recent examination.

Sec. 1306.256. **PROVISIONAL LICENSE.** Authorizes the board to issue a provisional license to an applicant who holds a license from another state that has substantially equivalent license requirements to those of this state, submits the required information to the board, and pays the required fees.

Sec. 1306.257. **LICENSE EXPIRATION DATE.** Provides that an automotive glass replacement technician license and a glazier license issued under this chapter are valid for three years and may be renewed in accordance with this chapter and board rule. Provides that an automotive glass repair technician license is valid for five years and may be renewed in accordance with this chapter and board rules. Authorizes the board, by rule, to adopt a system under which licenses expire on various dates during the year. Provides that, for a year in which the license expiration date is changed, license fees payable on January 1 should be prorated on a monthly basis so that each license holder pays only the portion of the fee that is allocable to the number of months during which the license is valid and on renewal of the license on the new expiration date, the total license renewal fee is payable.

Sec. 1306.258. **LICENSE RENEWAL.** Authorizes a person to renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license and requires the board to send written notice of an impending license expiration, at least thirty days before the expiration, to the person and the person's last known address according to the board's records. Authorizes a person whose license has been expired for ninety days or less to renew the license by paying the required renewal fee to the board and an additional fee equal to one-half of the examination fee for the license. Authorizes a person whose license has been expired for more than ninety days but less

than one year to renew the license by paying all unpaid renewal fees to the board and an additional fee equal to the examination fee for the license.

[Reserves Sections 1306.259-1306.300 for expansion.]

SUBCHAPTER G. DISCIPLINARY PROCEDURES

Sec. 1306.301. **GROUND FOR DISCIPLINARY ACTION.** Requires the board to revoke, suspend, or refuse to renew a license or reprimand a license holder if the license holder commits certain actions. Authorizes the board to place on probation a person whose license has been suspended and, if a suspended license has been probated, to impose certain requirements and restrictions on that person.

Sec. 1306.302. **HEARING.** Entitles a person to a hearing before the board if the board proposes to revoke or suspend a person's license. Authorizes a member of the board or employee of the department to communicate directly or indirectly with a party to the proceeding or with the party's representative only if notice and an opportunity to participate are given to each party.

Sec. 1306.303. **SCHEDULE OF SANCTIONS.** Requires the board, by rule, to adopt a broad schedule of sanctions for violations under this chapter and requires the State Office of Administrative Hearings to use the schedule for any sanction imposed under this chapter as the result of a hearing conducted by that office.

Sec. 1306.304. **TEMPORARY LICENSE SUSPENSION.** (a) Requires the board or a three-member committee of board members designated by the board to temporarily suspend the license of a license holder if the board or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) Authorizes the board or committee to temporarily suspend a license without notice or hearing under this section if action is taken to initiate proceedings for hearing before the board or the State Office of Administrative Hearings simultaneously with the temporary suspension or hearing is held as soon as practicable under this chapter and Chapter 2001 (Administrative Procedure), Government Code.

(c) Requires the board or the State Office of Administrative Hearings to hold a preliminary hearing within fourteen days of the temporary suspension to determine if there is a probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held within sixty days of the temporary suspension.

Sec. 1306.305. **INFORMAL PROCEDURES.** Requires the board, by rule, to adopt procedures governing informal disposition of a contested case under Section 2001.054 (Licenses), Government Code, and an informal proceeding held in compliance with Section 2001.054, Government Code. Requires the rules adopted under this section to provide the complainant and the license holder an opportunity to be heard and require the presence of a representative of the attorney general or the Texas Department of Licensing and Regulation's legal counsel to advise the board or the department's employees.

Sec. 1306.306. **ADMINISTRATIVE PROCEDURE.** Provides that a proceeding to suspend or revoke a license under this subchapter is governed by Chapter 2001, Government Code.

Sec. 1306.307. **MONITORING OF LICENSE HOLDER.** Requires the board, by rule, to develop a system for monitoring a license holder's compliance with this chapter. Requires rules adopted under this section to include procedures to monitor for compliance a license holder who is ordered by the board to perform certain acts and identify and monitor license holders who represent a risk to the public.

Sec. 1306.308. REFUND. Authorizes the board to order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter. Prohibits the amount of the refund ordered from exceeding the amount the consumer paid the license holder for a service regulated by this chapter and prohibits the board from requiring payment of other damages or estimate harm in a refund order.

[Reserves Sections 1306.309-1306.350 for expansion.]

SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 1306.351. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the board to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 1306.352. AMOUNT OF ADMINISTRATIVE PENALTY. Prohibits the amount of the administrative penalty from being less than fifty dollars and more than five thousand dollars for each violation and provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty, with the amount being determined by several specific factors as provided by this section. Requires the board, by rule, to adopt an administrative penalty schedule based on those factors for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation and to provide this schedule to the public upon request.

Sec. 1306.353. REPORT AND NOTICE OF VIOLATION AND PENALTY. Authorizes the board, upon determining that a violation occurred, to issue a report stating the facts on which the determination is based and the board's recommendation on the imposition and amount of an administrative penalty. Requires the board, within fourteen days of issuing the report, to give written notice of the report to the person which must include a brief summary of the alleged violation, state the amount of the recommended administrative penalty, and inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 1306.354. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, in writing and within ten days of receiving the notice, to accept the determination and recommended administrative penalty of the board or request a hearing on the occurrence of the violation, the amount of the penalty, or both. Requires the board, if the person accepts the determination and recommended penalty, to approve the determination and impose the recommended penalty.

Sec. 1306.355. HEARING. Requires the board, if the person requests a hearing or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person. Requires an administrative law judge of the State Office of Administrative Hearings to hold the hearing, make findings of fact and conclusions of law, and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 1306.356. DECISION BY BOARD. Authorizes the board, based on the findings of fact, conclusions of law, and proposal for decision, to determine that a violation occurred and impose an administrative penalty or a violation did not occur. Requires the notice of the board's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 1306.357. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person, within thirty days of the board's order becoming final, to pay the administrative penalty or file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both. Authorizes a person who files a petition for judicial review, within that thirty day period, to stay enforcement of the penalty by performing certain actions or request the court to stay enforcement of the penalty by performing certain actions. Authorizes the board, upon receiving a copy of an affidavit under this section, to file with the court, within five days of receiving the copy, a contest to the

affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 1306.358. COLLECTION OF PENALTY. Authorizes the administrative penalty to be collected if the person does not pay it and the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

Sec. 1306.359. DETERMINATION BY COURT. Authorizes the court, if it sustains the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty. Requires the court, if it does not sustain the finding that a violation occurred, to order that a penalty is not owed.

Sec. 1306.360. REMITTANCE OF PENALTY AND INTEREST. Requires the court, if a person paid the administrative penalty and if the amount is reduced or the penalty is not upheld by the court, to order upon final judgment that the appropriate amount plus accrued interest be remitted to the person. Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank and requires it to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 1306.361. RELEASE OF BOND. Requires the court, if the person gave a supersedeas bond and the penalty is not upheld by the court, to order upon final judgment the release of the bond or, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 1306.362. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to impose an administrative penalty is considered to be a contested case under Chapter 2001, Government Code.

[Reserves Sections 1306.363-1306.400 for expansion.]

SUBCHAPTER I. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1306.401. INJUNCTIVE RELIEF. Authorizes the board to commence an action in its own name for an injunction to restrain a violation of this chapter and provides that an action under this section is in addition to any other action authorized by law. Requires the attorney general or the appropriate county or district attorney to represent the board in an action under this section.

Sec. 1306.402. CEASE AND DESIST ORDER. Authorizes the board, after notice and opportunity for a hearing, to issue a cease and desist order to a person who is not licensed under this chapter and is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to automotive glass work or glazing to prohibit that person from engaging in the activity. Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

SECTION 2. Requires the governor, within ninety days of the effective date of this Act, to make appointments to the board and sets forth requirements in making such appointments. Provides that, for the initial members of the board, the licensing requirements under this Act are not effective until September 1, 2006.

SECTION 3. Requires the board, by May 1, 2006, to adopt rules, procedures, and fees under this Act and to contract with a nationally recognized testing organization for the administration of the license examinations required by this Act.

SECTION 4. Requires the board to issue a license to a qualified applicant under this section who applies for the license by June 1, 2006, submits to the board the required information, holds a

current auto glass repair, auto glass replacement, or glass installer certificate issued by the National Glass Association or other certification approved by the board, and pays the application fee. Requires an applicant for a license under this section to be a certified automotive glass replacement technician, automotive glass repair technician, or glazier on the effective date of this Act.

SECTION 5. (a) Effective date: September 1, 2005, except as provided by Subsection (b) of this section.

(b) Provides that Section 1306.251, Occupations Code, and Subchapters G, H, and I, Chapter 1306, Occupations Code, as added by this Act, take effect September 1, 2006.