

BILL ANALYSIS

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S.B. 1274
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Hurricane Ike and smaller yet costly hailstorms have exposed an issue previously discussed but not acted upon by members of the legislature relating to the roofing industry. Under current Texas law, there is no authorization for any agency to help assure consumer protections against actions by a small number of roofers, out-of-state roofers in particular. These problems have included: consumers being required to pay for services that are not rendered by the roofer, after which the roofer cannot be contacted; roofers deliberately causing damage to structures to attempt to gain authorization for service; roofers offering to pay or paying all or a portion of insurance deductibles; and roofers acting as claims adjusters without proper credentials.

S.B. 1274 would address these issues and help provide recourse for consumers by requiring basic registration of those providing roofing services with the Texas Department of Licensing and Regulation (TDLR). Information required for registration would include an address and other essential contact data to help assure that a consumer is able to follow-up with the roofing service provider as needed. There would also be specific prohibitions on types of consumer fraud and any attempt to pay all or part of a consumer's insurance deductible. TDLR would be authorized to adopt rules to implement the legislation.

These provisions in tandem will provide an avenue of recourse to Texas consumers and help control the costs for homeowners stemming from the actions of certain roofers, especially those that sweep into Texas following storms. Other states have recently enacted similar provisions to protect consumers.

As proposed, S.B. 1274 amends current law relating to the registration of roofing contractors and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive director of the Texas Department of Licensing and Regulation in SECTION 1 (Section 1307.201 and 1307.203, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1 (Sections 1307.052, 1307.103, 1307.151, 1307.202, and 1307.203, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Licensing and Regulation in SECTION 1 (Section 1307.102, Occupations Code) 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. Authorizes this chapter to be cited as the Roofing Contractor Registration Act.

Sec. 1307.002. DEFINITIONS. Defines "certificate," "commission," "department," "executive director," "roofing contractor," and "roofing services."

Sec. 1307.003. EXEMPTIONS. Provides that this chapter does not apply to:

(1) an actual owner of residential or farm property who physically performs or has employees perform roofing services on the owner's dwelling or on another structure located on the person's residential or farm 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;

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

(4) an employee of a roofing contractor who holds a certificate issued under this chapter.

Sec. 1307.004. CONSTRUCTION OF CHAPTER. Requires that this chapter be construed to be in addition to any required licensure of persons in this state, and prohibits this chapter from being construed as conflicting with or affecting 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. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

Sec. 1307.051. GENERAL POWERS AND DUTIES. Authorizes the Texas Department of Licensing and Regulation (TDLR), the executive director of TDLR (executive director), or the Texas Commission of Licensing and Regulation (TCLR), as appropriate, to take action as necessary to administer and enforce this chapter.

Sec. 1307.052. RULES. Requires TCLR to adopt rules for registering roofing contractors and standards of conduct for registrants under this chapter.

Sec. 1307.053. FEES. Requires TCLR to establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Sec. 1307.054. 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 a certificate under this chapter.

Sec. 1307.055. VERIFICATION. Requires TDLR, on request, to verify a roofing contractor registration number to a city, county, or other government enforcement official. Requires TDLR to establish a verification system for certificates maintained by TDLR.

[Reserves Sections 1307.056-1307.100 for expansion.]

SUBCHAPTER C. REGISTRATION REQUIREMENTS

Sec. 1307.101. REGISTRATION REQUIRED. (a) Prohibits a person, except as provided by Section 1307.003, from performing or offering to perform roofing services unless the person holds a certificate issued under this chapter.

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

Sec. 1307.102. APPLICATION; ELIGIBILITY. Requires an applicant for a certificate under this chapter to:

(1) submit to TDLR a completed application on a form prescribed by the executive director;

(2) submit to TDLR any other information required by the executive director or by rule;

(3) demonstrate the applicant's honesty, trustworthiness, and integrity;

(4) submit sufficient information and an authorization for TDLR to obtain criminal history record information;

(5) submit proof of general liability insurance in an amount not less than \$300,000;

(6) unless the applicant has elected not to obtain workers' compensation coverage, as provided by Subchapter A (Coverage Election; Security Procedures), Chapter 406, Labor Code, and provided notice under Section 406.004 (Employer Notice to Division), Labor Code, submit proof that the applicant maintains workers' compensation coverage for the contractor's employees through an insurance company authorized by the Texas Department of Insurance to engage in the business of insurance in this state or through self-insurance; and

(7) pay any required application fee.

Sec. 1307.103. REGISTRATION RENEWAL. (a) Provides that a certificate issued under this chapter is valid for one year. Authorizes TDLR to adopt a system under which certificates expire at different times during the year.

(b) Requires TDLR by rule to adopt requirements to renew a certificate issued under this chapter.

[Reserves Sections 1307.104-1307.150 for expansion.]

SUBCHAPTER D. PRACTICE BY CERTIFICATE HOLDER

Sec. 1307.151. DISPLAY OF CERTIFICATE INFORMATION. (a) Requires a roofing contractor to display the contractor's business name and the number of the certificate issued by the executive director on each vehicle used by the contractor 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 permanently affixed in conspicuous places on both sides of the vehicle.

(c) Authorizes TDLR to develop rules for the display of the certificate number on contracts and other documents used to solicit and conduct roofing services in this state.

Sec. 1307.152. USE OF CERTIFICATE. (a) Provides that a roofing contractor's certificate number:

(1) is required to be valid and in good standing at the time of soliciting a project and during subsequent job performance;

(2) is required to be provided when applying for a permit issued by the state or any political subdivision of the state for commercial or residential roofing services or projects; and

(3) is prohibited from being shared or used by any other individual or business entity, except that a business entity or other group may be granted a single roofing registration certificate number for use by designated roofing contractors acting as agents for the business entity if the application for registration contains sufficient information on each member, partner, officer, and agent of the entity, and TDLR issued a single certificate number to those persons as a single business entity.

(b) Requires the contractor, at the time of any change to the name, address, business entity, or legal service agent of a roofing contractor, to notify TDLR.

Sec. 1307.153. COMPLIANCE WITH PERMIT REQUIREMENTS. Requires a roofing contractor to comply with state laws and local ordinances and regulations relating to standards and permits for roofing services and projects.

Sec. 1307.154. OBTAINING A CERTIFICATE UNDER ANOTHER NAME PROHIBITED. (a) Prohibits a person from attempting to obtain a certificate under any other name during any period during which the person's roofing contractor registration is suspended or revoked.

(b) Provides that Subsection (a) applies to any member, partner, officer, or agent of a business entity or other group whose certificate is suspended or revoked.

Sec. 1307.155. INSURANCE CLAIMS FOR RESIDENTIAL ROOFING GOODS AND SERVICES; PAYMENT OR REBATE OF INSURANCE DEDUCTIBLE. Prohibits a registered roofing contractor providing residential roofing services to be paid by an insured from the proceeds of a property or casualty insurance policy from advertising or promising to pay or rebate all or part of any applicable insurance deductible.

[Reserves Sections 1307.156-1307.200 for expansion.]

SUBCHAPTER E. ENFORCEMENT

Sec. 1307.201. DENIAL OF LICENSE; ADMINISTRATIVE SANCTIONS. Authorizes TDLR to deny an application for a certificate or impose an administrative sanction under Section 51.353 if the applicant or, if the applicant is not an individual, a partner, principal, officer, or general manager of the applicant has:

(1) before the date of the application, a criminal conviction or has pleaded guilty or no contest to an offense for a felony, or a misdemeanor punishable by confinement in jail or by a fine in an amount that exceeds \$500;

(2) violated this chapter or a rule or order of TDLR or the executive director, including an order for sanctions or administrative penalties; or

(3) knowingly submitted false or incomplete information on the application.

Sec. 1307.202. INVESTIGATION OF COMPLAINTS. (a) Requires TDLR to investigate any complaint filed with TDLR alleging that a person has:

- (1) violated this chapter or a rule adopted under this chapter;
- (2) abandoned a roofing contract without legal excuse after a deposit of money or other consideration has been paid;
- (3) misused money or property entrusted to a roofing contractor;
- (4) engaged in any fraudulent or deceptive act or practice or misrepresentation as a roofing contractor;
- (5) made a false or misleading statement in an application for a certificate or certificate renewal;
- (6) been convicted of an offense that prohibits the person from registering as a roofing contractor or affects the ability of the person to act as a roofing contractor;
- (7) performed roofing services without a valid certificate under this chapter; or
- (8) performed roofing services without obtaining a permit required by a state or local authority.

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

Sec. 1307.203. ADMINISTRATIVE PENALTY. (a) Authorizes TDLR or executive director to impose an administrative penalty on a person under Subchapter F (Administrative Penalty), Chapter 51, regardless of whether the person holds a certificate under this chapter, if the person violates this chapter or a rule adopted under this chapter, or a rule or order of the executive director or commission.

(b) Prohibits an administrative penalty from being imposed unless the person charged with a violation is provided the opportunity for a hearing.

Sec. 1307.204. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) Authorizes the executive director to issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) Authorizes the attorney general or executive director to institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352 (Injunctive Relief; Civil Penalty).

Sec. 1307.205. SANCTIONS. Authorizes TDLR to impose sanctions as provided by Section 51.353 (License Denial; Administrative Sanctions).

Sec. 1307.206. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person violates the registration requirements of this chapter, or performs roofing services without a certificate required by this chapter.

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

SECTION 2. Requires TDLR and TDLR, as appropriate, not later than March 31, 2012, to adopt rules and forms necessary to implement Chapter 1307, Occupations Code, as added by this Act.

SECTION 3. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Section 1307.101, Occupations Code, and Subchapters D and E, Chapter 1307, Occupations Code, as added by this Act: September 1, 2012.