By: _____ S.B. No. 259

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. SHORT TITLE. This Act may be cited as the "Roofing Contractors Licensing Law."

SECTION 2. DEFINITIONS. In this Act:

(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, and other materials on any building or structure other than buildings or structures listed in Subdivision (7) of this section.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Commissioner" means the commissioner of licensing and regulation.

(5) "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.

(6) "Person" means an individual.

(7) "Qualifying party" means a person who possesses

all the necessary qualifications and who is a principal of a company licensed under this Act.

(8) "Residential roofing" means any material applied to the exterior roof framing (wood or steel) on single-family homes, duplexes, or quadplexes.

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

(10) "Roofing contracting company" or "company" means any person, corporation, partnership, association, or other entity that performs roofing contracting.

SECTION 3. POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner shall adopt rules for the practice of roofing contracting consistent with this Act. The standards prescribed by rule must be substantially the same as the standards set forth in the roofing manufacturers' standard requirements. The commissioner shall enforce this Act and may adopt rules relating to enforcement requirements.

(b) The commissioner may issue an emergency order as necessary to enforce this Act if the commissioner determines that an emergency exists requiring immediate action to protect the public health and safety. The order may be issued without notice and hearing or with such notice and hearing as the commissioner considers practicable under the circumstances. If an emergency

order is issued under this subsection without a hearing, the commissioner shall set the time and place for a hearing to affirm, modify, or set aside the emergency order. The commission may issue cease and desist orders.

(c) The commissioner shall prescribe application forms for original and renewal licenses and the design of the licenses.

(d) The commissioner shall prescribe the method and content of examinations administered under this Act 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.

(e) The commissioner shall enforce insurance requirements for persons licensed under this Act.

(f) The commission may employ the personnel necessary to implement this Act. The commission shall contract with at least two full-time roofing contractors to serve as test examiners.

(g) The commissioner may authorize necessary disbursements to implement this Act, including office expenses, costs of equipment, and other necessary facilities.

(h) The commission shall publish annually a directory of the persons licensed under this Act. The commission may sell the directory on payment of a reasonable fee set by the commission. The fees collected under this subsection shall be appropriated to the commission for use in the administration of this Act.

(i) The commission may contract with another state agency or

with a political subdivision of the state for the enforcement of this Act and the rules adopted by the commissioner under this Act.

SECTION 4. ADVISORY BOARD. (a) The Roofing Contractors Advisory Board is created to advise the commissioner in adopting rules, method, and content of examination and enforcing and administering this Act and to advise the commission in setting fees.

(b) The advisory board is composed of six members appointed by the commissioner who are experienced in the design, installation, construction, maintenance, service, repair, alteration, or modification of roofing systems. Members of the advisory board shall hold office for staggered terms of six years, with two terms expiring on February 1 of each odd-numbered year.

(c) The commissioner shall appoint the advisory board members as follows:

(1) three members must be full-time licensed roofing contractors as follows:

(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 shall be public members.

(d) For the members appointed under Subsection (c)(1) of this section, at least one member must practice in a municipality

with a population of 250,000 or more and at least one member must practice in a municipality with a population of less than 250,000. For the purposes of this subsection, "population" means the population according to the most recent federal decennial census.

(e) The commissioner shall designate one member of the advisory board to serve as chairman. The commissioner or the commissioner's designee shall serve as an ex officio, nonvoting member of the advisory board. On the resignation, death, suspension, or incapacity of any member, the commissioner shall fill the vacancy for the remainder of the unexpired term with an individual who represents the same category with which the predecessor was identified.

(f) The advisory board shall meet at least every six months and may meet at other times at the call of the chairman. The advisory board shall meet at a place designated by the board within the State of Texas. A decision of the advisory board is not effective unless it receives the affirmative vote of at least a majority of the members present.

(g) The advisory board members serve without compensation.

SECTION 5. LICENSE REQUIRED. (a) Unless the person is exempted under Section 14 of this Act, a person or company may not perform roofing contracting without a license under this Act.

(b) A roofing contracting company that is not exempt under this Act must employ a license holder, or license holders whose license is assigned to that company.

(c) A representative of the commission or a municipal official may issue a citation to a person who performs roofing contracting without a license issued under this Act. To the extent authorized by Chapter 29, Government Code, the municipal court has concurrent jurisdiction with a justice court of a precinct in which the municipality is located in a case arising from a citation issued under this subsection.

(d) A license issued under this Act is valid throughout the state, and the holder and persons under the holder's supervision are not required to hold a municipal license to practice roofing contracting in any municipality within this state.

SECTION 6. ROOFING CONTRACTOR LICENSES. (a) The roofing contracting company shall be the license holder and shall comply with all the requirements of this Act, with a principal of the company being the qualifying party meeting all the requirements of this Act. Roofing contractor licenses are of the following three classes and entitle the licensee to perform the following services, respectively:

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

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

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

(b) The commissioner shall prescribe separate examinations

for each class of license. For Class I licenses, the commissioner shall prescribe separate examinations for commercial and residential services.

(c) The qualifying party that applies for a roofing contractor license must be at least 18 years old and must present to the commissioner satisfactory evidence of at least 36 months of practical experience with the tools of the trade in the preceding five years.

(d) The application must be made on a form prescribed by the commissioner and must specify the class of license the applicant seeks. The application must be sworn to and verified and must be accompanied by:

(1) evidence of the insurance coverage required under this Act;

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

(3) the examination fee.

(e) The commissioner shall issue a roofing contractor license to a company which has a qualifying party who possesses the required qualifications, passes the appropriate examinations, and pays the examination fee and the original license fee required by this Act. An applicant who fails an examination is eligible for reexamination.

(f) A license issued under this Act is valid for a one-year period from the date of issuance.

(g) With the advice of the advisory board, the commissioner shall adopt rules relating to the use, display, and advertisement of a licensee's license.

SECTION 7. NOTICE OF EXAMINATION RESULTS. (a) Not later than the 45th day after the date on which an examination is administered under this Act, the commissioner shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commissioner shall notify examinees of the results of the examination not later than the 14th day after the date on which the commissioner receives the results from the testing service.

(b) If requested in writing by a person who fails the examination, the commissioner shall furnish the person with the results of the person's performance on the examination.

SECTION 8. INSURANCE REQUIREMENT. (a) A licensed contractor 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) Insurance must be obtained from an admitted company or an eligible surplus lines insurer, as defined in Article 1.14-2,

Insurance Code.

(c) A license applicant or holder shall furnish to the commission a certificate of insurance. The license holder's name, business name, and address must be shown as it appears on the license. The certificate form to be submitted shall be the form furnished by the commission. Each certificate of insurance shall reflect all assumed names used by the license holder and registered with this agency. Neither binders nor interim certificates of less than 60 days will be accepted.

(d) The certificate of insurance shall state that the insurance carrier shall notify the commission not later than the 30th day before the cancellation or nonrenewal by the insurance carrier and not later than the 10th day following nonrenewal or cancellation by the insured.

(e) A license holder whose proof of insurance expires shall be notified by the commission that the holder has an insurance violation. Failure to furnish the required proof shall be grounds for revocation of the license in accordance with Article 9100, Revised Statutes.

(f) A surety bond shall be posted with the commission by each licensee in the following amounts:

(1) $35,000 for a Class I license;

(2) $25,000 for a Class II license; and

(3) $10,000 for a Class III license.

SECTION 9. CONTINUING EDUCATION PROGRAMS. The commissioner

shall recognize, prepare, or administer continuing education programs for licensees. The Roofing Contractors Association of Texas shall be an education provider and shall be the approval agent of continuing education credits in these programs. Participation in the programs is mandatory. Each licensee shall be required to complete eight hours of continuing education per license year.

SECTION 10. LICENSE BY RECIPROCITY. The commissioner may waive any license requirement for an applicant or for the qualifying party of an applicant with a valid license from another state with which this state has a reciprocity agreement.

SECTION 11. TEMPORARY LICENSE. (a) In the event the qualifying party becomes incapacitated and unable to serve in the normal capacity of principal of a company or is no longer available due to the dissolution of a partnership or corporation, a temporary license may be issued to another principal of the company, who then becomes the qualifying party for a period extending 30 days beyond the date of the next examination, not to exceed six months. The temporary license is not renewable, but a second temporary license may be issued if the company's qualifying party becomes unavailable in circumstances that make the company again eligible to receive a temporary license. The temporary license shall be of the same class and endorsement as the license being replaced.

(b) The commissioner may issue a temporary license under the conditions provided by Subsection (a) of this section to an

applicant who applies to the commissioner on a form prescribed by the commissioner and pays the required fees.

SECTION 12. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) A violation of this Act or a rule adopted under this Act is a ground for the denial, suspension, or revocation of a license issued under this Act as well as a ground for the imposition of administrative penalties as provided by Article 9100, Revised Statutes. 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 Act constitutes a violation of this Act. An intentional or knowing misrepresentation of necessary services, services to be provided, or services that have been provided constitutes a violation of this Act and a ground for the suspension or revocation of a license issued under this Act.

(b) Proceedings for the denial, suspension, or revocation of a license and appeals from those proceedings are governed by Chapter 2001, Government Code. The imposition of administrative penalties is governed by Article 9100, Revised Statutes.

SECTION 13. CONSUMER COMPLAINT INVESTIGATION. (a) The commissioner shall prepare information of consumer interest describing the functions performed by the commissioner under this Act and the rights of consumers as affected by this Act. The information must describe the procedure by which a consumer complaint is filed with and resolved by the commissioner. The

commissioner shall make the information available to the general public.

(b) The commissioner shall investigate consumer complaints filed with the commissioner. If the commissioner determines after investigation that a licensee has violated this Act or a rule adopted under this Act, the commissioner may take appropriate action under Section 12 of this Act.

SECTION 14. EXEMPTIONS. This Act does not apply:

(1) to a person who performs roofing contracting on a dwelling owned by the person and used as the person's residence;

(2) to a person or firm that is registered as a manufacturer, retailer, or installer and regulated pursuant to the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) and that engages in roofing contracting for manufactured homes in the installation of manufactured homes or in providing retailer or manufacturer warranty services free of charge; or

(3) to new residential construction of single-family homes, duplexes, or quadplexes.

SECTION 15. ENFORCEMENT OF CONTRACTS. (a) A person who performs roofing contracting without holding the appropriate license under this Act may not collect a fee or otherwise enforce a contract for the services performed. To enforce a contract for the performance of roofing contracting, the person who performs the services must present proof that the person or the person's company

holds a license under this Act at the time the contract is signed and the work is performed.

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

SECTION 16. OFFENSE; PENALTY. Except as provided in Section 17 of this Act, a person commits an offense if the person is a qualifying party and knowingly or intentionally engages in roofing contracting without a license issued under this Act. An offense under this section is a Class B misdemeanor.

SECTION 17. MUNICIPAL REGULATION. A municipality may by ordinance adopt and enforce standards for roofing contractors that are consistent with the standards established under this Act. A municipality may not impose a licensing or registration fee on a roofing contractor licensed under this Act. The municipality may report a violation of this Act 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 of this Act. Conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license issued under this Act.

SECTION 18. EXEMPTION FROM EXAMINATION FOR CERTIFIED CONTRACTORS. (a) A person who is a certified roofing contractor in good standing as tested and approved by the Roofing Contractors Association of Texas on the effective date of this Act is entitled or, if the person is a qualifying party of a company, the person's

company is entitled to receive a license without examination if the contractor applies to the commissioner for the license not later than September 1, 1998, and:

(1) registers with the commission and pays the required licensing fee;

(2) shows evidence of insurance coverage required under Section 8 of this Act; and

(3) submits a copy of the contractor's certification that has been attested to by the president and the executive director of the Roofing Contractors Association of Texas.

(b) The class of a license issued under this section shall be based on the classification of certification that is currently held by the contractor and shall correspond as follows:

(1) a certified commercial and residential roofing contractor shall receive a Class I license;

(2) a certified commercial roofing contractor shall receive a Class II license; and

(3) a certified residential roofing contractor shall receive a Class III license.

(c) A roofing contractor who is issued a license under this section is subject to all other provisions of this Act, including provisions for the renewal of the roofing contractor license.

SECTION 19. TERMS OF INITIAL BOARD MEMBERS. In making the initial appointments to the advisory board, the commissioner shall designate two members for a term expiring on February 1, 1999, two

members for a term expiring on February 1, 2001, and two members for a term expiring on February 1, 2003.

SECTION 20. EFFECTIVE DATE. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1997.

(b) Sections 5 and 16 of this Act take effect September 1, 1998.

SECTION 21. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

By: Moncrief S.B. No. 259

(In the Senate - Filed January 21, 1997; January 23, 1997, read first time and referred to Committee on State Affairs; March 19, 1997, reported adversely, with favorable Committee Substitute by the following vote: Yeas 11, Nays 1; March 19, 1997, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 259 By: Nixon

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. SHORT TITLE. This Act may be cited as the "Roofing Contractors Licensing Law."

SECTION 2. DEFINITIONS. In this Act:

(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, and other materials on any building or structure other than buildings or structures listed in Subdivision (8) of this section.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Commissioner" means the commissioner of licensing and regulation.

(5) "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.

(6) "Person" means an individual.

(7) "Qualifying party" means a person who possesses all the necessary qualifications and who is a principal of a company licensed under this Act.

(8) "Residential roofing" means any material applied to the exterior roof framing (wood or steel) on single-family homes, duplexes, or quadplexes.

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

(10) "Roofing contracting company" or "company" means any person, corporation, partnership, association, or other entity that performs roofing contracting.

SECTION 3. POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner shall adopt rules for the practice of roofing contracting consistent with this Act. The standards prescribed by rule must be substantially the same as the standards set forth in the roofing manufacturers' standard requirements. The commissioner shall enforce this Act and may adopt rules relating to enforcement requirements.

(b) The commissioner may issue an emergency order as necessary to enforce this Act if the commissioner determines that an emergency exists requiring immediate action to protect the public health and safety. The order may be issued without notice and hearing or with such notice and hearing as the commissioner considers practicable under the circumstances. If an emergency order is issued under this subsection without a hearing, the commissioner shall set the time and place for a hearing to affirm, modify, or set aside the emergency order. The commission may issue cease and desist orders.

(c) The commissioner shall prescribe application forms for original and renewal licenses and the design of the licenses.

(d) The commissioner shall prescribe the method and content

of examinations administered under this Act 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.

(e) The commissioner shall enforce insurance requirements for persons licensed under this Act.

(f) The commission may employ the personnel necessary to implement this Act. The commission shall contract with at least two full-time roofing contractors to serve as test examiners.

(g) The commissioner may authorize necessary disbursements to implement this Act, including office expenses, costs of equipment, and other necessary facilities.

(h) The commission shall publish annually a directory of the persons licensed under this Act. The commission may sell the directory on payment of a reasonable fee set by the commission. The fees collected under this subsection shall be appropriated to the commission for use in the administration of this Act.

(i) The commission may contract with another state agency or with a political subdivision of the state for the enforcement of this Act and the rules adopted by the commissioner under this Act.

SECTION 4. ADVISORY BOARD. (a) The Roofing Contractors Advisory Board is created to advise the commissioner in adopting rules, method, and content of examination and enforcing and administering this Act and to advise the commission in setting fees.

(b) The advisory board is composed of six members appointed by the commissioner who are experienced in the design, installation, construction, maintenance, service, repair, alteration, or modification of roofing systems. Members of the advisory board shall hold office for staggered terms of six years, with two terms expiring on February 1 of each odd-numbered year.

(c) The commissioner shall appoint the advisory board members as follows:

(1) three members must be full-time licensed roofing contractors as follows:

(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 shall be public members.

(d) For the members appointed under Subsection (c)(1) of this section, at least one member must practice in a municipality with a population of 250,000 or more and at least one member must practice in a municipality with a population of less than 250,000. For the purposes of this subsection, "population" means the population according to the most recent federal decennial census.

(e) The commissioner shall designate one member of the advisory board to serve as chairman. The commissioner or the commissioner's designee shall serve as an ex officio, nonvoting member of the advisory board. On the resignation, death, suspension, or incapacity of any member, the commissioner shall fill the vacancy for the remainder of the unexpired term with an individual who represents the same category with which the predecessor was identified.

(f) The advisory board shall meet at least every six months and may meet at other times at the call of the chairman. The advisory board shall meet at a place designated by the board within the State of Texas. A decision of the advisory board is not effective unless it receives the affirmative vote of at least a majority of the members present.

(g) The advisory board members serve without compensation.

SECTION 5. LICENSE REQUIRED. (a) Unless the person is exempted under Section 14 of this Act, a person or company may not perform roofing contracting without a license under this Act.

(b) A roofing contracting company that is not exempt under this Act must employ a license holder, or license holders, whose license is assigned to that company.

(c) A representative of the commission or a municipal

official may issue a citation to a person who performs roofing contracting without a license issued under this Act.

(d) A license issued under this Act is valid throughout the state, and the holder and persons under the holder's supervision are not required to hold a municipal license to practice roofing contracting in any municipality within this state.

SECTION 6. ROOFING CONTRACTOR LICENSES. (a) The roofing contracting company shall be the license holder and shall comply with all the requirements of this Act, with a principal of the company being the qualifying party meeting all the requirements of this Act. Roofing contractor licenses are of the following three classes and entitle the licensee to perform the following services, respectively:

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

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

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

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

(c) The qualifying party that applies for a roofing contractor license must be at least 18 years old and must present to the commissioner satisfactory evidence of at least 36 months of practical experience in the preceding five years.

(d) The application must be made on a form prescribed by the commissioner and must specify the class of license the applicant seeks. The application must be sworn to and verified and must be accompanied by:

(1) evidence of the insurance coverage required under this Act;

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

(3) the examination fee.

(e) The commissioner shall issue a roofing contractor license to a company which has a qualifying party who possesses the required qualifications, passes the appropriate examinations, and pays the examination fee and the original license fee required by this Act. An applicant who fails an examination is eligible for reexamination.

(f) A license issued under this Act is valid for a one-year period from the date of issuance.

(g) With the advice of the advisory board, the commissioner shall adopt rules relating to the use, display, and advertisement of a licensee's license.

SECTION 7. NOTICE OF EXAMINATION RESULTS. (a) Not later than the 45th day after the date on which an examination is administered under this Act, the commissioner shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commissioner shall notify examinees of the results of the examination not later than the 14th day after the date on which the commissioner receives the results from the testing service.

(b) If requested in writing by a person who fails the examination, the commissioner shall furnish the person with the results of the person's performance on the examination.

SECTION 8. INSURANCE REQUIREMENT. (a) A licensed contractor 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) Insurance must be obtained from an admitted company or an eligible surplus lines insurer, as defined in Article 1.14-2,

Insurance Code.

(c) A license applicant or holder shall furnish to the commission a certificate of insurance. The license holder's name, business name, and address must be shown as it appears on the license. The certificate form to be submitted shall be the form furnished by the commission. Each certificate of insurance shall reflect all assumed names used by the license holder and registered with this agency. Neither binders nor interim certificates of less than 60 days will be accepted.

(d) The certificate of insurance shall state that the insurance carrier shall notify the commission not later than the 30th day before the cancellation or nonrenewal by the insurance carrier and not later than the 10th day following nonrenewal or cancellation by the insured.

(e) A license holder whose proof of insurance expires shall be notified by the commission that the holder has an insurance violation. Failure to furnish the required proof shall be grounds for revocation of the license in accordance with Article 9100, Revised Statutes.

(f) A surety bond shall be posted with the commission by each licensee in the following amounts:

(1) $35,000 for a Class I license;

(2) $25,000 for a Class II license; and

(3) $10,000 for a Class III license.

SECTION 9. CONTINUING EDUCATION PROGRAMS. The commissioner shall recognize, prepare, or administer continuing education programs for licensees. The Roofing Contractors Association of Texas shall be an education provider and shall be the approval agent of continuing education credits in these programs. Participation in the programs is mandatory. Each licensee shall be required to complete eight hours of continuing education per license year.

SECTION 10. LICENSE BY RECIPROCITY. The commissioner may waive any license requirement for an applicant or for the qualifying party of an applicant with a valid license from another state with which this state has a reciprocity agreement.

SECTION 11. TEMPORARY LICENSE. (a) In the event the qualifying party becomes incapacitated and unable to serve in the normal capacity of principal of a company or is no longer available due to the dissolution of a partnership or corporation, a temporary license may be issued to another principal of the company, who then becomes the qualifying party for a period extending 30 days beyond the date of the next examination, not to exceed six months. The temporary license is not renewable, but a second temporary license may be issued if the company's qualifying party becomes unavailable in circumstances that make the company again eligible to receive a temporary license. The temporary license shall be of the same class and endorsement as the license being replaced.

(b) The commissioner may issue a temporary license under the conditions provided by Subsection (a) of this section to an applicant who applies to the commissioner on a form prescribed by the commissioner and pays the required fees.

SECTION 12. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) A violation of this Act or a rule adopted under this Act is a ground for the denial, suspension, or revocation of a license issued under this Act as well as a ground for the imposition of administrative penalties as provided by Article 9100, Revised Statutes. 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 Act constitutes a violation of this Act. An intentional or knowing misrepresentation of necessary services, services to be provided, or services that have been provided constitutes a violation of this Act and a ground for the suspension or revocation of a license issued under this Act.

(b) Proceedings for the denial, suspension, or revocation of a license and appeals from those proceedings are governed by Chapter 2001, Government Code. The imposition of administrative penalties is governed by Article 9100, Revised Statutes.

SECTION 13. CONSUMER COMPLAINT INVESTIGATION. (a) The commissioner shall prepare information of consumer interest describing the functions performed by the commissioner under this Act and the rights of consumers as affected by this Act. The information must describe the procedure by which a consumer complaint is filed with and resolved by the commissioner. The commissioner shall make the information available to the general public.

(b) The commissioner shall investigate consumer complaints filed with the commissioner. If the commissioner determines after investigation that a licensee has violated this Act or a rule adopted under this Act, the commissioner may take appropriate action under Section 12 of this Act.

SECTION 14. EXEMPTIONS. (a) This Act does not apply:

(1) to a person who performs roofing contracting on a dwelling owned by the person and used as the person's residence;

(2) to a person or firm that is registered as a manufacturer, retailer, or installer and regulated pursuant to the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) and that engages in roofing contracting for manufactured homes in the installation of manufactured homes or in providing retailer or manufacturer warranty services free of charge;

(3) to new residential construction of single-family homes, duplexes, or quadplexes;

(4) to a person who performs roofing contracting if (i) the person is a maintenance person or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the roofing contracting work is being performed, (ii) the work is performed in connection with the business in which the person is employed, and (iii) the person and the person's employee referred to in (i) above do not engage in the occupation of roofing contracting for the general public;

(5) to a person who performs roofing contracting on a dwelling owned by a member of the person's family; or

(6) to a person who performs roofing contracting that is not a license holder under this Act but who receives a signed disclosure statement from a homeowner that states explicitly that the homeowner understands that the person who is performing roofing contracting on the homeowner's dwelling is not a license holder under this Act.

(b) This Act shall in no way restrict the practice of architecture or engineering by persons duly licensed in Texas to practice these professions.

SECTION 15. ENFORCEMENT OF CONTRACTS. (a) A person who performs roofing contracting without holding the appropriate license under this Act may not collect a fee or otherwise enforce a contract for the services performed unless the person performing the roofing contracting is subject to the exemptions as outlined in Section 14 of this Act. To enforce a contract for the performance of roofing contracting, the person performing the services must present proof that the person or the person's company held a license under this Act at the time the contract was signed and the work is performed or must present a signed disclosure statement from the homeowner as prescribed by Subdivision (6), Subsection (a), Section 14 of this Act.

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

SECTION 16. OFFENSE; PENALTY. Except as provided in Section 17 of this Act, a person commits an offense if the person is a qualifying party and knowingly or intentionally engages in roofing contracting without a license issued under this Act. An offense under this section is a Class B misdemeanor.

SECTION 17. MUNICIPAL REGULATION. A municipality may by ordinance adopt and enforce standards for roofing contractors that are consistent with the standards established under this Act. A municipality may not impose a licensing or registration fee on a roofing contractor licensed under this Act. The municipality may

report a violation of this Act 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 of this Act. Conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license issued under this Act.

SECTION 18. EXEMPTION FROM EXAMINATION FOR CERTIFIED CONTRACTORS. (a) A person who is a certified roofing contractor in good standing as tested and approved by the Roofing Contractors Association of Texas on the effective date of this Act is entitled or, if the person is a qualifying party of a company, the person's company is entitled to receive a license without examination if the contractor applies to the commissioner for the license not later than September 1, 1998, and:

(1) registers with the commission and pays the required licensing fee;

(2) shows evidence of insurance coverage required under Section 8 of this Act; and

(3) submits a copy of the contractor's certification that has been attested to by the president and the executive director of the Roofing Contractors Association of Texas.

(b) The class of a license issued under this section shall be based on the classification of certification that is currently held by the contractor and shall correspond as follows:

(1) a certified commercial and residential roofing contractor shall receive a Class I license;

(2) a certified commercial roofing contractor shall receive a Class II license; and

(3) a certified residential roofing contractor shall receive a Class III license.

(c) A roofing contractor who is issued a license under this section is subject to all other provisions of this Act, including provisions for the renewal of the roofing contractor license.

SECTION 19. TERMS OF INITIAL BOARD MEMBERS. In making the initial appointments to the advisory board, the commissioner shall designate two members for a term expiring on February 1, 1999, two members for a term expiring on February 1, 2001, and two members for a term expiring on February 1, 2003.

SECTION 20. EFFECTIVE DATE. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1997.

(b) Sections 5 and 16 of this Act take effect September 1, 1998.

SECTION 21. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

* * * * *

1 11

# FAVORABLY AS SUBSTITUTED
# SENATE COMMITTEE REPORT ON

(SB) SCR SJR SR HB HCR HJR 259

By Moncrief
(Author/Senate Sponsor)

3/19/97
(date)

We, your Committee on STATE AFFAIRS, to which was referred the attached measure, have on 3/13/97 (date of hearing), had the same under consideration and I am instructed to report it back with the recommendation (s) that it:

(✓) do pass as substituted, and be printed
(✓) the caption remained the same as original measure
( ) the caption changed with adoption of the substitute

( ) do pass as substituted, and be ordered not printed

( ) and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. (✓) yes ( ) no

A revised fiscal note was requested. (✓) yes ( ) no

An actuarial analysis was requested. ( ) yes (✓) no

Considered by subcommittee. ( ) yes (✓) no

The measure was reported from Committee by the following vote:

| | YEA | NAY | ABSENT | PNV |
|---|---|---|---|---|
| Senator Armbrister, Chair | ✓ | | | |
| Senator Nixon, Vice-Chair | ✓ | | | |
| Senator Cain | ✓ | | | |
| Senator Carona | ✓ | | | |
| Senator Ellis | ✓ | | | |
| Senator Fraser | | | | ✓ |
| Senator Gallegos | ✓ | | | |
| Senator Galloway | ✓ | | | |
| Senator Lindsay | | ✓ | | |
| Senator Luna | ✓ | | | |
| Senator Nelson | ✓ | | | |
| Senator Shapiro | ✓ | | | |
| Senator Whitmire | ✓ | | | |
| | | | | |
| TOTAL VOTES | 11 | 1 | 0 | 1 |

## COMMITTEE ACTION

(S280) S270 Considered in public hearing
S270 Testimony taken

Kelly C. Gilbert
COMMITTEE CLERK

CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute
Retain one copy of this form for Committee files

# BILL ANALYSIS

Senate Research Center

C.S.S.B. 259
By: Moncrief
State Affairs
3-16-97
Committee Report (Substituted)

## DIGEST

Currently, Texas has no system of regulating the roofing industry. In May 1995, hail storms inflicted damage to an estimated 100,000 roofs in north Texas. Many consumers in need of new roofs or roofing repair employed roofers who could not be held responsible for ineffective work. S.B. 259 seeks to regulate roofing contractors by allowing only licensed roofing contracting companies to perform residential or commercial roofing contracting in Texas.

## PURPOSE

As proposed, C.S.S.B. 259 outlines provisions and provides penalties regarding regulation of roofing contractors.

## RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioner of licensing and regulation in SECTIONS 3(a), 6(g), and 15(b) and to a municipality in SECTION 17, Roofing Contractors Licensing Law, of this bill.

## SECTION BY SECTION ANALYSIS

SECTION 1. SHORT TITLE: ROOFING CONTRACTORS LICENSING LAW.

SECTION 2. DEFINITIONS. Defines "advisory board," "commercial roofing," "commission," "commissioner," "mechanical integrity," "person," "qualifying party," "residential roofing," "roofing contracting," "roofing contracting company," and "company."

SECTION 3. POWERS AND DUTIES OF COMMISSIONER. Sets forth the powers and duties allocated to the commissioner of licensing and regulation (commissioner) and the Texas Commission of Licensing and Regulation (commission).

SECTION 4. ADVISORY BOARD. Sets forth requirements for the creation of the Roofing Contractors Advisory Board (advisory board).

SECTION 5. LICENSE REQUIRED. Prohibits a person or company from performing roofing contracting without a license unless the person is exempt under Section 14 of this Act. Requires a roofing contracting company that is not exempt to employ a license holder whose license is assigned to that company. Authorizes a representative of the commission or a municipal official to issue a citation to a person who performs roofing contracting without a license. Provides that a license is valid throughout this state and the holder and persons under the holder's supervision are not required to hold a municipal license to practice roofing contracting in any municipality within this state.

SECTION 6. ROOFING CONTRACTOR LICENSES. Requires the roofing contracting company to be the license holder and to comply with all the requirements of this Act, with a principal of the company being the qualifying party meeting all the requirements of this Act. Sets forth the classes of roofing contractor licenses and the services the licensee is entitled to perform. Requires the commissioner to prescribe separate examinations for each class of licenses and prescribe separate examinations for commercial and residential services for Class I licenses. Requires the qualifying party applying for a roofing contractor license to be at least 18 years old and present to the

commissioner satisfactory evidence of at least 36 months of practical experience in the preceding five years. Sets forth requirements for the creation of an application and sets forth the information to be accompanied by an application. Sets forth requirements for a company to which the commissioner is required to issue a roofing contractor license. Provides that an applicant who fails an examination is eligible for reexamination. Provides that a license issued is valid for a one-year period from the date of issuance. Requires the commissioner to adopt rules relating to the use, display, and advertisement of a licensee's license with the advice of the advisory board.

SECTION 7. NOTICE OF EXAMINATION RESULTS. Sets forth the requirements for notice of examination results.

SECTION 8. INSURANCE REQUIREMENT. Sets forth the monetary amounts in which a licensed contractor is required to maintain general liability insurance coverage. Requires insurance to be obtained from an admitted company or an eligible surplus lines insurer, as defined in Article 1.14-2, Insurance Code. Sets forth requirements for the certificate of insurance a license applicant or holder is required to furnish to the commission. Requires a license holder whose proof of insurance expires to be notified by the commission that the holder has an insurance violation. Requires failure to provide the required proof to be grounds for revocation of the license in accordance with Article 9100, V.T.C.S. Sets forth monetary amounts in which a surety bond is required to be posted with the commission by each licensee.

SECTION 9. CONTINUING EDUCATION PROGRAMS. Sets forth requirements for the establishment of continuing education programs. Requires each licensee to be required to complete eight hours of continuing education per license year.

SECTION 10. LICENSE BY RECIPROCITY. Authorizes the commissioner to waive any license requirement for an applicant or qualifying party of an applicant with a valid license from another state with which this state has a reciprocity agreement.

SECTION 11. TEMPORARY LICENSE. Sets forth requirements for the issuance of a temporary license.

SECTION 12. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. Sets forth instances in which a license may be denied suspended, or revoked. Provides that proceedings for the denial, suspension, or revocation of a license and appeals from those proceedings are governed by Chapter 2001, Government Code. Provides that the imposition of administrative penalties is governed by Article 9100, V.T.C.S.

SECTION 13. CONSUMER COMPLAINT INVESTIGATION. Requires the commissioner to prepare information of consumer interest describing the functions performed by the commissioner and the rights of consumers. Requires the information to describe the procedure by which a consumer complaint is filed with and resolved by the commissioner. Requires the commissioner to make the information available to the general public. Requires the commissioner to investigate consumer complaints filed with the commissioner. Authorizes the commissioner to take appropriate action under Section 12 of this Act if the commissioner determines after investigation that a licensee has violated this Act or rule adopted under this Act.

SECTION 14. EXEMPTIONS. Sets forth the entities which are exempt from this Act. Makes nonsubstantive changes.

SECTION 15. ENFORCEMENT OF CONTRACTS. Outlines provisions and requirements for the enforcement of contracts for the performance of roofing contracting. Requires the commissioner to adopt rules relating to the manner in which proof may be presented under this section.

SECTION 16. OFFENSE; PENALTY. Provides that a person commits a Class B misdemeanor if the person knowingly or intentionally engages in roofing contracting without a license, except as provided in Section 17 of this Act.

SECTION 17. MUNICIPAL REGULATION. Outlines provisions for the regulation by municipalities.

SECTION 18. EXEMPTION FROM EXAMINATION FOR CERTIFIED CONTRACTORS. Sets forth instances in which a certified roofing contractor is exempt from examination requirements. Sets forth license classifications required for specific contractors. Provides that a roofing contractor who is issued a license under this section is subject to other provisions of this Act, including provisions for the renewal of the roofing contractor license.

SECTION 19. TERMS OF INITIAL BOARD MEMBERS. Sets forth the terms of initial advisory board members.

SECTION 20. (a) Effective date: September 1, 1997,

(b) Effective date for Sections 5 and 6: September 1, 1998.

SECTION 21. Emergency clause.

**SUMMARY OF COMMITTEE CHANGES**

Amends SECTION 2, to redefine "commercial roofing."

Amends SECTION 5(c), to delete text regarding jurisdiction of a municipal court.

Amends SECTION 6(c), to delete text regarding requirements for a qualifying party that applies for a roofing contractor license.

Amends SECTION 14(a), by adding an entity which is exempt from this Act.

**LEGISLATIVE BUDGET BOARD**
**Austin, Texas**

**FISCAL NOTE**
**75th Regular Session**

March 18, 1997

To: Honorable Kenneth Armbrister, Chair
Committee on State Affairs
Senate
Austin, Texas

IN RE: Senate Bill No. 259,
Committee Report 1st House,
Substituted
By: Moncrief

From: John Keel, Director

In response to your request for a Fiscal Note on SB259 (Relating to the regulation of roofing contractors; providing penalties.) this office has determined the following:

**Biennial Net Impact to General Revenue Funds by SB259-Committee Report 1st House, Substituted**

Implementing the provisions of the bill would result in a net positive impact of $222,872 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**Fiscal Analysis**

This bill would require the Department of Licensing and Regulation (TDLR) to license roofing contractors and provide for criminal and administrative penalties. The bill would exempt certain maintenance personnel and allow homeowners to sign a disclosure statement acknowledging that the roofer is not licensed. Examinations at various locations and reciprocity agreements with other states would be required to license these contractors. Liability insurance and bonding requirements are also specified. The TDLR would also be required to publish an annual directory of all persons licensed under this legislation. In addition, this bill would provide for the creation of a six member Roofing Contractors Advisory Board. This bill would allow the Department to employ personnel as necessary for implementation and authorize additional expenditures including office expenses, equipment, and other necessary facilities.

**Methodology**

According to the TDLR, an additional 23 FTEs would be required to implement the provisions of this bill. Most of the costs are related to examination administration. The agency assumes that 15,000 contractors would be required to have a license. The agency would examine and license 6,000 people in the first year. The second year would include 6,000 additional new licensees and 6,000 renewals from the first year. In the third year, the agency would license any remaining contractors requiring licenses (about 3,000) and continue license renewals. The initial license fee would be $175 per contractor and annual license renewals would be $125 per contractor. Regulation of this industry would also result in new administrative hearings from complaints originated in the industry. The agency assumes 30 administrative hearings

would result from 900 complaints received annually. This analysis assumes that the Commission would set fees necessary to cover the costs of administering this Act.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

**Five Year Impact:**

| Fiscal Year | Probable Savings/(Cost) from General Revenue Fund | Salaries/Wages Probable Savings/(Cost) from General Revenue Fund | Probable Revenue Gain/(Loss) from General Revenue Fund | Change in Number of State Employees from FY 1997 |
|---|---|---|---|---|
| | 0001 | 0001 | 0001 | |
| 1998 | ($520,864) | ($497,700) | $1,050,000 | 23.0 |
| 1999 | (360,864) | (497,700) | 1,050,000 | 23.0 |
| 2000 | (351,864) | (497,700) | 1,875,000 | 23.0 |
| 2001 | (367,864) | (497,700) | 1,875,000 | 23.0 |
| 2002 | (367,864) | (497,700) | 1,875,000 | 23.0 |

**Net Impact on General Revenue Related Funds:**

The probable fiscal implication to General Revenue related funds during each of the first five years is estimated as follows:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|---|---|
| 1998 | $31,436 |
| 1999 | 191,436 |
| 2000 | 1,025,436 |
| 2001 | 1,009,436 |
| 2002 | 1,009,436 |

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

Revenue impacts to local governments would occur as a result of deferring licensing requirements to the state. Local governments currently regulating roofing contractors would be limited to only enforcement authorization. Currently, the City of San Antonio generates approximately $47,000 per year in roofer licensing; the City of Fort Worth collects approximately $60,000 in roofer licensing.

Source: Agencies: 452 Department of Licensing and Regulation

LBB Staff: JK, JD, RA

**LEGISLATIVE BUDGET BOARD**
**Austin, Texas**

**FISCAL NOTE**
**75th Regular Session**

March 4, 1997

To: Honorable Kenneth Armbrister, Chair
Committee on State Affairs
Senate
Austin, Texas

IN RE: Senate Bill No. 259
By: Moncrief

From: John Keel, Director

In response to your request for a Fiscal Note on SB259 (Relating to the regulation of roofing contractors; providing penalties.) this office has determined the following:

**Biennial Net Impact to General Revenue Funds by SB259-As Introduced**

Implementing the provisions of the bill would result in a net positive impact of $222,872 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

## Fiscal Analysis

This bill would require the Department of Licensing and Regulation (TDLR) to license roofing contractors and provides for criminal and administrative penalties. Examinations at various locations and reciprocity agreements with other states would be required to license these contractors. Liability insurance and bonding requirements are also specified. The TDLR would also be required to publish an annual directory of all persons licensed under this legislation. In addition, this bill would provide for the creation of a six member Roofing Contractors Advisory Board. This bill would allow the Department to employ personnel as necessary for implementation and authorize additional expenditures including office expenses, equipment, and other necessary facilities.

## Methodology

According to the TDLR, an additional 23 FTEs would be required to implement the provisions of this bill. Most of the costs are related to examination administration. The agency assumes that 15,000 contractors would be required to have a license. The agency would examine and license 6,000 people in the first year. The second year would include 6,000 additional new licensees and 6,000 renewals from the first year. In the third year, the agency would license any remaining contractors requiring licenses (about 3,000) and continue license renewals. The initial license fee would be $175 per contractor and annual license renewals would be $125 per contractor. Regulation of this industry would also result in new administrative hearings from complaints originated in the industry. The agency assumes 30 administrative hearings would result from 900 complaints received annually. This analysis assumes that the Commission would set fees necessary to cover the costs of administering this Act.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

## Five Year Impact:

| Fiscal Year | Probable Savings/(Cost) from General Revenue Fund 0001 | Probable Revenue Gain/(Loss) from General Revenue Fund 0001 | Salaries/Wages Probable Savings/(Cost) from General Revenue Fund 0001 | Change in Number of State Employees from FY 1997 |
|---|---|---|---|---|
| 1998 | ($520,864) | $1,050,000 | ($497,700) | 23.0 |
| 1999 | (360,864) | 1,050,000 | (497,700) | 23.0 |
| 2000 | (351,864) | 1,875,000 | (497,700) | 23.0 |
| 2001 | (367,864) | 1,875,000 | (497,700) | 23.0 |
| 2002 | (367,864) | 1,875,000 | (497,700) | 23.0 |

## Net Impact on General Revenue Related Funds:

The probable fiscal implication to General Revenue related funds during each of the first five years is estimated as follows:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
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Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

Revenue impacts to local governments would occur as a result of deferring licensing requirements to the state. Local governments currently regulating roofing contractors would be limited to only enforcement authorization. Currently, the City of San Antonio generates approximately $47,000 per year in roofer licensing; the City of Fort Worth collects approximately $60,000 in roofer licensing.

Source: Agencies: 452 Department of Licensing and Regulation

LBB Staff: JK, JD, RA

# WITNESS LIST

SB 259
SENATE COMMITTEE REPORT
State Affairs Committee

March 13, 1997 - 1:30P

| | |
|---|---|
| For: | Bowling, Lysia (Self), Temple |
| | Eubank, Max (Self), Ft. Worth |
| | Harrison, Eddie (Roof Contract Assn), Ft. Worth |
| | Henry, Mark (State Farm Insurance), Plano |
| | MacKenzie, John (Self), San Antonio |
| Against: | Schulle, Jr., Gerhardt (TX Soc of Pro Engineers), Austin |
| On: | McEachern, Dede (TDLR), Austin |
| | Yuhr, Michael (TDLR), Austin |

ADOPTED

APR 9 1997

Secretary of the Senate

MONCRIEF

FLOOR AMENDMENT NO. 1 BY

Amend C.S.S.B. No. 259 by striking all below the enacting clause and substituting the following:

SECTION 1. SHORT TITLE. This Act may be cited as the "Roofing Contractors Licensing Law."

SECTION 2. DEFINITIONS. In this Act:

(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, and other materials on any building or structure other than buildings or structures listed in Subdivision (8) of this section.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Commissioner" means the commissioner of licensing and regulation.

(5) "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.

(6) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership, association, and any other legal entity.

(7) "Qualifying party" means a person who possesses

Floor Am. #1
4-9-97

all the necessary qualifications and who is a principal of a company licensed under this Act.

(8) "Residential roofing" means any material applied to the exterior roof framing (wood or steel) on single-family homes, duplexes, or quadplexes.

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

(10) "Roofing contracting company" or "company" means any person, corporation, partnership, association, or other entity that performs roofing contracting.

SECTION 3. POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner shall adopt rules for the practice of roofing contracting consistent with this Act. The standards prescribed by rule must be substantially the same as the standards set forth in the roofing manufacturers' standard requirements. The commissioner shall enforce this Act and may adopt rules relating to enforcement requirements.

(b) The commissioner may issue an emergency order as necessary to enforce this Act if the commissioner determines that an emergency exists or formerly existed requiring immediate temporary action to protect the public health and safety or to protect damaged property. The order may be issued without notice and hearing or with such notice and hearing as the commissioner considers practicable under the circumstances. If an emergency order is issued under this subsection without a hearing, the

commissioner shall set the time and place for a hearing to affirm, modify, or set aside the emergency order. The commission may issue cease and desist orders.

(c) The commissioner shall prescribe application forms for original and renewal licenses and the design of the licenses.

(d) The commissioner shall prescribe the method and content of examinations administered under this Act 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.

(e) The commissioner shall enforce insurance requirements for persons licensed under this Act.

(f) The commission may employ the personnel necessary to implement this Act. The commission shall contract with at least two full-time roofing contractors to serve as test examiners.

(g) The commissioner may authorize necessary disbursements to implement this Act, including office expenses, costs of equipment, and other necessary facilities.

(h) The commission shall publish annually a directory of the persons licensed under this Act. The commission may sell the directory on payment of a reasonable fee set by the commission. The fees collected under this subsection shall be appropriated to the commission for use in the administration of this Act.

(i) The commission may contract with another state agency or with a political subdivision of the state for the enforcement of this Act and the rules adopted by the commissioner under this Act.

(j) The commissioner shall adopt rules that require a

license holder to obtain a permit from an approved landfill to dispose of roofing materials. Rules adopted under this subsection shall include a requirement that a license holder maintain a record for each disposal of roofing materials by the license holder.

SECTION 4. ADVISORY BOARD. (a) The Roofing Contractors Advisory Board is created to advise the commissioner in adopting rules, method, and content of examination and enforcing and administering this Act and to advise the commission in setting fees.

(b) The advisory board is composed of six members appointed by the commissioner who are experienced in the design, installation, construction, maintenance, service, repair, alteration, or modification of roofing systems. Members of the advisory board shall hold office for staggered terms of six years, with two terms expiring on February 1 of each odd-numbered year.

(c) The commissioner shall appoint the advisory board members as follows:

(1) three members must be full-time licensed roofing contractors as follows:

(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 shall be public members.

(d) For the members appointed under Subsection (c)(1) of this section, at least one member must practice in a municipality

with a population of 250,000 or more and at least one member must practice in a municipality with a population of less than 250,000. For the purposes of this subsection, "population" means the population according to the most recent federal decennial census.

(e) The commissioner shall designate one member of the advisory board to serve as chairman. The commissioner or the commissioner's designee shall serve as an ex officio, nonvoting member of the advisory board. On the resignation, death, suspension, or incapacity of any member, the commissioner shall fill the vacancy for the remainder of the unexpired term with an individual who represents the same category with which the predecessor was identified.

(f) The advisory board shall meet at least every six months and may meet at other times at the call of the chairman. The advisory board shall meet at a place designated by the board within the State of Texas. A decision of the advisory board is not effective unless it receives the affirmative vote of at least a majority of the members present.

(g) The advisory board members serve without compensation.

SECTION 5. LICENSE REQUIRED. (a) Unless the person is exempted under Section 14 of this Act, a person or company may not perform roofing contracting without a license under this Act.

(b) A roofing contracting company that is not exempt under this Act must employ a license holder, or license holders, whose license is assigned to that company.

(c) A representative of the commission or a municipal official may issue a citation to a person who performs roofing

contracting without a license issued under this Act.

(d) A license issued under this Act is valid throughout the state, and the holder and persons under the holder's supervision are not required to hold a municipal license to practice roofing contracting in any municipality within this state.

SECTION 6. ROOFING CONTRACTOR LICENSES. (a) The roofing contracting company shall be the license holder and shall comply with all the requirements of this Act, with a principal of the company being the qualifying party meeting all the requirements of this Act. Roofing contractor licenses are of the following three classes and entitle the licensee to perform the following services, respectively:

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

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

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

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

(c) The qualifying party that applies for a roofing contractor license must be at least 18 years old and must present to the commissioner satisfactory evidence of at least 36 months of practical experience in the preceding five years.

(d) The application must be made on a form prescribed by the

commissioner and must specify the class of license the applicant seeks. The application must be sworn to and verified and must be accompanied by:

(1) evidence of the insurance coverage required under this Act;

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

(3) the examination fee.

(e) The commissioner shall issue a roofing contractor license to a company which has a qualifying party who possesses the required qualifications, passes the appropriate examinations, and pays the examination fee and the original license fee required by this Act. An applicant who fails an examination is eligible for reexamination.

(f) A license issued under this Act is valid for a one-year period from the date of issuance.

(g) With the advice of the advisory board, the commissioner shall adopt rules relating to the use, display, and advertisement of a licensee's license.

SECTION 7. NOTICE OF EXAMINATION RESULTS. (a) Not later than the 45th day after the date on which an examination is administered under this Act, the commissioner shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commissioner shall notify examinees of the results of the examination not later than the 14th day after the date on which the commissioner receives the results from the testing service.

(b) If requested in writing by a person who fails the examination, the commissioner shall furnish the person with the results of the person's performance on the examination.

SECTION 8. INSURANCE REQUIREMENT. (a) A licensed contractor 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) Insurance must be obtained from an admitted company or an eligible surplus lines insurer, as defined in Article 1.14-2, Insurance Code.

(c) A license applicant or holder shall furnish to the commission a certificate of insurance. The license holder's name, business name, and address must be shown as it appears on the license. The certificate form to be submitted shall be the form furnished by the commission. Each certificate of insurance shall reflect all assumed names used by the license holder and registered with this agency. Neither binders nor interim certificates of less than 60 days will be accepted.

(d) The certificate of insurance shall state that the insurance carrier shall notify the commission not later than the 30th day before the cancellation or nonrenewal by the insurance carrier and not later than the 10th day following nonrenewal or

cancellation by the insured.

(e) A license holder whose proof of insurance expires shall be notified by the commission that the holder has an insurance violation. Failure to furnish the required proof shall be grounds for revocation of the license in accordance with Article 9100, Revised Statutes.

(f) A surety bond shall be posted with the commission by each licensee in the following amounts:

(1) $35,000 for a Class I license;

(2) $25,000 for a Class II license; and

(3) $10,000 for a Class III license.

SECTION 9. CONTINUING EDUCATION PROGRAMS. The commissioner shall recognize, prepare, or administer continuing education programs for licensees. The Roofing Contractors Association of Texas shall be an education provider and shall be the approval agent of continuing education credits in these programs. Participation in the programs is mandatory. Each licensee shall be required to complete eight hours of continuing education per license year.

SECTION 10. LICENSE BY RECIPROCITY. The commissioner may waive any license requirement for an applicant or for the qualifying party of an applicant with a valid license from another state with which this state has a reciprocity agreement. A reciprocity agreement with another state may only be recognized under this section if the other state has licensing requirements that the commissioner determines are substantially equivalent to the requirements of this Act. The commissioner may not waive a

license requirement under this section for an applicant or qualifying party of an applicant that does not maintain insurance coverage and does not post a surety bond of the same type and amount as required by Section 8 of this Act. The insurance coverage and surety bond must apply to work performed in this state.

SECTION 11. TEMPORARY LICENSE. (a) In the event the qualifying party becomes incapacitated and unable to serve in the normal capacity of principal of a company or is no longer available due to the dissolution of a partnership or corporation, a temporary license may be issued to another principal of the company, who then becomes the qualifying party for a period extending 30 days beyond the date of the next examination, not to exceed six months. The temporary license is not renewable, but a second temporary license may be issued if the company's qualifying party becomes unavailable in circumstances that make the company again eligible to receive a temporary license. The temporary license shall be of the same class and endorsement as the license being replaced.

(b) The commissioner may issue a temporary license under the conditions provided by Subsection (a) of this section to an applicant who applies to the commissioner on a form prescribed by the commissioner and pays the required fees.

SECTION 12. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) A violation of this Act or a rule adopted under this Act is a ground for the denial, suspension, or revocation of a license issued under this Act as well as a ground for the imposition of administrative penalties as provided by Article 9100, Revised

Statutes. 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 Act constitutes a violation of this Act. An intentional or knowing misrepresentation of necessary services, services to be provided, or services that have been provided constitutes a violation of this Act and a ground for the suspension or revocation of a license issued under this Act.

(b) Proceedings for the denial, suspension, or revocation of a license and appeals from those proceedings are governed by Chapter 2001, Government Code. The imposition of administrative penalties is governed by Article 9100, Revised Statutes.

SECTION 13. CONSUMER COMPLAINT INVESTIGATION. (a) The commissioner shall prepare information of consumer interest describing the functions performed by the commissioner under this Act and the rights of consumers as affected by this Act. The information must describe the procedure by which a consumer complaint is filed with and resolved by the commissioner. The commissioner shall make the information available to the general public.

(b) The commissioner shall investigate consumer complaints filed with the commissioner. If the commissioner determines after investigation that a licensee has violated this Act or a rule adopted under this Act, the commissioner may take appropriate action under Section 12 of this Act.

SECTION 14. EXEMPTIONS. (a) This Act does not apply:

(1) to a person who performs roofing contracting on

property owned by the person;

(2) to a person or firm that is registered as a manufacturer, retailer, or installer and regulated pursuant to the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) and that engages in roofing contracting for manufactured homes in the installation of manufactured homes or in providing retailer or manufacturer warranty services free of charge;

(3) to new residential construction of single-family homes, duplexes, or quadplexes;

(4) to a person who performs roofing contracting if:

(A) the person is a maintenance person or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the roofing contracting work is being performed;

(B) the work is performed in connection with the business in which the person is employed; and

(C) the person and the person's employee referred to in Paragraph (A) of this subdivision do not engage in the occupation of roofing contracting for the general public;

(5) to a person who performs roofing contracting on a dwelling owned by a member of the person's family;

(6) to a person that performs roofing contracting without a license under this Act but receives a signed disclosure statement from the owner of the property that states explicitly that the owner understands that the person performing roofing

contracting on the owner's property is not a license holder under this Act;

(7) to roofing contracting that is performed on property that is primarily for agricultural use;

(8) to roofing contracting that is performed on property that is a portable building or a garage that is not connected to a dwelling; or

(9) to a person who holds a license or other credential under the laws of this state who performs roofing contracting that is incidental to work performed by the person in the ordinary scope of the person's work under the license or credential.

(b) This Act shall in no way restrict the practice of architecture or engineering by persons duly licensed in Texas to practice these professions. This Act does not affect any provision or requirement of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), or The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

SECTION 15. ENFORCEMENT OF CONTRACTS. (a) A person who performs roofing contracting without holding the appropriate license under this Act may not collect a fee or otherwise enforce a contract for the services performed unless the person performing the roofing contracting is subject to the exemptions as outlined in Section 14 of this Act. To enforce a contract for the performance of roofing contracting, the person performing the services must present proof that the person or the person's company held a

license under this Act at the time the contract was signed and the work is performed or must present a signed disclosure statement from the homeowner as prescribed by Section 14(a)(6) of this Act.

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

SECTION 16. OFFENSE; PENALTY. Except as provided in Section 18 of this Act, a person commits an offense if the person is a qualifying party and knowingly or intentionally engages in roofing contracting without a license issued under this Act. An offense under this section is a Class B misdemeanor.

SECTION 17. 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 Act. A violation of this section constitutes engaging in roofing contracting without a license for purposes of Section 16 of this Act.

SECTION 18. MUNICIPAL REGULATION. A municipality may by ordinance adopt and enforce standards for roofing contractors that are consistent with the standards established under this Act. A municipality may not impose a licensing or registration fee on a roofing contractor licensed under this Act. The municipality may report a violation of this Act 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 of this Act. Conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license issued under this Act.

SECTION 19. EXEMPTION FROM EXAMINATION FOR CERTIFIED CONTRACTORS. (a) A person who is a certified roofing contractor in good standing as tested and approved by the Roofing Contractors Association of Texas on the effective date of this Act is entitled or, if the person is a qualifying party of a company, the person's company is entitled to receive a license without examination if the contractor applies to the commissioner for the license not later than September 1, 1998, and:

(1) registers with the commission and pays the required licensing fee;

(2) shows evidence of insurance coverage required under Section 8 of this Act; and

(3) submits a copy of the contractor's certification that has been attested to by the president and the executive director of the Roofing Contractors Association of Texas.

(b) The class of a license issued under this section shall be based on the classification of certification that is currently held by the contractor and shall correspond as follows:

(1) a certified commercial and residential roofing contractor shall receive a Class I license;

(2) a certified commercial roofing contractor shall receive a Class II license; and

(3) a certified residential roofing contractor shall receive a Class III license.

(c) A roofing contractor who is issued a license under this section is subject to all other provisions of this Act, including provisions for the renewal of the roofing contractor license.

SECTION 20. TERMS OF INITIAL BOARD MEMBERS. In making the initial appointments to the advisory board, the commissioner shall designate two members for terms expiring on February 1, 1999, two members for terms expiring on February 1, 2001, and two members for terms expiring on February 1, 2003.

SECTION 21. EFFECTIVE DATE. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1997.

(b) Sections 5 and 16 of this Act take effect September 1, 1998.

SECTION 22. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

By: Moncrief S.B. No. 259

Substitute the following for S.B. No. 259:

By: _____ C.S.S.B. No. 259

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. SHORT TITLE. This Act may be cited as the "Roofing Contractors Licensing Law."

SECTION 2. DEFINITIONS. In this Act:

(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, and other materials on any building or structure other than buildings or structures listed in Subdivision (8) of this section.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Commissioner" means the commissioner of licensing and regulation.

(5) "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.

(6) "Person" means an individual.

(7) "Qualifying party" means a person who possesses all the necessary qualifications and who is a principal of a company licensed under this Act.

(8) "Residential roofing" means any material applied to the exterior roof framing (wood or steel) on single-family homes, duplexes, or quadplexes.

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

(10) "Roofing contracting company" or "company" means any person, corporation, partnership, association, or other entity that performs roofing contracting.

SECTION 3. POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner shall adopt rules for the practice of roofing contracting consistent with this Act. The standards prescribed by rule must be substantially the same as the standards set forth in the roofing manufacturers' standard requirements. The commissioner shall enforce this Act and may adopt rules relating to enforcement requirements.

(b) The commissioner may issue an emergency order as necessary to enforce this Act if the commissioner determines that an emergency exists requiring immediate action to protect the public health and safety. The order may be issued without notice and hearing or with such notice and hearing as the commissioner considers practicable under the circumstances. If an emergency

order is issued under this subsection without a hearing, the commissioner shall set the time and place for a hearing to affirm, modify, or set aside the emergency order. The commission may issue cease and desist orders.

(c) The commissioner shall prescribe application forms for original and renewal licenses and the design of the licenses.

(d) The commissioner shall prescribe the method and content of examinations administered under this Act 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.

(e) The commissioner shall enforce insurance requirements for persons licensed under this Act.

(f) The commission may employ the personnel necessary to implement this Act. The commission shall contract with at least two full-time roofing contractors to serve as test examiners.

(g) The commissioner may authorize necessary disbursements to implement this Act, including office expenses, costs of equipment, and other necessary facilities.

(h) The commission shall publish annually a directory of the persons licensed under this Act. The commission may sell the directory on payment of a reasonable fee set by the commission. The fees collected under this subsection shall be appropriated to the commission for use in the administration of this Act.

(i) The commission may contract with another state agency or with a political subdivision of the state for the enforcement of

this Act and the rules adopted by the commissioner under this Act.

SECTION 4. ADVISORY BOARD. (a) The Roofing Contractors Advisory Board is created to advise the commissioner in adopting rules, method, and content of examination and enforcing and administering this Act and to advise the commission in setting fees.

(b) The advisory board is composed of six members appointed by the commissioner who are experienced in the design, installation, construction, maintenance, service, repair, alteration, or modification of roofing systems. Members of the advisory board shall hold office for staggered terms of six years, with two terms expiring on February 1 of each odd-numbered year.

(c) The commissioner shall appoint the advisory board members as follows:

(1) three members must be full-time licensed roofing contractors as follows:

(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 shall be public members.

(d) For the members appointed under Subsection (c)(1) of this section, at least one member must practice in a municipality with a population of 250,000 or more and at least one member must practice in a municipality with a population of less than 250,000.

For the purposes of this subsection, "population" means the population according to the most recent federal decennial census.

(e) The commissioner shall designate one member of the advisory board to serve as chairman. The commissioner or the commissioner's designee shall serve as an ex officio, nonvoting member of the advisory board. On the resignation, death, suspension, or incapacity of any member, the commissioner shall fill the vacancy for the remainder of the unexpired term with an individual who represents the same category with which the predecessor was identified.

(f) The advisory board shall meet at least every six months and may meet at other times at the call of the chairman. The advisory board shall meet at a place designated by the board within the State of Texas. A decision of the advisory board is not effective unless it receives the affirmative vote of at least a majority of the members present.

(g) The advisory board members serve without compensation.

SECTION 5. LICENSE REQUIRED. (a) Unless the person is exempted under Section 14 of this Act, a person or company may not perform roofing contracting without a license under this Act.

(b) A roofing contracting company that is not exempt under this Act must employ a license holder, or license holders, whose license is assigned to that company.

(c) A representative of the commission or a municipal official may issue a citation to a person who performs roofing contracting without a license issued under this Act.

(d) A license issued under this Act is valid throughout the state, and the holder and persons under the holder's supervision are not required to hold a municipal license to practice roofing contracting in any municipality within this state.

SECTION 6. ROOFING CONTRACTOR LICENSES. (a) The roofing contracting company shall be the license holder and shall comply with all the requirements of this Act, with a principal of the company being the qualifying party meeting all the requirements of this Act. Roofing contractor licenses are of the following three classes and entitle the licensee to perform the following services, respectively:

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

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

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

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

(c) The qualifying party that applies for a roofing contractor license must be at least 18 years old and must present to the commissioner satisfactory evidence of at least 36 months of practical experience in the preceding five years.

(d) The application must be made on a form prescribed by the

commissioner and must specify the class of license the applicant seeks. The application must be sworn to and verified and must be accompanied by:

(1) evidence of the insurance coverage required under this Act;

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

(3) the examination fee.

(e) The commissioner shall issue a roofing contractor license to a company which has a qualifying party who possesses the required qualifications, passes the appropriate examinations, and pays the examination fee and the original license fee required by this Act. An applicant who fails an examination is eligible for reexamination.

(f) A license issued under this Act is valid for a one-year period from the date of issuance.

(g) With the advice of the advisory board, the commissioner shall adopt rules relating to the use, display, and advertisement of a licensee's license.

SECTION 7. NOTICE OF EXAMINATION RESULTS. (a) Not later than the 45th day after the date on which an examination is administered under this Act, the commissioner shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commissioner shall notify examinees of the results of the examination not later than the 14th day after the date on which the

commissioner receives the results from the testing service.

(b) If requested in writing by a person who fails the examination, the commissioner shall furnish the person with the results of the person's performance on the examination.

SECTION 8. INSURANCE REQUIREMENT. (a) A licensed contractor 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) Insurance must be obtained from an admitted company or an eligible surplus lines insurer, as defined in Article 1.14-2, Insurance Code.

(c) A license applicant or holder shall furnish to the commission a certificate of insurance. The license holder's name, business name, and address must be shown as it appears on the license. The certificate form to be submitted shall be the form furnished by the commission. Each certificate of insurance shall reflect all assumed names used by the license holder and registered with this agency. Neither binders nor interim certificates of less than 60 days will be accepted.

(d) The certificate of insurance shall state that the insurance carrier shall notify the commission not later than the

30th day before the cancellation or nonrenewal by the insurance carrier and not later than the 10th day following nonrenewal or cancellation by the insured.

(e) A license holder whose proof of insurance expires shall be notified by the commission that the holder has an insurance violation. Failure to furnish the required proof shall be grounds for revocation of the license in accordance with Article 9100, Revised Statutes.

(f) A surety bond shall be posted with the commission by each licensee in the following amounts:

(1) $35,000 for a Class I license;

(2) $25,000 for a Class II license; and

(3) $10,000 for a Class III license.

SECTION 9. CONTINUING EDUCATION PROGRAMS. The commissioner shall recognize, prepare, or administer continuing education programs for licensees. The Roofing Contractors Association of Texas shall be an education provider and shall be the approval agent of continuing education credits in these programs. Participation in the programs is mandatory. Each licensee shall be required to complete eight hours of continuing education per license year.

SECTION 10. LICENSE BY RECIPROCITY. The commissioner may waive any license requirement for an applicant or for the qualifying party of an applicant with a valid license from another state with which this state has a reciprocity agreement.

SECTION 11. TEMPORARY LICENSE. (a) In the event the

qualifying party becomes incapacitated and unable to serve in the normal capacity of principal of a company or is no longer available due to the dissolution of a partnership or corporation, a temporary license may be issued to another principal of the company, who then becomes the qualifying party for a period extending 30 days beyond the date of the next examination, not to exceed six months. The temporary license is not renewable, but a second temporary license may be issued if the company's qualifying party becomes unavailable in circumstances that make the company again eligible to receive a temporary license. The temporary license shall be of the same class and endorsement as the license being replaced.

(b) The commissioner may issue a temporary license under the conditions provided by Subsection (a) of this section to an applicant who applies to the commissioner on a form prescribed by the commissioner and pays the required fees.

SECTION 12. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) A violation of this Act or a rule adopted under this Act is a ground for the denial, suspension, or revocation of a license issued under this Act as well as a ground for the imposition of administrative penalties as provided by Article 9100, Revised Statutes. 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 Act constitutes a violation of this Act. An intentional or knowing misrepresentation of necessary services, services to be provided, or services that have been provided

constitutes a violation of this Act and a ground for the suspension or revocation of a license issued under this Act.

(b) Proceedings for the denial, suspension, or revocation of a license and appeals from those proceedings are governed by Chapter 2001, Government Code. The imposition of administrative penalties is governed by Article 9100, Revised Statutes.

SECTION 13. CONSUMER COMPLAINT INVESTIGATION. (a) The commissioner shall prepare information of consumer interest describing the functions performed by the commissioner under this Act and the rights of consumers as affected by this Act. The information must describe the procedure by which a consumer complaint is filed with and resolved by the commissioner. The commissioner shall make the information available to the general public.

(b) The commissioner shall investigate consumer complaints filed with the commissioner. If the commissioner determines after investigation that a licensee has violated this Act or a rule adopted under this Act, the commissioner may take appropriate action under Section 12 of this Act.

SECTION 14. EXEMPTIONS. (a) This Act does not apply:

(1) to a person who performs roofing contracting on a dwelling owned by the person and used as the person's residence;

(2) to a person or firm that is registered as a manufacturer, retailer, or installer and regulated pursuant to the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) and that engages in roofing contracting for

manufactured homes in the installation of manufactured homes or in providing retailer or manufacturer warranty services free of charge;

(3) to new residential construction of single-family homes, duplexes, or quadplexes;

(4) to a person who performs roofing contracting if (i) the person is a maintenance person or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the roofing contracting work is being performed, (ii) the work is performed in connection with the business in which the person is employed, and (iii) the person and the person's employee referred to in (i) above do not engage in the occupation of roofing contracting for the general public;

(5) to a person who performs roofing contracting on a dwelling owned by a member of the person's family; or

(6) to a person who performs roofing contracting that is not a license holder under this Act but who receives a signed disclosure statement from a homeowner that states explicitly that the homeowner understands that the person who is performing roofing contracting on the homeowner's dwelling is not a license holder under this Act.

(b) This Act shall in no way restrict the practice of architecture or engineering by persons duly licensed in Texas to practice these professions.

SECTION 15. ENFORCEMENT OF CONTRACTS. (a) A person who

performs roofing contracting without holding the appropriate license under this Act may not collect a fee or otherwise enforce a contract for the services performed unless the person performing the roofing contracting is subject to the exemptions as outlined in Section 14 of this Act. To enforce a contract for the performance of roofing contracting, the person performing the services must present proof that the person or the person's company held a license under this Act at the time the contract was signed and the work is performed or must present a signed disclosure statement from the homeowner as prescribed by Subdivision (6), Subsection (a), Section 14 of this Act.

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

SECTION 16. OFFENSE; PENALTY. Except as provided in Section 17 of this Act, a person commits an offense if the person is a qualifying party and knowingly or intentionally engages in roofing contracting without a license issued under this Act. An offense under this section is a Class B misdemeanor.

SECTION 17. MUNICIPAL REGULATION. A municipality may by ordinance adopt and enforce standards for roofing contractors that are consistent with the standards established under this Act. A municipality may not impose a licensing or registration fee on a roofing contractor licensed under this Act. The municipality may report a violation of this Act 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 of this Act. Conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license issued under this Act.

SECTION 18. EXEMPTION FROM EXAMINATION FOR CERTIFIED CONTRACTORS. (a) A person who is a certified roofing contractor in good standing as tested and approved by the Roofing Contractors Association of Texas on the effective date of this Act is entitled or, if the person is a qualifying party of a company, the person's company is entitled to receive a license without examination if the contractor applies to the commissioner for the license not later than September 1, 1998, and:

(1) registers with the commission and pays the required licensing fee;

(2) shows evidence of insurance coverage required under Section 8 of this Act; and

(3) submits a copy of the contractor's certification that has been attested to by the president and the executive director of the Roofing Contractors Association of Texas.

(b) The class of a license issued under this section shall be based on the classification of certification that is currently held by the contractor and shall correspond as follows:

(1) a certified commercial and residential roofing contractor shall receive a Class I license;

(2) a certified commercial roofing contractor shall receive a Class II license; and

(3) a certified residential roofing contractor shall

receive a Class III license.

(c) A roofing contractor who is issued a license under this section is subject to all other provisions of this Act, including provisions for the renewal of the roofing contractor license.

SECTION 19. TERMS OF INITIAL BOARD MEMBERS. In making the initial appointments to the advisory board, the commissioner shall designate two members for a term expiring on February 1, 1999, two members for a term expiring on February 1, 2001, and two members for a term expiring on February 1, 2003.

SECTION 20. EFFECTIVE DATE. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1997.

(b) Sections 5 and 16 of this Act take effect September 1, 1998.

SECTION 21. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

AMEND THE CAPTION TO CONFORM
TO THE BODY OF THE BILL

ADOPTED

APR 9 1997

Secretary of the Senate

April 9 1997 Engrossed

Engrossing Clerk

By: Moncrief S.B. No. 259

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. SHORT TITLE. This Act may be cited as the "Roofing Contractors Licensing Law."

SECTION 2. DEFINITIONS. In this Act:

(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, and other materials on any building or structure other than buildings or structures listed in Subdivision (8) of this section.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Commissioner" means the commissioner of licensing and regulation.

(5) "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.

(6) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership,

association, and any other legal entity.

(7) "Qualifying party" means a person who possesses all the necessary qualifications and who is a principal of a company licensed under this Act.

(8) "Residential roofing" means any material applied to the exterior roof framing (wood or steel) on single-family homes, duplexes, or quadplexes.

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

(10) "Roofing contracting company" or "company" means any person, corporation, partnership, association, or other entity that performs roofing contracting.

SECTION 3. POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner shall adopt rules for the practice of roofing contracting consistent with this Act. The standards prescribed by rule must be substantially the same as the standards set forth in the roofing manufacturers' standard requirements. The commissioner shall enforce this Act and may adopt rules relating to enforcement requirements.

(b) The commissioner may issue an emergency order as necessary to enforce this Act if the commissioner determines that an emergency exists or formerly existed requiring immediate temporary action to protect the public health and safety or to

protect damaged property. The order may be issued without notice and hearing or with such notice and hearing as the commissioner considers practicable under the circumstances. If an emergency order is issued under this subsection without a hearing, the commissioner shall set the time and place for a hearing to affirm, modify, or set aside the emergency order. The commission may issue cease and desist orders.

(c) The commissioner shall prescribe application forms for original and renewal licenses and the design of the licenses.

(d) The commissioner shall prescribe the method and content of examinations administered under this Act 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.

(e) The commissioner shall enforce insurance requirements for persons licensed under this Act.

(f) The commission may employ the personnel necessary to implement this Act. The commission shall contract with at least two full-time roofing contractors to serve as test examiners.

(g) The commissioner may authorize necessary disbursements to implement this Act, including office expenses, costs of equipment, and other necessary facilities.

(h) The commission shall publish annually a directory of the persons licensed under this Act. The commission may sell the directory on payment of a reasonable fee set by the commission.

The fees collected under this subsection shall be appropriated to the commission for use in the administration of this Act.

(i) The commission may contract with another state agency or with a political subdivision of the state for the enforcement of this Act and the rules adopted by the commissioner under this Act.

(j) The commissioner shall adopt rules that require a license holder to obtain a permit from an approved landfill to dispose of roofing materials. Rules adopted under this subsection shall include a requirement that a license holder maintain a record for each disposal of roofing materials by the license holder.

SECTION 4. ADVISORY BOARD. (a) The Roofing Contractors Advisory Board is created to advise the commissioner in adopting rules, method, and content of examination and enforcing and administering this Act and to advise the commission in setting fees.

(b) The advisory board is composed of six members appointed by the commissioner who are experienced in the design, installation, construction, maintenance, service, repair, alteration, or modification of roofing systems. Members of the advisory board shall hold office for staggered terms of six years, with two terms expiring on February 1 of each odd-numbered year.

(c) The commissioner shall appoint the advisory board members as follows:

(1) three members must be full-time licensed roofing contractors as follows:

(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 shall be public members.

(d) For the members appointed under Subsection (c)(1) of this section, at least one member must practice in a municipality with a population of 250,000 or more and at least one member must practice in a municipality with a population of less than 250,000. For the purposes of this subsection, "population" means the population according to the most recent federal decennial census.

(e) The commissioner shall designate one member of the advisory board to serve as chairman. The commissioner or the commissioner's designee shall serve as an ex officio, nonvoting member of the advisory board. On the resignation, death, suspension, or incapacity of any member, the commissioner shall fill the vacancy for the remainder of the unexpired term with an individual who represents the same category with which the predecessor was identified.

(f) The advisory board shall meet at least every six months and may meet at other times at the call of the chairman. The advisory board shall meet at a place designated by the board within the State of Texas. A decision of the advisory board is not effective unless it receives the affirmative vote of at least a

majority of the members present.

(g) The advisory board members serve without compensation.

SECTION 5. LICENSE REQUIRED. (a) Unless the person is exempted under Section 14 of this Act, a person or company may not perform roofing contracting without a license under this Act.

(b) A roofing contracting company that is not exempt under this Act must employ a license holder, or license holders, whose license is assigned to that company.

(c) A representative of the commission or a municipal official may issue a citation to a person who performs roofing contracting without a license issued under this Act.

(d) A license issued under this Act is valid throughout the state, and the holder and persons under the holder's supervision are not required to hold a municipal license to practice roofing contracting in any municipality within this state.

SECTION 6. ROOFING CONTRACTOR LICENSES. (a) The roofing contracting company shall be the license holder and shall comply with all the requirements of this Act, with a principal of the company being the qualifying party meeting all the requirements of this Act. Roofing contractor licenses are of the following three classes and entitle the licensee to perform the following services, respectively:

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

(2) a Class II license entitles the licensee to

perform only commercial roofing services; and

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

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

(c) The qualifying party that applies for a roofing contractor license must be at least 18 years old and must present to the commissioner satisfactory evidence of at least 36 months of practical experience in the preceding five years.

(d) The application must be made on a form prescribed by the commissioner and must specify the class of license the applicant seeks. The application must be sworn to and verified and must be accompanied by:

(1) evidence of the insurance coverage required under this Act;

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

(3) the examination fee.

(e) The commissioner shall issue a roofing contractor license to a company which has a qualifying party who possesses the required qualifications, passes the appropriate examinations, and pays the examination fee and the original license fee required by this Act. An applicant who fails an examination is eligible for

reexamination.

(f) A license issued under this Act is valid for a one-year period from the date of issuance.

(g) With the advice of the advisory board, the commissioner shall adopt rules relating to the use, display, and advertisement of a licensee's license.

SECTION 7. NOTICE OF EXAMINATION RESULTS. (a) Not later than the 45th day after the date on which an examination is administered under this Act, the commissioner shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commissioner shall notify examinees of the results of the examination not later than the 14th day after the date on which the commissioner receives the results from the testing service.

(b) If requested in writing by a person who fails the examination, the commissioner shall furnish the person with the results of the person's performance on the examination.

SECTION 8. INSURANCE REQUIREMENT. (a) A licensed contractor 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) Insurance must be obtained from an admitted company or an eligible surplus lines insurer, as defined in Article 1.14-2, Insurance Code.

(c) A license applicant or holder shall furnish to the commission a certificate of insurance. The license holder's name, business name, and address must be shown as it appears on the license. The certificate form to be submitted shall be the form furnished by the commission. Each certificate of insurance shall reflect all assumed names used by the license holder and registered with this agency. Neither binders nor interim certificates of less than 60 days will be accepted.

(d) The certificate of insurance shall state that the insurance carrier shall notify the commission not later than the 30th day before the cancellation or nonrenewal by the insurance carrier and not later than the 10th day following nonrenewal or cancellation by the insured.

(e) A license holder whose proof of insurance expires shall be notified by the commission that the holder has an insurance violation. Failure to furnish the required proof shall be grounds for revocation of the license in accordance with Article 9100, Revised Statutes.

(f) A surety bond shall be posted with the commission by each licensee in the following amounts:

(1) $35,000 for a Class I license;

(2) $25,000 for a Class II license; and

(3) $10,000 for a Class III license.

SECTION 9. CONTINUING EDUCATION PROGRAMS. The commissioner shall recognize, prepare, or administer continuing education programs for licensees. The Roofing Contractors Association of Texas shall be an education provider and shall be the approval agent of continuing education credits in these programs. Participation in the programs is mandatory. Each licensee shall be required to complete eight hours of continuing education per license year.

SECTION 10. LICENSE BY RECIPROCITY. The commissioner may waive any license requirement for an applicant or for the qualifying party of an applicant with a valid license from another state with which this state has a reciprocity agreement. A reciprocity agreement with another state may only be recognized under this section if the other state has licensing requirements that the commissioner determines are substantially equivalent to the requirements of this Act. The commissioner may not waive a license requirement under this section for an applicant or qualifying party of an applicant that does not maintain insurance coverage and does not post a surety bond of the same type and amount as required by Section 8 of this Act. The insurance coverage and surety bond must apply to work performed in this state.

SECTION 11. TEMPORARY LICENSE. (a) In the event the

qualifying party becomes incapacitated and unable to serve in the normal capacity of principal of a company or is no longer available due to the dissolution of a partnership or corporation, a temporary license may be issued to another principal of the company, who then becomes the qualifying party for a period extending 30 days beyond the date of the next examination, not to exceed six months. The temporary license is not renewable, but a second temporary license may be issued if the company's qualifying party becomes unavailable in circumstances that make the company again eligible to receive a temporary license. The temporary license shall be of the same class and endorsement as the license being replaced.

(b) The commissioner may issue a temporary license under the conditions provided by Subsection (a) of this section to an applicant who applies to the commissioner on a form prescribed by the commissioner and pays the required fees.

SECTION 12. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) A violation of this Act or a rule adopted under this Act is a ground for the denial, suspension, or revocation of a license issued under this Act as well as a ground for the imposition of administrative penalties as provided by Article 9100, Revised Statutes. 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 Act constitutes a violation of this Act. An intentional or knowing misrepresentation of necessary services,

services to be provided, or services that have been provided constitutes a violation of this Act and a ground for the suspension or revocation of a license issued under this Act.

(b) Proceedings for the denial, suspension, or revocation of a license and appeals from those proceedings are governed by Chapter 2001, Government Code. The imposition of administrative penalties is governed by Article 9100, Revised Statutes.

SECTION 13. CONSUMER COMPLAINT INVESTIGATION. (a) The commissioner shall prepare information of consumer interest describing the functions performed by the commissioner under this Act and the rights of consumers as affected by this Act. The information must describe the procedure by which a consumer complaint is filed with and resolved by the commissioner. The commissioner shall make the information available to the general public.

(b) The commissioner shall investigate consumer complaints filed with the commissioner. If the commissioner determines after investigation that a licensee has violated this Act or a rule adopted under this Act, the commissioner may take appropriate action under Section 12 of this Act.

SECTION 14. EXEMPTIONS. (a) This Act does not apply:

(1) to a person who performs roofing contracting on property owned by the person;

(2) to a person or firm that is registered as a manufacturer, retailer, or installer and regulated pursuant to the

Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) and that engages in roofing contracting for manufactured homes in the installation of manufactured homes or in providing retailer or manufacturer warranty services free of charge;

(3) to new residential construction of single-family homes, duplexes, or quadplexes;

(4) to a person who performs roofing contracting if:

(A) the person is a maintenance person or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the roofing contracting work is being performed;

(B) the work is performed in connection with the business in which the person is employed; and

(C) the person and the person's employee referred to in Paragraph (A) of this subdivision do not engage in the occupation of roofing contracting for the general public;

(5) to a person who performs roofing contracting on a dwelling owned by a member of the person's family;

(6) to a person that performs roofing contracting without a license under this Act but receives a signed disclosure statement from the owner of the property that states explicitly that the owner understands that the person performing roofing contracting on the owner's property is not a license holder under

this Act;

(7) to roofing contracting that is performed on property that is primarily for agricultural use;

(8) to roofing contracting that is performed on property that is a portable building or a garage that is not connected to a dwelling; or

(9) to a person who holds a license or other credential under the laws of this state who performs roofing contracting that is incidental to work performed by the person in the ordinary scope of the person's work under the license or credential.

(b) This Act shall in no way restrict the practice of architecture or engineering by persons duly licensed in Texas to practice these professions. This Act does not affect any provision or requirement of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), or The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

SECTION 15. ENFORCEMENT OF CONTRACTS. (a) A person who performs roofing contracting without holding the appropriate license under this Act may not collect a fee or otherwise enforce a contract for the services performed unless the person performing the roofing contracting is subject to the exemptions as outlined in Section 14 of this Act. To enforce a contract for the performance of roofing contracting, the person performing the services must

present proof that the person or the person's company held a license under this Act at the time the contract was signed and the work is performed or must present a signed disclosure statement from the homeowner as prescribed by Section 14(a)(6) of this Act.

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

SECTION 16. OFFENSE; PENALTY. Except as provided in Section 18 of this Act, a person commits an offense if the person is a qualifying party and knowingly or intentionally engages in roofing contracting without a license issued under this Act. An offense under this section is a Class B misdemeanor.

SECTION 17. 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 Act. A violation of this section constitutes engaging in roofing contracting without a license for purposes of Section 16 of this Act.

SECTION 18. MUNICIPAL REGULATION. A municipality may by ordinance adopt and enforce standards for roofing contractors that are consistent with the standards established under this Act. A municipality may not impose a licensing or registration fee on a roofing contractor licensed under this Act. The municipality may report a violation of this Act 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 of this Act. Conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license issued under this Act.

SECTION 19. EXEMPTION FROM EXAMINATION FOR CERTIFIED CONTRACTORS. (a) A person who is a certified roofing contractor in good standing as tested and approved by the Roofing Contractors Association of Texas on the effective date of this Act is entitled or, if the person is a qualifying party of a company, the person's company is entitled to receive a license without examination if the contractor applies to the commissioner for the license not later than September 1, 1998, and:

(1) registers with the commission and pays the required licensing fee;

(2) shows evidence of insurance coverage required under Section 8 of this Act; and

(3) submits a copy of the contractor's certification that has been attested to by the president and the executive director of the Roofing Contractors Association of Texas.

(b) The class of a license issued under this section shall be based on the classification of certification that is currently held by the contractor and shall correspond as follows:

(1) a certified commercial and residential roofing contractor shall receive a Class I license;

(2) a certified commercial roofing contractor shall receive a Class II license; and

(3) a certified residential roofing contractor shall receive a Class III license.

(c) A roofing contractor who is issued a license under this section is subject to all other provisions of this Act, including provisions for the renewal of the roofing contractor license.

SECTION 20. TERMS OF INITIAL BOARD MEMBERS. In making the initial appointments to the advisory board, the commissioner shall designate two members for terms expiring on February 1, 1999, two members for terms expiring on February 1, 2001, and two members for terms expiring on February 1, 2003.

SECTION 21. EFFECTIVE DATE. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1997.

(b) Sections 5 and 16 of this Act take effect September 1, 1998.

SECTION 22. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

**LEGISLATIVE BUDGET BOARD**
**Austin, Texas**

**FISCAL NOTE**
**75th Regular Session**

March 18, 1997

To: Honorable Kenneth Armbrister, Chair
Committee on State Affairs
Senate
Austin, Texas

IN RE: Senate Bill No. 259,
Committee Report 1st House,
Substituted
By: Moncrief

From: John Keel, Director

In response to your request for a Fiscal Note on SB259 (Relating to the regulation of roofing contractors; providing penalties.) this office has determined the following:

**Biennial Net Impact to General Revenue Funds by SB259-Committee Report 1st House, Substituted**

Implementing the provisions of the bill would result in a net positive impact of $222,872 to General Revenue Related Funds through the biennium ending August 31, 1999.

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The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**Fiscal Analysis**

This bill would require the Department of Licensing and Regulation (TDLR) to license roofing contractors and provide for criminal and administrative penalties. The bill would exempt certain maintenance personnel and allow homeowners to sign a disclosure statement acknowledging that the roofer is not licensed. Examinations at various locations and reciprocity agreements with other states would be required to license these contractors. Liability insurance and bonding requirements are also specified. The TDLR would also be required to publish an annual directory of all persons licensed under this legislation. In addition, this bill would provide for the creation of a six member Roofing Contractors Advisory Board. This bill would allow the Department to employ personnel as necessary for implementation and authorize additional expenditures including office expenses, equipment, and other necessary facilities.

**Methodology**

According to the TDLR, an additional 23 FTEs would be required to implement the provisions of this bill. Most of the costs are related to examination administration. The agency assumes that 15,000 contractors would be required to have a license. The agency would examine and license 6,000 people in the first year. The second year would include 6,000 additional new licensees and 6,000 renewals from the first year. In the third year, the agency would license any remaining contractors requiring licenses (about 3,000) and continue license renewals. The initial license fee would be $175 per contractor and annual license renewals would be $125 per contractor. Regulation of this industry would also result in new administrative hearings from complaints originated in the industry. The agency assumes 30 administrative hearings

would result from 900 complaints received annually. This analysis assumes that the Commission would set fees necessary to cover the costs of administering this Act.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

**Five Year Impact:**

| Fiscal Year | Probable Savings/(Cost) from General Revenue Fund 0001 | Salaries/Wages Probable Savings/(Cost) from General Revenue Fund 0001 | Probable Revenue Gain/(Loss) from General Revenue Fund 0001 | Change in Number of State Employees from FY 1997 |
|---|---|---|---|---|
| 1998 | ($520,864) | ($497,700) | $1,050,000 | 23.0 |
| 1999 | (360,864) | (497,700) | 1,050,000 | 23.0 |
| 2000 | (351,864) | (497,700) | 1,875,000 | 23.0 |
| 2001 | (367,864) | (497,700) | 1,875,000 | 23.0 |
| 2002 | (367,864) | (497,700) | 1,875,000 | 23.0 |

**Net Impact on General Revenue Related Funds:**

The probable fiscal implication to General Revenue related funds during each of the first five years is estimated as follows:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|---|---|
| 1998 | $31,436 |
| 1999 | 191,436 |
| 2000 | 1,025,436 |
| 2001 | 1,009,436 |
| 2002 | 1,009,436 |

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

Revenue impacts to local governments would occur as a result of deferring licensing requirements to the state. Local governments currently regulating roofing contractors would be limited to only enforcement authorization. Currently, the City of San Antonio generates approximately $47,000 per year in roofer licensing; the City of Fort Worth collects approximately $60,000 in roofer licensing.

Source: Agencies: 452 Department of Licensing and Regulation

LBB Staff: JK, JD, RA

**LEGISLATIVE BUDGET BOARD**
**Austin, Texas**

**FISCAL NOTE**
**75th Regular Session**

March 4, 1997

To: Honorable Kenneth Armbrister, Chair
Committee on State Affairs
Senate
Austin, Texas

IN RE: Senate Bill No. 259
By: Moncrief

From: John Keel, Director

In response to your request for a Fiscal Note on SB259 (Relating to the regulation of roofing contractors; providing penalties.) this office has determined the following:

**Biennial Net Impact to General Revenue Funds by SB259-As Introduced**

Implementing the provisions of the bill would result in a net positive impact of $222,872 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**Fiscal Analysis**

This bill would require the Department of Licensing and Regulation (TDLR) to license roofing contractors and provides for criminal and administrative penalties. Examinations at various locations and reciprocity agreements with other states would be required to license these contractors. Liability insurance and bonding requirements are also specified. The TDLR would also be required to publish an annual directory of all persons licensed under this legislation. In addition, this bill would provide for the creation of a six member Roofing Contractors Advisory Board. This bill would allow the Department to employ personnel as necessary for implementation and authorize additional expenditures including office expenses, equipment, and other necessary facilities.

**Methodology**

According to the TDLR, an additional 23 FTEs would be required to implement the provisions of this bill. Most of the costs are related to examination administration. The agency assumes that 15,000 contractors would be required to have a license. The agency would examine and license 6,000 people in the first year. The second year would include 6,000 additional new licensees and 6,000 renewals from the first year. In the third year, the agency would license any remaining contractors requiring licenses (about 3,000) and continue license renewals. The initial license fee would be $175 per contractor and annual license renewals would be $125 per contractor. Regulation of this industry would also result in new administrative hearings from complaints originated in the industry. The agency assumes 30 administrative hearings would result from 900 complaints received annually. This analysis assumes that the Commission would set fees necessary to cover the costs of administering this Act.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

## Five Year Impact:

| Fiscal Year | Probable Savings/(Cost) from General Revenue Fund 0001 | Probable Revenue Gain/(Loss) from General Revenue Fund 0001 | Salaries/Wages Probable Savings/(Cost) from General Revenue Fund 0001 | Change in Number of State Employees from FY 1997 |
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| 2000 | (351,864) | 1,875,000 | (497,700) | 23.0 |
| 2001 | (367,864) | 1,875,000 | (497,700) | 23.0 |
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Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

Revenue impacts to local governments would occur as a result of deferring licensing requirements to the state. Local governments currently regulating roofing contractors would be limited to only enforcement authorization. Currently, the City of San Antonio generates approximately $47,000 per year in roofer licensing; the City of Fort Worth collects approximately $60,000 in roofer licensing.

Source: Agencies: 452 Department of Licensing and Regulation

LBB Staff: JK, JD, RA

# HOUSE
# COMMITTEE REPORT

## 1st Printing

By Moncrief (Brimer) S.B. No. 259

Substitute the following for S.B. No. 259:

By Yarbrough C.S.S.B. No. 259

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. SHORT TITLE. This Act may be cited as the "Roofing Contractors Licensing Law."

SECTION 2. DEFINITIONS. In this Act:

(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, and other materials on any building or structure other than buildings or structures listed in Subdivision (8) of this section.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Commissioner" means the commissioner of licensing and regulation.

(5) "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.

(6) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership,

association, and any other legal entity.

(7) "Qualifying party" means a person who possesses all the necessary qualifications and who is a principal of a company licensed under this Act.

(8) "Residential roofing" means any material applied to the exterior roof framing (wood or steel) on single-family homes, duplexes, or quadplexes.

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

(10) "Roofing contracting company" or "company" means any person, corporation, partnership, association, or other entity that performs roofing contracting.

SECTION 3. POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner shall adopt rules for the practice of roofing contracting consistent with this Act. The standards prescribed by rule must be substantially the same as the standards set forth in the roofing manufacturers' standard requirements. The commissioner shall enforce this Act and may adopt rules relating to enforcement requirements.

(b) The commissioner may issue an emergency order as necessary to enforce this Act if the commissioner determines that an emergency exists or formerly existed requiring immediate temporary action to protect the public health and safety or to protect damaged property. The order may be issued without notice and hearing or with such notice and hearing as the commissioner

considers practicable under the circumstances. If an emergency order is issued under this subsection without a hearing, the commissioner shall set the time and place for a hearing to affirm, modify, or set aside the emergency order. The commission may issue cease and desist orders.

(c) The commissioner shall prescribe application forms for original and renewal licenses and the design of the licenses.

(d) The commissioner shall prescribe the method and content of examinations administered under this Act 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.

(e) The commissioner shall enforce insurance requirements for persons licensed under this Act.

(f) The commission may employ the personnel necessary to implement this Act. The commission shall contract with at least two full-time roofing contractors to serve as test examiners.

(g) The commissioner may authorize necessary disbursements to implement this Act, including office expenses, costs of equipment, and other necessary facilities.

(h) The commission shall publish annually a directory of the persons licensed under this Act. The commission may sell the directory on payment of a reasonable fee set by the commission. The fees collected under this subsection shall be appropriated to the commission for use in the administration of this Act.

(i) The commission may contract with another state agency or with a political subdivision of the state for the enforcement of

this Act and the rules adopted by the commissioner under this Act.

(j) The commissioner shall adopt rules that require a license holder to obtain a permit from an approved landfill to dispose of roofing materials. Rules adopted under this subsection shall include a requirement that a license holder maintain a record for each disposal of roofing materials by the license holder.

SECTION 4. ADVISORY BOARD. (a) The Roofing Contractors Advisory Board is created to advise the commissioner in adopting rules, method, and content of examination and enforcing and administering this Act and to advise the commission in setting fees.

(b) The advisory board is composed of six members appointed by the commissioner who are experienced in the design, installation, construction, maintenance, service, repair, alteration, or modification of roofing systems. Members of the advisory board shall hold office for staggered terms of six years, with two terms expiring on February 1 of each odd-numbered year.

(c) The commissioner shall appoint the advisory board members as follows:

(1) three members must be full-time licensed roofing contractors as follows:

(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 shall be public members.

(d) For the members appointed under Subsection (c)(1) of this section, at least one member must practice in a municipality with a population of 250,000 or more and at least one member must practice in a municipality with a population of less than 250,000. For the purposes of this subsection, "population" means the population according to the most recent federal decennial census.

(e) The commissioner shall designate one member of the advisory board to serve as chairman. The commissioner or the commissioner's designee shall serve as an ex officio, nonvoting member of the advisory board. On the resignation, death, suspension, or incapacity of any member, the commissioner shall fill the vacancy for the remainder of the unexpired term with an individual who represents the same category with which the predecessor was identified.

(f) The advisory board shall meet at least every six months and may meet at other times at the call of the chairman. The advisory board shall meet at a place designated by the board within the State of Texas. A decision of the advisory board is not effective unless it receives the affirmative vote of at least a majority of the members present.

(g) The advisory board members serve without compensation.

SECTION 5. LICENSE REQUIRED. (a) Unless the person is exempted under Section 14 of this Act, a person or company may not perform roofing contracting without a license under this Act.

(b) A roofing contracting company that is not exempt under this Act must employ a license holder, or license holders, whose license is assigned to that company.

(c) A representative of the commission or a municipal official may issue a citation to a person who performs roofing contracting without a license issued under this Act.

(d) A license issued under this Act is valid throughout the state, and the holder and persons under the holder's supervision are not required to hold a municipal license to practice roofing contracting in any municipality within this state.

SECTION 6. ROOFING CONTRACTOR LICENSES. (a) The roofing contracting company shall be the license holder and shall comply with all the requirements of this Act, with a principal of the company being the qualifying party meeting all the requirements of this Act. Roofing contractor licenses are of the following three classes and entitle the licensee to perform the following services, respectively:

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

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

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

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

(c) The qualifying party that applies for a roofing contractor license must be at least 18 years old and must present to the commissioner satisfactory evidence of at least 36 months of

practical experience in the preceding five years.

(d) The application must be made on a form prescribed by the commissioner and must specify the class of license the applicant seeks. The application must be sworn to and verified and must be accompanied by:

(1) evidence of the insurance coverage required under this Act;

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

(3) the examination fee.

(e) The commissioner shall issue a roofing contractor license to a company which has a qualifying party who possesses the required qualifications, passes the appropriate examinations, and pays the examination fee and the original license fee required by this Act. An applicant who fails an examination is eligible for reexamination.

(f) A license issued under this Act is valid for a one-year period from the date of issuance.

(g) With the advice of the advisory board, the commissioner shall adopt rules relating to the use, display, and advertisement of a licensee's license.

SECTION 7. NOTICE OF EXAMINATION RESULTS. (a) Not later than the 45th day after the date on which an examination is administered under this Act, the commissioner shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commissioner shall notify examinees of the results of the

examination not later than the 14th day after the date on which the commissioner receives the results from the testing service.

(b) If requested in writing by a person who fails the examination, the commissioner shall furnish the person with the results of the person's performance on the examination.

SECTION 8. INSURANCE REQUIREMENT. (a) A licensed contractor 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) Insurance must be obtained from an admitted company or an eligible surplus lines insurer, as defined in Article 1.14-2, Insurance Code.

(c) A license applicant or holder shall furnish to the commission a certificate of insurance. The license holder's name, business name, and address must be shown as it appears on the license. The certificate form to be submitted shall be the form furnished by the commission. Each certificate of insurance shall reflect all assumed names used by the license holder and registered with this agency. Neither binders nor interim certificates of less than 60 days will be accepted.

(d) The certificate of insurance shall state that the insurance carrier shall notify the commission not later than the

30th day before the cancellation or nonrenewal by the insurance carrier and not later than the 10th day following nonrenewal or cancellation by the insured.

(e) A license holder whose proof of insurance expires shall be notified by the commission that the holder has an insurance violation. Failure to furnish the required proof shall be grounds for revocation of the license in accordance with Article 9100, Revised Statutes.

(f) A surety bond shall be posted with the commission by each licensee in the following amounts:

(1) $35,000 for a Class I license;

(2) $25,000 for a Class II license; and

(3) $10,000 for a Class III license.

SECTION 9. CONTINUING EDUCATION PROGRAMS. The commissioner shall recognize, prepare, or administer continuing education programs for licensees. The Roofing Contractors Association of Texas shall be an education provider and shall be the approval agent of continuing education credits in these programs. Participation in the programs is mandatory. Each licensee shall be required to complete eight hours of continuing education per license year.

SECTION 10. LICENSE BY RECIPROCITY. The commissioner may waive any license requirement for an applicant or for the qualifying party of an applicant with a valid license from another state with which this state has a reciprocity agreement. A reciprocity agreement with another state may only be recognized under this section if the other state has licensing requirements

that the commissioner determines are substantially equivalent to the requirements of this Act. The commissioner may not waive a license requirement under this section for an applicant or qualifying party of an applicant that does not maintain insurance coverage and does not post a surety bond of the same type and amount as required by Section 8 of this Act. The insurance coverage and surety bond must apply to work performed in this state.

SECTION 11. TEMPORARY LICENSE. (a) In the event the qualifying party becomes incapacitated and unable to serve in the normal capacity of principal of a company or is no longer available due to the dissolution of a partnership or corporation, a temporary license may be issued to another principal of the company, who then becomes the qualifying party for a period extending 30 days beyond the date of the next examination, not to exceed six months. The temporary license is not renewable, but a second temporary license may be issued if the company's qualifying party becomes unavailable in circumstances that make the company again eligible to receive a temporary license. The temporary license shall be of the same class and endorsement as the license being replaced.

(b) The commissioner may issue a temporary license under the conditions provided by Subsection (a) of this section to an applicant who applies to the commissioner on a form prescribed by the commissioner and pays the required fees.

SECTION 12. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) A violation of this Act or a rule adopted under this Act is a ground for the denial, suspension, or revocation of a license

issued under this Act as well as a ground for the imposition of administrative penalties as provided by Article 9100, Revised Statutes. 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 Act constitutes a violation of this Act. An intentional or knowing misrepresentation of necessary services, services to be provided, or services that have been provided constitutes a violation of this Act and a ground for the suspension or revocation of a license issued under this Act.

(b) Proceedings for the denial, suspension, or revocation of a license and appeals from those proceedings are governed by Chapter 2001, Government Code. The imposition of administrative penalties is governed by Article 9100, Revised Statutes.

SECTION 13. CONSUMER COMPLAINT INVESTIGATION. (a) The commissioner shall prepare information of consumer interest describing the functions performed by the commissioner under this Act and the rights of consumers as affected by this Act. The information must describe the procedure by which a consumer complaint is filed with and resolved by the commissioner. The commissioner shall make the information available to the general public.

(b) The commissioner shall investigate consumer complaints filed with the commissioner. If the commissioner determines after investigation that a licensee has violated this Act or a rule adopted under this Act, the commissioner may take appropriate action under Section 12 of this Act.

SECTION 14. EXEMPTIONS. (a) This Act does not apply:

(1) to a person who performs roofing contracting on property owned by the person;

(2) to a person or firm that is licensed and regulated as a manufacturer, rebuilder, retailer, or installer under the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), and that engages in roofing contracting for manufactured homes or in providing retailer or manufacturer warranty services free of charge;

(3) to new residential construction of single-family homes, duplexes, or quadplexes;

(4) to a person who performs roofing contracting if:

(A) the person is a maintenance person or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the roofing contracting work is being performed;

(B) the work is performed in connection with the business in which the person is employed; and

(C) the person and the person's employee referred to in Paragraph (A) of this subdivision do not engage in the occupation of roofing contracting for the general public;

(5) to a person who performs roofing contracting on a dwelling owned by a member of the person's family;

(6) to roofing contracting that is performed on property that is primarily for agricultural use;

(7) to roofing contracting that is performed on

property that is a portable building or a garage that is not connected to a dwelling; or

(8) to a person who holds a license or other credential under the laws of this state who performs roofing contracting that is incidental to work performed by the person in the ordinary scope of the person's work under the license or credential.

(b) This Act shall in no way restrict the practice of architecture or engineering by persons duly licensed in Texas to practice these professions. This Act does not affect any provision or requirement of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), or The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

SECTION 15. ENFORCEMENT OF CONTRACTS. (a) A person who performs roofing contracting without holding the appropriate license under this Act may not collect a fee or otherwise enforce a contract for the services performed. To enforce a contract for the performance of roofing contracting, the person performing the services must present proof that the person or the person's company held a license under this Act at the time the contract was signed and the work is performed.

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

SECTION 16. OFFENSE; PENALTY. Except as provided in Section 18 of this Act, a person commits an offense if the person is a qualifying party and knowingly or intentionally engages in roofing

contracting without a license issued under this Act. An offense under this section is a Class C misdemeanor.

SECTION 17. 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 Act. A violation of this section constitutes engaging in roofing contracting without a license for purposes of Section 16 of this Act.

SECTION 18. MUNICIPAL REGULATION. A municipality may by ordinance adopt and enforce standards for roofing contractors that are consistent with the standards established under this Act. A municipality may not impose a licensing or registration fee on a roofing contractor licensed under this Act. The municipality may report a violation of this Act 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 of this Act. Conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license issued under this Act.

SECTION 19. EXEMPTION FROM EXAMINATION FOR CERTIFIED CONTRACTORS. (a) A person who is a certified roofing contractor in good standing as tested and approved by the Roofing Contractors Association of Texas on the effective date of this Act is entitled or, if the person is a qualifying party of a company, the person's company is entitled to receive a license without examination if the contractor applies to the commissioner for the license not later than September 1, 1998, and:

(1) registers with the commission and pays the required licensing fee;

(2) shows evidence of insurance coverage required under Section 8 of this Act; and

(3) submits a copy of the contractor's certification that has been attested to by the president and the executive director of the Roofing Contractors Association of Texas.

(b) The class of a license issued under this section shall be based on the classification of certification that is currently held by the contractor and shall correspond as follows:

(1) a certified commercial and residential roofing contractor shall receive a Class I license;

(2) a certified commercial roofing contractor shall receive a Class II license; and

(3) a certified residential roofing contractor shall receive a Class III license.

(c) A roofing contractor who is issued a license under this section is subject to all other provisions of this Act, including provisions for the renewal of the roofing contractor license.

SECTION 20. TERMS OF INITIAL BOARD MEMBERS. In making the initial appointments to the advisory board, the commissioner shall designate two members for terms expiring on February 1, 1999, two members for terms expiring on February 1, 2001, and two members for terms expiring on February 1, 2003.

SECTION 21. EFFECTIVE DATE. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1997.

(b) Sections 5 and 16 of this Act take effect September 1, 1998.

SECTION 22. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

# COMMITTEE REPORT

**The Honorable James E. "Pete" Laney**
**Speaker of the House of Representatives**

5/20/97
(date)

Sir:

We, your COMMITTEE ON LICENSING AND ADMINISTRATIVE PROCEDURES

to whom was referred SB 259 have had the same under consideration and beg to report back with the recommendation that it

( ) do pass, without amendment.
( ) do pass, with amendment(s).
(X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

(X) yes ( ) no A fiscal note was requested.
( ) yes (X) no A criminal justice policy impact statement was requested.
( ) yes (X) no An equalized educational funding impact statement was requested.
( ) yes (X) no An actuarial analysis was requested.
( ) yes (X) no A water development policy impact statement was requested.
( ) yes (X) no A tax equity note was requested.

( ) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

**For Senate Measures:** House Sponsor BRIMER

Joint Sponsors: / / /

Co-Sponsors:

The measure was reported from Committee by the following vote:

| | AYE | NAY | PNV | ABSENT |
|---|---|---|---|---|
| Wilson, Chair | X | | | |
| Kubiak, Vice-chair | X | | | |
| Goolsby | X | | | |
| Haggerty | X | | | |
| Hamric | X | | | |
| Jones, D. | X | | | |
| Pickett | X | | | |
| Torres | X | | | |
| Yarbrough | X | | | |
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Total
9 aye
0 nay
0 present, not voting
0 absent

Ron Wilson
CHAIR

# BILL ANALYSIS

LICENSING & ADMINISTRATIVE PROCEDURES
S.B. 259
By: Moncrief (Brimer)
5-20-97
Committee Report (Substituted)

## BACKGROUND

Currently, Texas has no system of regulating the roofing industry. In May 1995, hail storms inflicted damage to an estimated 100,000 roofs in north Texas. Many consumers in need of new roofs or roofing repair employed roofers who could not be held responsible for ineffective work. S.B. 259 seeks to regulate roofing contractors by allowing only licensed roofing contracting companies to perform residential or commercial roofing contracting in Texas.

## PURPOSE

S.B. 259 outlines provisions and provides penalties regarding regulation of roofing contractors.

## RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioner of licensing and regulation in SECTIONS 3(a), 6(g), and 15(b) and to a municipality in SECTION 17, Roofing Contractors Licensing Law, of this bill.

## SECTION BY SECTION ANALYSIS

SECTION 1. SHORT TITLE: ROOFING CONTRACTORS LICENSING LAW.

SECTION 2. DEFINITIONS. Defines "advisory board," "commercial roofing," "commission," "commissioner," "mechanical integrity," "person," "qualifying party," "residential roofing," "roofing contracting," "roofing contracting company," and "company."

SECTION 3. POWERS AND DUTIES OF COMMISSIONER. Sets forth the powers and duties allocated to the commissioner of licensing and regulation (commissioner) and the Texas Commission of Licensing and Regulation (commission).

SECTION 4. ADVISORY BOARD. Sets forth requirements for the creation of the Roofing Contractors Advisory Board (advisory board).

SECTION 5. LICENSE REQUIRED. Prohibits a person or company from performing roofing contracting without a license unless the person is exempt under Section 14 of this Act. Requires a roofing contracting company that is not exempt to employ a license holder whose license is assigned to that company. Authorizes a representative of the commission or a municipal official to issue a citation to a person who performs roofing contracting without a license. Provides that a license is valid throughout this state and the holder and persons under the holder's supervision are not required to hold a municipal license to practice roofing contracting in any municipality within this state.

SECTION 6. ROOFING CONTRACTOR LICENSES. Requires the roofing contracting company to be the license holder and to comply with all the requirements of this Act, with a principal of the company being the qualifying party meeting all the requirements of this Act. Sets forth the classes of roofing contractor licenses and the services the licensee is entitled to perform. Requires the commissioner to prescribe separate examinations for each class of licenses and prescribe separate examinations for commercial and residential services for Class I licenses. Requires the qualifying party applying for a roofing contractor license to be at least 18 years old and present to the commissioner satisfactory evidence of at least 36 months of practical experience in the preceding

five years. Sets forth requirements for the creation of an application and sets forth the information to be accompanied by an application. Sets forth requirements for a company to which the commissioner is required to issue a roofing contractor license. Provides that an applicant who fails an examination is eligible for reexamination. Provides that a license issued is valid for a one-year period from the date of issuance. Requires the commissioner to adopt rules relating to the use, display, and advertisement of a licensee's license with the advice of the advisory board.

SECTION 7. NOTICE OF EXAMINATION RESULTS. Sets forth the requirements for notice of examination results.

SECTION 8. INSURANCE REQUIREMENT. Sets forth the monetary amounts in which a licensed contractor is required to maintain general liability insurance coverage. Requires insurance to be obtained from an admitted company or an eligible surplus lines insurer, as defined in Article 1.14-2, Insurance Code. Sets forth requirements for the certificate of insurance a license applicant or holder is required to furnish to the commission. Requires a license holder whose proof of insurance expires to be notified by the commission that the holder has an insurance violation. Requires failure to provide the required proof to be grounds for revocation of the license in accordance with Article 9100, V.T.C.S. Sets forth monetary amounts in which a surety bond is required to be posted with the commission by each licensee.

SECTION 9. CONTINUING EDUCATION PROGRAMS. Sets forth requirements for the establishment of continuing education programs. Requires each licensee to be required to complete eight hours of continuing education per license year.

SECTION 10. LICENSE BY RECIPROCITY. Authorizes the commissioner to waive any license requirement for an applicant or qualifying party of an applicant with a valid license from another state with which this state has a reciprocity agreement.

SECTION 11. TEMPORARY LICENSE. Sets forth requirements for the issuance of a temporary license.

SECTION 12. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. Sets forth instances in which a license may be denied suspended, or revoked. Provides that proceedings for the denial, suspension, or revocation of a license and appeals from those proceedings are governed by Chapter 2001, Government Code. Provides that the imposition of administrative penalties is governed by Article 9100, V.T.C.S.

SECTION 13. CONSUMER COMPLAINT INVESTIGATION. Requires the commissioner to prepare information of consumer interest describing the functions performed by the commissioner and the rights of consumers. Requires the information to describe the procedure by which a consumer complaint is filed with and resolved by the commissioner. Requires the commissioner to make the information available to the general public. Requires the commissioner to investigate consumer complaints filed with the commissioner. Authorizes the commissioner to take appropriate action under Section 12 of this Act if the commissioner determines after investigation that a licensee has violated this Act or rule adopted under this Act.

SECTION 14. EXEMPTIONS. Sets forth the entities which are exempt from this Act. Makes nonsubstantive changes.

SECTION 15. ENFORCEMENT OF CONTRACTS. Outlines provisions and requirements for the enforcement of contracts for the performance of roofing contracting. Requires the commissioner to adopt rules relating to the manner in which proof may be presented under this section.

SECTION 16. OFFENSE; PENALTY. Provides that a person commits a Class B misdemeanor if the person knowingly or intentionally engages in roofing contracting without a license, except as provided in Section 17 of this Act.

SECTION 17. MUNICIPAL REGULATION. Outlines provisions for the regulation by municipalities.

SECTION 18. EXEMPTION FROM EXAMINATION FOR CERTIFIED CONTRACTORS. Sets forth instances in which a certified roofing contractor is exempt from examination requirements. Sets forth license classifications required for specific contractors. Provides that a roofing contractor who is issued a license under this section is subject to other provisions of this Act, including provisions for the renewal of the roofing contractor license.

SECTION 19. EXEMPTION FROM EXAMINATION FOR CERTIFIED CONTRACTORS. Sets forth terms under which a certified roofing contractor is entitled to receive a license.

SECTION 20. TERMS OF INITIAL BOARD MEMBERS. Sets forth the terms of initial advisory board members.

SECTION 21. (a) Effective date: September 1, 1997,

(b) Effective date for Sections 5 and 6: September 1, 1998.

SECTION 22. Emergency clause.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute added SECTION 19 concerning exemptions for certified contractors.

**LEGISLATIVE BUDGET BOARD**
**Austin, Texas**

**FISCAL NOTE**
**75th Regular Session**

May 22, 1997

To: Honorable Ron Wilson, Chair
Committee on Licensing & Administrative Procedures
House
Austin, Texas

IN RE: Senate Bill No. 259,
Committee Report 2nd House, Substituted
By: Moncrief

From: John Keel, Director

In response to your request for a Fiscal Note on SB259 (relating to the regulation of roofing contractors; providing penalties.) this office has determined the following:

**Biennial Net Impact to General Revenue Funds by SB259-Committee Report 2nd House, Substituted FN Revision 1**

Implementing the provisions of the bill would result in a net positive impact of $222,872 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**Fiscal Analysis**

This bill would require the Department of Licensing and Regulation (TDLR) to license roofing contractors and provide for criminal and administrative penalties. Examinations at various locations and reciprocity agreements with other states would be required to license these contractors. Liability insurance and bonding requirements are also specified. The TDLR would also be required to publish an annual directory of all persons licensed under this legislation. In addition, this bill would provide for the creation of a six member Roofing Contractors Advisory Board. This bill would allow the Department to employ personnel as necessary for implementation and authorize additional expenditures including office expenses, equipment, and other necessary facilities.

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## Methodology

According to the TDLR, an additional 23 FTEs would be required to implement the provisions of this bill. Most of the costs are related to examination administration. The agency assumes that 15,000 contractors would be required to have a license. The agency would examine and license 6,000 people in the first year. The second year would include 6,000 additional new licensees and 6,000 renewals from the first year. In the third year, the agency would license any remaining contractors requiring licenses (about 3,000) and continue license renewals. The initial license fee would be $175 per contractor and annual license renewals would be $125 per contractor. Regulation of this industry would also result in new administrative hearings from complaints originated in the industry. The agency assumes 30 administrative hearings would result from 900 complaints received annually. This analysis assumes that the Commission would set fees necessary to cover the costs of administering this Act.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

## Five Year Impact:

| Fiscal Year | Probable Savings/(Cost) from General Revenue Fund 0001 | Salaries/Wages Probable Savings/(Cost) from General Revenue Fund 0001 | Probable Revenue Gain/(Loss) from General Revenue Fund 0001 | Change in Number of State Employees from FY 1997 |
|---|---|---|---|---|
| 1998 | ($520,864) | ($497,700) | $1,050,000 | 23.0 |
| 1999 | (360,864) | (497,700) | 1,050,000 | 23.0 |
| 2000 | (351,864) | (497,700) | 1,875,000 | 23.0 |
| 2001 | (367,864) | (497,700) | 1,875,000 | 23.0 |
| 2002 | (367,864) | (497,700) | 1,875,000 | 23.0 |

## Net Impact on General Revenue Related Funds:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|---|---|
| 1998 | $31,436 |
| 1999 | 191,436 |
| 2000 | 1,025,436 |
| 2001 | 1,009,436 |
| 2002 | 1,009,436 |

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

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Revenue impacts to local governments would occur as a result of deferring licensing requirements to the state. Local governments currently regulating roofing contractors would be limited to only enforcement authorization. Currently, the City of San Antonio generates approximately $47,000 per year in roofer licensing; the City of Fort Worth collects approximately $60,000 in roofer licensing.

Source: Agencies: 452 Department of Licensing and Regulation

LBB Staff: JK, TH, JD, RA

**LEGISLATIVE BUDGET BOARD**
**Austin, Texas**

**FISCAL NOTE**
**75th Regular Session**

April 21, 1997

To: Honorable Ron Wilson, Chair
Committee on Licensing & Administrative Procedures
House
Austin, Texas

IN RE: Senate Bill No. 259, As Engrossed
By: Moncrief

From: John Keel, Director

In response to your request for a Fiscal Note on SB259 (Relating to the regulation of roofing contractors; providing penalties.) this office has determined the following:

**Biennial Net Impact to General Revenue Funds by SB259-As Engrossed**

Implementing the provisions of the bill would result in a net positive impact of $222,872 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**Fiscal Analysis**

This bill would require the Department of Licensing and Regulation (TDLR) to license roofing contractors and provide for criminal and administrative penalties. The bill would exempt certain maintenance personnel and allow homeowners to sign a disclosure statement acknowledging that the roofer is not licensed. Examinations at various locations and reciprocity agreements with other states would be required to license these contractors. Liability insurance and bonding requirements are also specified. The TDLR would also be required to publish an annual directory of all persons licensed under this legislation. In addition, this bill would provide for the creation of a six member Roofing Contractors Advisory Board. This bill would allow the Department to employ personnel as necessary for implementation and authorize additional expenditures including office expenses, equipment, and other necessary facilities.

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## Methodology

According to the TDLR, an additional 23 FTEs would be required to implement the provisions of this bill. Most of the costs are related to examination administration. The agency assumes that 15,000 contractors would be required to have a license. The agency would examine and license 6,000 people in the first year. The second year would include 6,000 additional new licensees and 6,000 renewals from the first year. In the third year, the agency would license any remaining contractors requiring licenses (about 3,000) and continue license renewals. The initial license fee would be $175 per contractor and annual license renewals would be $125 per contractor. Regulation of this industry would also result in new administrative hearings from complaints originated in the industry. The agency assumes 30 administrative hearings would result from 900 complaints received annually. This analysis assumes that the Commission would set fees necessary to cover the costs of administering this Act.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

## Five Year Impact:

| Fiscal Year | Probable Savings/(Cost) from General Revenue Fund 0001 | Salaries/Wages Probable Savings/(Cost) from General Revenue Fund 0001 | Probable Revenue Gain/(Loss) from General Revenue Fund 0001 | Change in Number of State Employees from FY 1997 |
|---|---|---|---|---|
| 1998 | ($520,864) | ($497,700) | $1,050,000 | 23.0 |
| 1999 | (360,864) | (497,700) | 1,050,000 | 23.0 |
| 2000 | (351,864) | (497,700) | 1,875,000 | 23.0 |
| 2001 | (367,864) | (497,700) | 1,875,000 | 23.0 |
| 2002 | (367,864) | (497,700) | 1,875,000 | 23.0 |

## Net Impact on General Revenue Related Funds:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|---|---|
| 1998 | $31,436 |
| 1999 | 191,436 |
| 2000 | 1,025,436 |
| 2001 | 1,009,436 |
| 2002 | 1,009,436 |

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

Revenue impacts to local governments would occur as a result of deferring licensing requirements to the state. Local governments currently regulating roofing contractors would be limited to only enforcement authorization. Currently, the City of San Antonio generates approximately $47,000 per year in roofer licensing; the City of Fort Worth collects approximately $60,000 in roofer licensing.

Source: Agencies: 452 Department of Licensing and Regulation

LBB Staff: JK, TH, JD, RA

**LEGISLATIVE BUDGET BOARD**
**Austin, Texas**

**FISCAL NOTE**
**75th Regular Session**

March 18, 1997

To: Honorable Kenneth Armbrister, Chair
Committee on State Affairs
Senate
Austin, Texas

IN RE: Senate Bill No. 259,
Committee Report 1st House,
Substituted
By: Moncrief

From: John Keel, Director

In response to your request for a Fiscal Note on SB259 (Relating to the regulation of roofing contractors; providing penalties.) this office has determined the following:

**Biennial Net Impact to General Revenue Funds by SB259-Committee Report 1st House, Substituted**

Implementing the provisions of the bill would result in a net positive impact of $222,872 to General Revenue Related Funds through the biennium ending August 31, 1999.

---

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**Fiscal Analysis**

This bill would require the Department of Licensing and Regulation (TDLR) to license roofing contractors and provide for criminal and administrative penalties. The bill would exempt certain maintenance personnel and allow homeowners to sign a disclosure statement acknowledging that the roofer is not licensed. Examinations at various locations and reciprocity agreements with other states would be required to license these contractors. Liability insurance and bonding requirements are also specified. The TDLR would also be required to publish an annual directory of all persons licensed under this legislation. In addition, this bill would provide for the creation of a six member Roofing Contractors Advisory Board. This bill would allow the Department to employ personnel as necessary for implementation and authorize additional expenditures including office expenses, equipment, and other necessary facilities.

**Methodology**

According to the TDLR, an additional 23 FTEs would be required to implement the provisions of this bill. Most of the costs are related to examination administration. The agency assumes that 15,000 contractors would be required to have a license. The agency would examine and license 6,000 people in the first year. The second year would include 6,000 additional new licensees and 6,000 renewals from the first year. In the third year, the agency would license any remaining contractors requiring licenses (about 3,000) and continue license renewals. The initial license fee would be $175 per contractor and annual license renewals would be $125 per contractor. Regulation of this industry would also result in new administrative hearings from complaints originated in the industry. The agency assumes 30 administrative hearings

would result from 900 complaints received annually. This analysis assumes that the Commission would set fees necessary to cover the costs of administering this Act.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

**Five Year Impact:**

| Fiscal Year | Probable Savings/(Cost) from General Revenue Fund 0001 | Salaries/Wages Probable Savings/(Cost) from General Revenue Fund 0001 | Probable Revenue Gain/(Loss) from General Revenue Fund 0001 | Change in Number of State Employees from FY 1997 |
|---|---|---|---|---|
| 1998 | ($520,864) | ($497,700) | $1,050,000 | 23.0 |
| 1999 | (360,864) | (497,700) | 1,050,000 | 23.0 |
| 2000 | (351,864) | (497,700) | 1,875,000 | 23.0 |
| 2001 | (367,864) | (497,700) | 1,875,000 | 23.0 |
| 2002 | (367,864) | (497,700) | 1,875,000 | 23.0 |

**Net Impact on General Revenue Related Funds:**

The probable fiscal implication to General Revenue related funds during each of the first five years is estimated as follows:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|---|---|
| 1998 | $31,436 |
| 1999 | 191,436 |
| 2000 | 1,025,436 |
| 2001 | 1,009,436 |
| 2002 | 1,009,436 |

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

Revenue impacts to local governments would occur as a result of deferring licensing requirements to the state. Local governments currently regulating roofing contractors would be limited to only enforcement authorization. Currently, the City of San Antonio generates approximately $47,000 per year in roofer licensing; the City of Fort Worth collects approximately $60,000 in roofer licensing.

Source: Agencies: 452 Department of Licensing and Regulation

LBB Staff: JK, JD, RA

**LEGISLATIVE BUDGET BOARD**
**Austin, Texas**

**FISCAL NOTE**
**75th Regular Session**

March 4, 1997

To: Honorable Kenneth Armbrister, Chair
Committee on State Affairs
Senate
Austin, Texas

IN RE: Senate Bill No. 259
By: Moncrief

From: John Keel, Director

In response to your request for a Fiscal Note on SB259 (Relating to the regulation of roofing contractors; providing penalties.) this office has determined the following:

**Biennial Net Impact to General Revenue Funds by SB259-As Introduced**

Implementing the provisions of the bill would result in a net positive impact of $222,872 to General Revenue Related Funds through the biennium ending August 31, 1999.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**Fiscal Analysis**

This bill would require the Department of Licensing and Regulation (TDLR) to license roofing contractors and provides for criminal and administrative penalties. Examinations at various locations and reciprocity agreements with other states would be required to license these contractors. Liability insurance and bonding requirements are also specified. The TDLR would also be required to publish an annual directory of all persons licensed under this legislation. In addition, this bill would provide for the creation of a six member Roofing Contractors Advisory Board. This bill would allow the Department to employ personnel as necessary for implementation and authorize additional expenditures including office expenses, equipment, and other necessary facilities.

**Methodology**

According to the TDLR, an additional 23 FTEs would be required to implement the provisions of this bill. Most of the costs are related to examination administration. The agency assumes that 15,000 contractors would be required to have a license. The agency would examine and license 6,000 people in the first year. The second year would include 6,000 additional new licensees and 6,000 renewals from the first year. In the third year, the agency would license any remaining contractors requiring licenses (about 3,000) and continue license renewals. The initial license fee would be $175 per contractor and annual license renewals would be $125 per contractor. Regulation of this industry would also result in new administrative hearings from complaints originated in the industry. The agency assumes 30 administrative hearings would result from 900 complaints received annually. This analysis assumes that the Commission would set fees necessary to cover the costs of administering this Act.

The probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

## Five Year Impact:

| Fiscal Year | Probable Savings/(Cost) from General Revenue Fund 0001 | Probable Revenue Gain/(Loss) from General Revenue Fund 0001 | Salaries/Wages Probable Savings/(Cost) from General Revenue Fund 0001 | Change in Number of State Employees from FY 1997 |
|---|---|---|---|---|
| 1998 | ($520,864) | $1,050,000 | ($497,700) | 23.0 |
| 1999 | (360,864) | 1,050,000 | (497,700) | 23.0 |
| 2000 | (351,864) | 1,875,000 | (497,700) | 23.0 |
| 2001 | (367,864) | 1,875,000 | (497,700) | 23.0 |
| 2002 | (367,864) | 1,875,000 | (497,700) | 23.0 |

## Net Impact on General Revenue Related Funds:

The probable fiscal implication to General Revenue related funds during each of the first five years is estimated as follows:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|---|---|
| 1998 | $31,436 |
| 1999 | 191,436 |
| 2000 | 1,025,436 |
| 2001 | 1,009,436 |
| 2002 | 1,009,436 |

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

Revenue impacts to local governments would occur as a result of deferring licensing requirements to the state. Local governments currently regulating roofing contractors would be limited to only enforcement authorization. Currently, the City of San Antonio generates approximately $47,000 per year in roofer licensing; the City of Fort Worth collects approximately $60,000 in roofer licensing.

Source: Agencies: 452 Department of Licensing and Regulation

LBB Staff: JK, JD, RA

WITNESS LIST

SB 259
HOUSE COMMITTEE REPORT
Licensing & Administrative Procedures Committee

April 28, 1997 - 10:30A

For: Eddie Harrison (Roofing Contractor Assn)
John MacKonzie (Roofing Contractor)
Max Eubank (Roofing Contractor)
Tysia Bowling (Roofing Contractor Assn)

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SUMMARY OF COMMITTEE ACTION

SB 259

April 28, 1997 10:30AM
Considered in public hearing
Testimony taken in committee
Committee substitute considered in committee
Left pending in committee

May 6, 1997 10:30AM
Considered in public hearing
Committee substitute considered in committee
Left pending in committee

May 20, 1997 8:48PM
Considered in formal meeting
Committee substitute considered in committee
Reported favorably as substituted

POINT OF ORDER SUSTAINED

By Moncrief S.B. No. 259

Substitute the following for S.B. No. 259:

By Yarbrough C.S.S.B. No. 259

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. SHORT TITLE. This Act may be cited as the "Roofing Contractors Licensing Law."

SECTION 2. DEFINITIONS. In this Act:

(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, and other materials on any building or structure other than buildings or structures listed in Subdivision (8) of this section.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Commissioner" means the commissioner of licensing and regulation.

(5) "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.

(6) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership,

association, and any other legal entity.

(7) "Qualifying party" means a person who possesses all the necessary qualifications and who is a principal of a company licensed under this Act.

(8) "Residential roofing" means any material applied to the exterior roof framing (wood or steel) on single-family homes, duplexes, or quadplexes.

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

(10) "Roofing contracting company" or "company" means any person, corporation, partnership, association, or other entity that performs roofing contracting.

SECTION 3. POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner shall adopt rules for the practice of roofing contracting consistent with this Act. The standards prescribed by rule must be substantially the same as the standards set forth in the roofing manufacturers' standard requirements. The commissioner shall enforce this Act and may adopt rules relating to enforcement requirements.

(b) The commissioner may issue an emergency order as necessary to enforce this Act if the commissioner determines that an emergency exists or formerly existed requiring immediate temporary action to protect the public health and safety or to protect damaged property. The order may be issued without notice and hearing or with such notice and hearing as the commissioner

considers practicable under the circumstances. If an emergency order is issued under this subsection without a hearing, the commissioner shall set the time and place for a hearing to affirm, modify, or set aside the emergency order. The commission may issue cease and desist orders.

(c) The commissioner shall prescribe application forms for original and renewal licenses and the design of the licenses.

(d) The commissioner shall prescribe the method and content of examinations administered under this Act 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.

(e) The commissioner shall enforce insurance requirements for persons licensed under this Act.

(f) The commission may employ the personnel necessary to implement this Act. The commission shall contract with at least two full-time roofing contractors to serve as test examiners.

(g) The commissioner may authorize necessary disbursements to implement this Act, including office expenses, costs of equipment, and other necessary facilities.

(h) The commission shall publish annually a directory of the persons licensed under this Act. The commission may sell the directory on payment of a reasonable fee set by the commission. The fees collected under this subsection shall be appropriated to the commission for use in the administration of this Act.

(i) The commission may contract with another state agency or with a political subdivision of the state for the enforcement of

this Act and the rules adopted by the commissioner under this Act.

(j) The commissioner shall adopt rules that require a license holder to obtain a permit from an approved landfill to dispose of roofing materials. Rules adopted under this subsection shall include a requirement that a license holder maintain a record for each disposal of roofing materials by the license holder.

SECTION 4. ADVISORY BOARD. (a) The Roofing Contractors Advisory Board is created to advise the commissioner in adopting rules, method, and content of examination and enforcing and administering this Act and to advise the commission in setting fees.

(b) The advisory board is composed of six members appointed by the commissioner who are experienced in the design, installation, construction, maintenance, service, repair, alteration, or modification of roofing systems. Members of the advisory board shall hold office for staggered terms of six years, with two terms expiring on February 1 of each odd-numbered year.

(c) The commissioner shall appoint the advisory board members as follows:

(1) three members must be full-time licensed roofing contractors as follows:

(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 shall be public members.

(d) For the members appointed under Subsection (c)(1) of this section, at least one member must practice in a municipality with a population of 250,000 or more and at least one member must practice in a municipality with a population of less than 250,000. For the purposes of this subsection, "population" means the population according to the most recent federal decennial census.

(e) The commissioner shall designate one member of the advisory board to serve as chairman. The commissioner or the commissioner's designee shall serve as an ex officio, nonvoting member of the advisory board. On the resignation, death, suspension, or incapacity of any member, the commissioner shall fill the vacancy for the remainder of the unexpired term with an individual who represents the same category with which the predecessor was identified.

(f) The advisory board shall meet at least every six months and may meet at other times at the call of the chairman. The advisory board shall meet at a place designated by the board within the State of Texas. A decision of the advisory board is not effective unless it receives the affirmative vote of at least a majority of the members present.

(g) The advisory board members serve without compensation.

SECTION 5. LICENSE REQUIRED. (a) Unless the person is exempted under Section 14 of this Act, a person or company may not perform roofing contracting without a license under this Act.

(b) A roofing contracting company that is not exempt under this Act must employ a license holder, or license holders, whose license is assigned to that company.

(c) A representative of the commission or a municipal official may issue a citation to a person who performs roofing contracting without a license issued under this Act.

(d) A license issued under this Act is valid throughout the state, and the holder and persons under the holder's supervision are not required to hold a municipal license to practice roofing contracting in any municipality within this state.

SECTION 6. ROOFING CONTRACTOR LICENSES. (a) The roofing contracting company shall be the license holder and shall comply with all the requirements of this Act, with a principal of the company being the qualifying party meeting all the requirements of this Act. Roofing contractor licenses are of the following three classes and entitle the licensee to perform the following services, respectively:

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

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

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

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

(c) The qualifying party that applies for a roofing contractor license must be at least 18 years old and must present to the commissioner satisfactory evidence of at least 36 months of

practical experience in the preceding five years.

(d) The application must be made on a form prescribed by the commissioner and must specify the class of license the applicant seeks. The application must be sworn to and verified and must be accompanied by:

(1) evidence of the insurance coverage required under this Act;

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

(3) the examination fee.

(e) The commissioner shall issue a roofing contractor license to a company which has a qualifying party who possesses the required qualifications, passes the appropriate examinations, and pays the examination fee and the original license fee required by this Act. An applicant who fails an examination is eligible for reexamination.

(f) A license issued under this Act is valid for a one-year period from the date of issuance.

(g) With the advice of the advisory board, the commissioner shall adopt rules relating to the use, display, and advertisement of a licensee's license.

SECTION 7. NOTICE OF EXAMINATION RESULTS. (a) Not later than the 45th day after the date on which an examination is administered under this Act, the commissioner shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commissioner shall notify examinees of the results of the

examination not later than the 14th day after the date on which the commissioner receives the results from the testing service.

(b) If requested in writing by a person who fails the examination, the commissioner shall furnish the person with the results of the person's performance on the examination.

SECTION 8. INSURANCE REQUIREMENT. (a) A licensed contractor 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) Insurance must be obtained from an admitted company or an eligible surplus lines insurer, as defined in Article 1.14-2, Insurance Code.

(c) A license applicant or holder shall furnish to the commission a certificate of insurance. The license holder's name, business name, and address must be shown as it appears on the license. The certificate form to be submitted shall be the form furnished by the commission. Each certificate of insurance shall reflect all assumed names used by the license holder and registered with this agency. Neither binders nor interim certificates of less than 60 days will be accepted.

(d) The certificate of insurance shall state that the insurance carrier shall notify the commission not later than the

30th day before the cancellation or nonrenewal by the insurance carrier and not later than the 10th day following nonrenewal or cancellation by the insured.

(e) A license holder whose proof of insurance expires shall be notified by the commission that the holder has an insurance violation. Failure to furnish the required proof shall be grounds for revocation of the license in accordance with Article 9100, Revised Statutes.

(f) A surety bond shall be posted with the commission by each licensee in the following amounts:

(1) $35,000 for a Class I license;

(2) $25,000 for a Class II license; and

(3) $10,000 for a Class III license.

SECTION 9. CONTINUING EDUCATION PROGRAMS. The commissioner shall recognize, prepare, or administer continuing education programs for licensees. The Roofing Contractors Association of Texas shall be an education provider and shall be the approval agent of continuing education credits in these programs. Participation in the programs is mandatory. Each licensee shall be required to complete eight hours of continuing education per license year.

SECTION 10. LICENSE BY RECIPROCITY. The commissioner may waive any license requirement for an applicant or for the qualifying party of an applicant with a valid license from another state with which this state has a reciprocity agreement. A reciprocity agreement with another state may only be recognized under this section if the other state has licensing requirements

that the commissioner determines are substantially equivalent to the requirements of this Act. The commissioner may not waive a license requirement under this section for an applicant or qualifying party of an applicant that does not maintain insurance coverage and does not post a surety bond of the same type and amount as required by Section 8 of this Act. The insurance coverage and surety bond must apply to work performed in this state.

SECTION 11. TEMPORARY LICENSE. (a) In the event the qualifying party becomes incapacitated and unable to serve in the normal capacity of principal of a company or is no longer available due to the dissolution of a partnership or corporation, a temporary license may be issued to another principal of the company, who then becomes the qualifying party for a period extending 30 days beyond the date of the next examination, not to exceed six months. The temporary license is not renewable, but a second temporary license may be issued if the company's qualifying party becomes unavailable in circumstances that make the company again eligible to receive a temporary license. The temporary license shall be of the same class and endorsement as the license being replaced.

(b) The commissioner may issue a temporary license under the conditions provided by Subsection (a) of this section to an applicant who applies to the commissioner on a form prescribed by the commissioner and pays the required fees.

SECTION 12. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) A violation of this Act or a rule adopted under this Act is a ground for the denial, suspension, or revocation of a license

issued under this Act as well as a ground for the imposition of administrative penalties as provided by Article 9100, Revised Statutes. 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 Act constitutes a violation of this Act. An intentional or knowing misrepresentation of necessary services, services to be provided, or services that have been provided constitutes a violation of this Act and a ground for the suspension or revocation of a license issued under this Act.

(b) Proceedings for the denial, suspension, or revocation of a license and appeals from those proceedings are governed by Chapter 2001, Government Code. The imposition of administrative penalties is governed by Article 9100, Revised Statutes.

SECTION 13. CONSUMER COMPLAINT INVESTIGATION. (a) The commissioner shall prepare information of consumer interest describing the functions performed by the commissioner under this Act and the rights of consumers as affected by this Act. The information must describe the procedure by which a consumer complaint is filed with and resolved by the commissioner. The commissioner shall make the information available to the general public.

(b) The commissioner shall investigate consumer complaints filed with the commissioner. If the commissioner determines after investigation that a licensee has violated this Act or a rule adopted under this Act, the commissioner may take appropriate action under Section 12 of this Act.

SECTION 14. EXEMPTIONS. (a) This Act does not apply:

(1) to a person who performs roofing contracting on property owned by the person;

(2) to a person or firm that is licensed and regulated as a manufacturer, rebuilder, retailer, or installer under the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), and that engages in roofing contracting for manufactured homes or in providing retailer or manufacturer warranty services free of charge;

(3) to new residential construction of single-family homes, duplexes, or quadplexes;

(4) to a person who performs roofing contracting if:

(A) the person is a maintenance person or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the roofing contracting work is being performed;

(B) the work is performed in connection with the business in which the person is employed; and

(C) the person and the person's employee referred to in Paragraph (A) of this subdivision do not engage in the occupation of roofing contracting for the general public;

(5) to a person who performs roofing contracting on a dwelling owned by a member of the person's family;

(6) to roofing contracting that is performed on property that is primarily for agricultural use;

(7) to roofing contracting that is performed on

property that is a portable building or a garage that is not connected to a dwelling; or

(8) to a person who holds a license or other credential under the laws of this state who performs roofing contracting that is incidental to work performed by the person in the ordinary scope of the person's work under the license or credential.

(b) This Act shall in no way restrict the practice of architecture or engineering by persons duly licensed in Texas to practice these professions. This Act does not affect any provision or requirement of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), or The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

SECTION 15. ENFORCEMENT OF CONTRACTS. (a) A person who performs roofing contracting without holding the appropriate license under this Act may not collect a fee or otherwise enforce a contract for the services performed. To enforce a contract for the performance of roofing contracting, the person performing the services must present proof that the person or the person's company held a license under this Act at the time the contract was signed and the work is performed.

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

SECTION 16. OFFENSE; PENALTY. Except as provided in Section 18 of this Act, a person commits an offense if the person is a qualifying party and knowingly or intentionally engages in roofing

contracting without a license issued under this Act. An offense under this section is a Class C misdemeanor.

SECTION 17. 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 Act. A violation of this section constitutes engaging in roofing contracting without a license for purposes of Section 16 of this Act.

SECTION 18. MUNICIPAL REGULATION. A municipality may by ordinance adopt and enforce standards for roofing contractors that are consistent with the standards established under this Act. A municipality may not impose a licensing or registration fee on a roofing contractor licensed under this Act. The municipality may report a violation of this Act 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 of this Act. Conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license issued under this Act.

SECTION 19. EXEMPTION FROM EXAMINATION FOR CERTIFIED CONTRACTORS. (a) A person who is a certified roofing contractor in good standing as tested and approved by the Roofing Contractors Association of Texas on the effective date of this Act is entitled or, if the person is a qualifying party of a company, the person's company is entitled to receive a license without examination if the contractor applies to the commissioner for the license not later than September 1, 1998, and:

(1) registers with the commission and pays the required licensing fee;

(2) shows evidence of insurance coverage required under Section 8 of this Act; and

(3) submits a copy of the contractor's certification that has been attested to by the president and the executive director of the Roofing Contractors Association of Texas.

(b) The class of a license issued under this section shall be based on the classification of certification that is currently held by the contractor and shall correspond as follows:

(1) a certified commercial and residential roofing contractor shall receive a Class I license;

(2) a certified commercial roofing contractor shall receive a Class II license; and

(3) a certified residential roofing contractor shall receive a Class III license.

(c) A roofing contractor who is issued a license under this section is subject to all other provisions of this Act, including provisions for the renewal of the roofing contractor license.

SECTION 20. TERMS OF INITIAL BOARD MEMBERS. In making the initial appointments to the advisory board, the commissioner shall designate two members for terms expiring on February 1, 1999, two members for terms expiring on February 1, 2001, and two members for terms expiring on February 1, 2003.

SECTION 21. EFFECTIVE DATE. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1997.

(b) Sections 5 and 16 of this Act take effect September 1, 1998.

SECTION 22. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

S.B. No. 259 By Shapiro

**A BILL TO BE ENTITLED**

**AN ACT:** relating to the regulation of roofing contractors; providing penalties.

JAN 21 1997 Filed with the Secretary of the Senate

JAN 23 1997 Read and referred to Committee on STATE AFFAIRS

Reported favorably

MAR 19 1997 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

APR 09 1997 Senate and Constitutional Rules to permit consideration suspended by: ~~unanimous consent~~ 21 yeas, 6 nays

APR 09 1997 Read second time, amended, and ordered engrossed by: ~~unanimous consent~~ a viva voce vote 22 yeas, 9 nays

APR 09 1997 Senate and Constitutional 3 Day Rule suspended by a vote of 25 yeas, 6 nays.

APR 09 1997 Read third time, _____, and passed by: A viva voce vote _____ yeas, _____ nays

Betty King
SECRETARY OF THE SENATE

**OTHER ACTION:**

APR 09 1997 Engrossed

April 10, 1997 Sent to House

Engrossing Clerk Patsy Spaw

MAY 26 1997 POINT OF ORDER SUSTAINED Returned to Committee

APR 10 1997 Received from the Senate

APR 21 Read first time and referred to Committee on Licensing & Administrative Procedures

MAY 20 1997 Reported ____favorably ~~(as amended)~~ (as substituted)

MAY 23 1997 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)

_____ Returned to Senate.

_____
CHIEF CLERK OF THE HOUSE

_____ Returned from House without amendment.

_____ Returned from House with _____ amendments.

_____ Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____

_____, _____, and _____

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

_____ , _____ , _____ .

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote

{ _____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote

{ _____ yeas, _____ nays

**OTHER ACTION:**

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote

{ _____ yeas, _____ nays