

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 311  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas property owners face some of the highest homeowners insurance rates in the nation, in large part because of the unique weather risks faced by the state. Hurricanes, hailstorms, and wildfires continue to be major cost drivers, prevalent in the panhandle, north Texas, the Dallas-Fort Worth metroplex, central Texas, and along the Gulf Coast. One of the most effective steps that can be taken to mitigate damage from wind, hail, and fire events is the use of appropriate roofing materials that are installed properly and designed to minimize losses.

A catastrophic weather event, such as Hurricane Ike in 2008, the Texas wildfires of 2011, or the 2012 Dallas-area hailstorms and tornados, often significantly impacts roofs and insurance rates reflect this high risk of loss. After a significant weather event, it is not uncommon to see a large influx of roofing contractors into an affected area offering to replace or make repairs to damaged roofs. Unfortunately, some of these contractors may be inexperienced, untrained, or unable or unwilling to perform quality work. Some are unscrupulous, collecting money before completing the work and never returning to finish the job. Moreover, some roofing contractors may not be appropriately bonded or insured, leaving a homeowner without any recourse for work that is incomplete or improperly installed. Additionally, poor workmanship can exacerbate the potential for damage, causing more severe and frequent property claims for homeowners, which then leads to higher insurance rates.

To minimize these concerns, many states require roofing contractors to be licensed. To obtain a license, a contractor may be required to obtain training, bonding, passage of a licensing exam, or continuing education. Implementation of a licensing program in Texas could provide some assurance that a roofing contractor is knowledgeable about and experienced in the trade, as well as bonded or insured in the event that the contractor fails to complete a job.

S.B. 311 establishes a roofing contractor licensing program at the Texas Department of Licensing and Regulation (TDLR). Roofing contractors installing replacement roofs in Texas would be required to pass a licensing examination, appropriately display license information, maintain sufficient insurance, and pass a criminal background check. The bill also provides TDLR with the authority to investigate complaints, pursue administrative and criminal penalties against bad actors, and terminate a license if appropriate. S.B. 311 seeks to ensure that consumers receive quality workmanship to address the state's high homeowners insurance premiums.

As proposed, S.B. 311 amends current law relating to the licensing and regulation of roofing contractors, authorizes a fee, and provides penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1 (Sections 1307.102 and 1307.152, Occupations Code) and SECTION 2 of this bill.

Rulemaking authority is expressly granted to the Texas Department of Licensing and Regulation (TDLR) and the executive director of TDLR in SECTION 2 of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 8, Occupations Code, by adding Chapter 1307, as follows:

### **CHAPTER 1307. ROOFING CONTRACTORS**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1307.001. **SHORT TITLE.** Provides that this chapter may be cited as the Roofing Contractor Consumer Protection Act.

Sec. 1307.002. **DEFINITIONS.** Defines "advisory board," "commission," "controlling person," "department," "executive director," "roofing contractor," "roofing product," and "roofing services."

Sec. 1307.003. **EXEMPTIONS.** (a) Provides that this chapter does not apply to:

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

(2) an authorized employee or representative of the United States government, this state, or any county, municipality, or other political subdivision of this state acting in an official capacity;

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

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

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

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

Sec. 1307.004. **CONSTRUCTION OF CHAPTER; CONFLICT WITH OTHER LAW.** Requires that this chapter be construed to be in addition to any required licensure of persons in this state. Provides that this chapter is not intended to conflict with or affect the authority of any state or local agency, board, or department that administers or enforces any law or ordinance or that establishes, administers, or enforces a policy, rule, qualification, or standard for a trade or profession.

[Reserves Sections 1307.005-1307.050 for expansion.]

#### **SUBCHAPTER B. ADVISORY BOARD**

Sec. 1307.051. **ROOFING CONTRACTORS ADVISORY BOARD.** (a) Provides that the roofing contractors advisory board (advisory board) consists of five members appointed by the presiding officer of the Texas Commission of Licensing and Regulation (TCLR) with the approval of TCLR as follows:

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

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

(3) one public member.

(b) Authorizes TCLR, for purposes of Subsection (a)(2), to appoint a roofing contractor who is not licensed under this chapter if the contractor has fulfilled the requirements for the issuance of a license and has submitted a complete application to the Texas Department of Licensing and Regulation (TDLR). Requires TCLR to remove from the advisory board a roofing contractor appointed under this subsection if the contractor does not receive a license before the 31st day after the date the contractor is appointed to the advisory board.

(c) Requires appointments to the advisory board to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(d) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the composition or duration of the advisory board.

Sec. 1307.052. POWERS AND DUTIES OF ADVISORY BOARD. Requires the advisory board to provide advice and recommendations to TCLR on the adoption of rules governing the repair of a roofing system.

Sec. 1307.053. COMPENSATION. Prohibits advisory board members from receiving compensation for serving as a member.

[Reserves Sections 1307.054-1307.100 for expansion.]

#### SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

Sec. 1307.101. GENERAL POWERS AND DUTIES. Authorizes TDLR, the executive director of TDLR (executive director), or TCLR, as appropriate, to take action as necessary to administer and enforce this chapter.

Sec. 1307.102. RULES. Requires TCLR to adopt rules as necessary to administer this chapter, including rules relating to licensing roofing contractors and establishing standards of conduct for license holders, including the display of a license by a license holder; investigating and resolving complaints filed under this chapter; establishing the minimum financial responsibility requirements for license holders; administering a licensing examination; and prohibiting false, misleading, or deceptive advertising practices by license holders.

Sec. 1307.103. CRIMINAL HISTORY BACKGROUND CHECK. Authorizes TDLR to obtain criminal history record information under Subchapter F (Criminal History Record Information), Chapter 411, Government Code, for an applicant for or holder of a license under this chapter. Provides that for purposes of Section 411.093 (Access to Criminal History Record Information: Texas Department of Licensing and Regulation), Government Code, an applicant for or holder of a license under this chapter includes a controlling person of an applicant or holder.

Sec. 1307.104. LICENSE HOLDER DATABASE. Requires TCLR to make available on its Internet website a publicly accessible list of licensed roofing contractors. Requires that the list contain the following for each licensed roofing contractor: contact information for the contractor; a statement indicating whether the contractor is licensed in good standing; a summary of any disciplinary action taken by TCLR against the contractor; and any other information that TCLR determines is relevant.

[Reserves Sections 1307.105-1307.150 for expansion.]

#### SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 1307.151. LICENSE REQUIRED. (a) Prohibits a person from acting as or offering to act as a roofing contractor unless the person holds a license issued under this chapter.

(b) Provides that a license is valid only with respect to the person or company named on the license, and authorizes the license holder to operate one roofing contractor business for each license.

(c) Provides that a license issued under this chapter is not transferable or assignable.

Sec. 1307.152. APPLICATION; APPLICATION FEE. (a) Requires an applicant for a license to apply to TDLR on a form prescribed by the executive director and under rules adopted by TCLR; submit with the application a nonrefundable application fee in an amount set by TCLR; and pass an examination adopted by TDLR.

(b) Requires TCLR by rule to specify the information that must be included on an application submitted to TDLR. Requires that the rules require each application to include the name and address of, and an authorization for TDLR to obtain criminal history record information for, each controlling person and evidence that the applicant satisfies the minimum financial responsibility requirements established by TCLR rule.

Sec. 1307.153. TERM OF LICENSE. Provides that a license issued under this chapter is valid for one year.

Sec. 1307.154. EXAMINATION. (a) Requires that an examination required by this chapter be conducted at locations throughout the state.

(b) Requires TDLR to accept, develop, or contract for the examination required by this chapter, including the administration of the examination. Requires each examination to test the knowledge of the applicant about basic contracting principles and roofing services.

(c) Requires the executive director to determine uniform standards for acceptable performance on an examination.

[Reserves Sections 1307.155-1307.200 for expansion.]

#### SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

Sec. 1307.201. DISPLAY OF LICENSE INFORMATION. (a) Requires a roofing contractor to display the contractor's business name and the number of the license issued by the executive director on each vehicle owned by the contractor and used in providing roofing services.

(b) Requires that the information required to be displayed be printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface and affixed in conspicuous places on both sides of the vehicle.

Sec. 1307.202. COMPLIANCE WITH LOCAL REQUIREMENTS. Requires a roofing contractor to comply with local ordinances and regulations relating to standards and permits for roofing services.

Sec. 1307.203. OBTAINING A LICENSE UNDER ANOTHER NAME PROHIBITED. (a) Prohibits a person from attempting to obtain a license under any other name during any period during which the person's roofing contractor license is suspended or revoked.

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

Sec. 1307.204. NOTIFICATION OF CHANGE OF INFORMATION. Requires a roofing contractor to timely notify TDLR of any change to the name, address, business entity, liability coverage, or legal service agent of the contractor.

Sec. 1307.205. PROHIBITED ACTS. Prohibits a roofing contractor providing roofing services to be paid by a consumer from the proceeds of the consumer's property or casualty insurance policy from paying or rebating or promising to pay or rebate all or part of any applicable insurance deductible.

Sec. 1307.206. CONFLICTS OF INTEREST PROHIBITED. (a) Defines, in this section, "public insurance adjuster."

(b) Prohibits a roofing contractor from acting as a public insurance adjuster for any property for which the contractor is providing roofing services, regardless of whether the contractor holds a license under Chapter 4102 (Public Insurance Adjuster), Insurance Code.

(c) Provides that a roofing contractor is subject to the prohibitions under Section 4102.158 (Conflicts of Interest Prohibited), Insurance Code.

[Reserves Sections 1307.207-1307.250 for expansion.]

#### SUBCHAPTER F. ENFORCEMENT

Sec. 1307.251. INVESTIGATION OF COMPLAINTS. (a) Requires TDLR to investigate any complaint alleging that a violation of this chapter or a rule adopted under this chapter has occurred.

(b) Requires that a complaint be filed in a manner prescribed by TDLR.

Sec. 1307.252. ADMINISTRATIVE PENALTY. Authorizes TCLR or the executive director to impose an administrative penalty on a person under Subchapter F (Administrative Penalty), Chapter 51, regardless of whether the person holds a license under this chapter, if the person violates this chapter or a rule adopted under this chapter or a rule or order of TCLR or executive director.

Sec. 1307.253. SANCTIONS. Authorizes TCLR to impose sanctions as provided by Section 51.353 (License Denial; Administrative Sanctions).

Sec. 1307.254. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person violates the licensing requirements of this chapter or performs roofing services without a license required by this chapter.

(b) Provides that an offense under this section is a Class C misdemeanor.

SECTION 2. Requires, not later than February 1, 2014, TCLR, TDLR, and the executive director of TDLR, as appropriate, to adopt rules and forms necessary to implement Chapter 1307, Occupations Code, as added by this Act.

SECTION 3. Requires TDLR to issue a roofing contractor license under Chapter 1307, Occupations Code, as added by this Act, to an applicant who applies for a license under this section not later than June 1, 2014; submits to TDLR the information required by rule; has at least 10 years of experience performing roofing services as defined by Section 1307.002, Occupations Code, as added by this Act; and pays the application fee established by TCLR.

SECTION 4. (a) Effective date, this section, except as provided by Subsection (b) of this section: September 1, 2013.

(b) Effective date, Section 1307.151, Occupations Code, and Subchapters E and F, Chapter 1307, Occupations Code, as added by this Act: September 1, 2014.