

The Texas Swimming Pool Service Industry's Contractors Licensing and Regulation Program

This initiative seeks to combine government oversight with swimming pool industry representation and influence.

- 1) **State Government Authority and Oversight of Swimming Pool Industry.** The proposal calls for the Texas Department of Licensing and Regulation (TDLR) to:
- develop and monitor the license application process,
 - maintain records with public internet access,
 - enforce rules and service and construction standards,
 - select types and amounts of insurance and bonding,
 - select from multiple trade associations to provide education and certification.

- 2) **Swimming Pool Service Industries contribution to education and certification.**

The proposal calls for the selection of national trade groups to provide education, testing and certification for pool service companies. The Independent Pool and Spa Service Associations Certifications programs, The National Swimming Pool Foundation (CPO), Aquatics Facility Operator, APSP Certified Building Professional.

- 3) **Swimming pool Service Industries presence and ongoing influence in the regulatory process.**

This proposal calls for the creation of a Swimming Pool Industry **Advisory Board** to assist the TDLR. The remaining language in Section B borrows from the Texas Occupations code, Chapter 1102 "Real Estate Inspectors". The proposal seeks to establish a relationship between the Advisory Board and the TDLR that is similar to the relationship of the Real Estate Inspectors to the Texas Real Estate Commission.

Other Features

The proposal seeks to divide the licensed company into two entities: the person or company that holds the license and the person who is qualified (the qualifier) to service and repair pools. One person can function as both. Or, one company can employ more than one qualifier.

The person who applies for the license must be certified and demonstrate that they have basic business knowledge, but the qualifier must have extensive technical knowledge.

The proposal allows for grandfathering of pool service companies with twenty years experience or more. Grandfathering means they will not be required to become certified. They will still be required to apply for a license.

There is a three-year implementation period allowing for the gradual training and certifying of qualifiers.

The proposal has language to insert into existing law to exempt pool service and repair companies from S.B. 500 and from the Appliance Act requirements that allow only licensed electricians to connect electrical appliances on new and existing pools. The proposal specifies ANSI standards for construction or repair of swimming pools.

Final Note

Section A and B, needs to be review by someone experienced in Texas state regulatory structure. The terms General Provisions, commission, department and executive director may need to be researched with more accuracy.

This program has not been translated into legislative language.

The Texas Swimming Pool Service Industries’ Legislative Proposal for Licensing

A. General Provisions

(a) Title: Texas Swimming Pool Industries Licensing Act

(b) Definitions

- (1) “Advisory Board” means the Swimming Pool Industries Advisory Board.
- (2) “Commission” means the Texas Commission of Licensing and Regulation.
- (3) “Department” means the Texas Department of Licensing and Regulation And Texas Department of Health.
- (4) “ANSI Standards” means the construction, workmanship and performance standards for swimming pools and spas published by the American National Standards Institute.
- (5) “Swimming Pools” means swimming pool construction, service, and repair of swimming pools and spas, weather in ground or above ground, including pre-manufactured or factory fabricated, including water and gas service lines from point of service to pool industry related equipment, and other related items to the industry, also includes, wiring from pool and spa equipment to the 1st readily accessible disconnect, pool piping, fittings, backflow prevention devices, waste lines and other integral parts of related items to the swimming pool and spa industry. Also included are swimming pool accessories, covers, safety devices, solar devices, heaters, boilers, reservoir linings, and fencing for protective purposes as related to the industry.
- (6) “Contractor/Service Company” means a sole proprietor, partnership or corporation that engages in the business of servicing or repairing or remodeling swimming pools, spas, and other related accessories to the industry.
- (7) “Implementation Period” means January 1, 2010 to December 31, 2012
- (8) “Training Course’ means a course of instruction that trains individuals on how to maintain and repair or replace related items to the swimming pool industry.

- (A) Training courses shall include information believed to be accurate and correct by subject matter experts of nationally recognized trade associations or other nationally recognized organizations of pool and spa professionals.
- (B) The courses shall be intended for the use of persons who have experience in service and repair of pools and spas.
- (C) The courses shall present a comprehensive training manual and workbook with information about all of the following relevant aspects of pool and spa service and repair, including but not limited to:

- Business management, finance, accounting, and insurance;
- Hydraulics pertaining to pool and spa construction and repair;
- Circulation systems for a pool and spa;
- Suction entrapment avoidance, and entrapment devices;
- Types of filtration used in pools and spas;
- Basic electricity as it pertains to the swimming pool and spa industry, and the necessary safety precautions;
- Design, materials, and components of concrete pool and spa structures;
- Coping, tile, and trim for pools and spas;
- Safety features and related equipment for pools and spas;
- Heaters, chemical feeders, and other accessories for pools and spas
- Application of interior surfaces for pools and spas;
- Acid washes and accident prevention.
- Start-up procedures for newly constructed, replaster, acid washed, and painted pools and spas;

- (D) The courses shall test participants' knowledge of the above-referenced information by means of a standardized, multiple-choice, true or false or fill in the blank examination administered by a nationally recognized trade association or other nationally recognized organization of the pool and spa professionals.

(9) "Certifying Organizations" mean nationally recognized organizations of pool and spa professionals that:

- (A) Develop and administer training courses.
- (B) Provide exams to test course participants' knowledge.
- (C) Certifies, and keeps records on, those individuals who successfully complete the course and passed exams.
- (D) Provide for, and require, continuing education for those who service or repair swimming pools to maintain their certification.
- (E) Maintain current records on who is certified.

(10) "Certified" means the designation given by a certifying organization signifying that an individual:

- (A) Has successfully completed a training course, passed the exam and demonstrates proficiency in the knowledge of how to service or repair swimming pools.
- (B) Has adequate field experience in service or repairing swimming pools.
- (C) Is maintaining their proficiency status through continuing education.

(11) "Qualified" means a person who is certified to maintain or repair or install a swimming pool or spa or other equipment related to the swimming pool industry. This person can be a contractor, corporate officer, partner or an employee of a contractor.

(12) "Sub-Contractor" means:

- (A) A person or company hired by the contractor and
- (B) A person who is not an employee of the contractor.

(13) "NEC" means the National Electric Code.

(14) "Proficiency exam" means an exam that is taken as an alternative to taking a training course, or portion of a training course. The proficiency exam must test on the same material that is covered by the training course hours that are being exempted.

(15) "Trade group" means the representatives of swimming pool hydraulic, illumination and heating equipment manufacturers and swimming pool warranty and repair technicians.

(c) Exemptions and Application

(1) The following shall be added to the Occupation Code, Subsection (a) in Section 1305.003:

"the maintenance, replacement, repair, remodeling and servicing of swimming pool equipment and accessories on swimming pools, spas and hot tubs and other related items in the Swimming Pool Industry as defined by The American National Standards Institute (ANSI) publications.

B. Swimming Pool Industries Advisory Board

(a) The Swimming Pool Industries Advisory Board shall consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

- (1) Four certified swimming pool companies or certified officers of a swimming pool company with at least ten years of swimming pool service and repair experience.
- (2) One structural/hydraulics engineer with at least ten years experience.
- (3) One representative of a manufacturer of hydraulic equipment products that are used in the service and repair of swimming pools who has at least three years experience.
- (4) One individual owner or officer of a company that engages in the work of swimming pool maintenance or repair with at least three years experience.
- (5) One attorney.
- (6) One representative from TDLR if available, if not a fifth certified swimming pool company or a certified officer of a swimming pool company with at least ten years of swimming pool service and repair experience.

(b) Terms

- (1) Members of the board shall serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year. A member holds office until the member's successor is appointed.
- (2) If a vacancy occurs during the member's term, the commission shall appoint a replacement to fill the unexpected term.

(c) Officers

The board shall annually elect from its members a presiding officer, assistant presiding officer, and secretary.

(d) Grounds for Removal

(1) The commission may remove a board member if the member:

- (A) Is unqualified at the time of appointment or
- (B) Cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term or
- (C) Is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during each year unless the absence is excused by the board.

(2) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(3) If the administrator of the commission has knowledge that a potential ground for removal exists, the administrator shall notify the presiding officer of the commission that the potential ground exists.

(e) Per Diem; Reimbursement

Subject to any applicable limitation in the General Appropriations Act, a member of the board is entitled to:

- (A) A per diem allowance; and
- (B) Reimbursement of travel expenses necessarily incurred in performing board functions.

(f) Meetings; Quorum

(1) The board shall meet semiannually and at the call of the commission. The board may meet at the call of a majority of its members.

(2) A quorum of the board is five members.

(g) General Powers and Duties of the Board

(1) The board has the powers and shall perform the duties that the commission delegates to the board.

(2) The board shall recommend to the commission, if appropriate:

- (A) Organizations to serve as certifying organizations.
- (B) Resources and testing methods to test license applicant's basic business knowledge.
- (C) The forms, and modifications to forms, for license application or other documents.
- (D) Reasonable license and renewal fees.
- (E) Rules establishing a code of professional conduct and ethics.
- (F) The amount and types of insurance and bonds to be required of swimming pool contractors.
- (G) The procedures for receiving and acting upon complaints against contractors.

- (H) Department actions to provide a high degree of service to and protection of the public in dealing with contractors.
- (I) Workmanship standards, rules and procedures for oversight of contractors.

(h) Review of Commission and Department Rules

- (1) The board in an advisory capacity shall develop and recommend to the executive director rules under this chapter. The board shall review department rules relating to this chapter and recommend to the executive director amendments to the rules.
- (2) The executive director shall submit to the board for development or recommendation each proposed rule, proposed amendment to a rule, and request for a proposal rule or proposed amendment to a rule that relates to the regulation or licensing of contractors.
- (3) The executive director may modify a rule developed by the board if the commission, or executive director, if appropriate, finds the modification to be in the public interest. This chapter does not prohibit the commission or the executive director from developing and adopting a rule relating to the regulation or licensing of contractors if the board does not develop or recommend a rule within six months after the commission or executive director submits to the board a proposed rule, amendment to a rule, or request for a proposed rule or amendment to a rule.
- (4) If the board determines that a rule that the commission or executive director requests should not be developed or recommended for adoption by the department, the board shall submit to the commission and department a report on the matter. An ad hoc body shall be established to consider the report and recommend to the executive director possible action. The presiding officer of the commission shall appoint one public member of the commission and three additional members drawn from either the commission or the department to serve on the ad hoc body. The presiding officer of the board shall appoint three members of the board to serve on the ad hoc body.

(i) Consideration of Board Recommendations

The commission, or executive director, if appropriate, shall consider the board's recommendations relating to qualifications and licensing of contractors to assure the public of quality professional swimming pool service and repair in this state.

(j) Delegation of Authority in Contested Cases

In contested cases regarding a contractor, the executive director may:

- (A) authorize the board to conduct administrative hearings, recommend the entry of final orders, or both; and
- (B) authorize specific employees to conduct hearings and render final decisions.

(k) Procedural Rules

The commission, or executive director, if appropriate, shall adopt procedural rules to be used by the board in implementing its powers and duties.

C. Powers and Duties

- (a) The executive director, or commission, if appropriate, shall:

- (1) By rule determine how contractor license applicants demonstrate their basic business knowledge.
 - (2) By July 1, 2009, select certifying organizations to provide the training courses, testing and certifying of qualifiers.
 - (3) Determine the types and amounts of insurance and bonds to be required of contractors.
 - (4) Decide on
 - (A) procedures for receiving complaints on violations of Industry Standards.
 - (B) procedures for providing inspections in response to complaints.
 - (C) procedures for arbitration.
 - (D) the amounts of fees and penalties for violation of Industry standards and department, and/or commission rules.
 - (5) Establish a record keeping system with public internet access that lists:
 - (A) Current and past holders of a swimming pool contractor's license and their current and past qualifiers.
 - (B) Qualifiers, their current certification status, dates for the renewal of certification, and current and past employment with swimming pool contractors and the dates of those employments.
 - (C) Contractors who have been found by the department to have unresolved complaints on Industry Standards violations.
 - (D) Contractors whose licenses are revoked.
 - (E) Contractor name, with photograph, which have been referred to the Attorney General for operating without a license.
 - (6) establish a procedure for use during 2009 for license exemptions according to paragraphs (e) (1) and (2) in Section D.
 - (7) establish workmanship standards and rules for sub-contractors.
- (b) Fees
- (1) Until December 31, 2013, the license application fee and the yearly renewal fee shall be \$250.00. After this date, the commission, as appropriate, may change the fee to an amount that is reasonable.
- (c) Personnel
- The department may employ personnel necessary to administer and enforce commission action and license requirements.
- (d) Department action on complaints and conflicts between contractors and swimming pool owners shall be confined to alleged violations of Industry Standards.

- (e) Criminal Action. The commission shall refer to the Texas Attorney General the individual names, business names and photographs of those who service and repair swimming pools without a license.
- (f) Construction Codes. The commission may adopt ICC and RCC swimming pool construction codes, as the swimming pool code for the state.

D. License Requirements

(a) Beginning January 1, 2010, a person or business may not engage in the business of Maintaining, remodeling, servicing, or installing related equipment in the swimming pool industry unless the person or business holds a swimming pool contractors license.

(b) Application Requirements:

(1) An applicant for a swimming pool contractor's license must:

- (A) submit to the department a completed application form prescribed by the department.
- (B) submit proof that he or she has basic business knowledge.
- (C) submit the name(s) of the contractor's qualifier(s).
- (D) submit other information required by the commission.
- (E) submit a photograph of the applicant.
- (F) submit information necessary for a credit check and report.

(c) Qualifier Requirements.

(1) Every contractor, unless exempted under (e) below, must be, or employ, a qualifier.

(2) During the implementation period a qualifier must meet the following requirements and demonstrate at each level of proficiency that they have received certification.

(A) until December 31, 2011 the qualifier is one who has completed at least 30 hours of training course instruction and passed an exam on the course topics.

Or,

The qualifier is one with at least two years field experience in service or repairing swimming pools and passed a proficiency exam on the course topics.

Or,

The qualifier is one with at least 3 years field experience and passed a proficiency exam on the course topics.

(3) Beginning January 1, 2012, the qualifier is one who has had at least 3 years field experience in maintaining, service and repairing swimming pools and has completed at least 30 hours of a certified training course instruction and passed the exams.

- (4) If an employed qualifier leaves a company, the contractor, to maintain the license, must:
(A) notify the department within ten days that the qualifier has left
And
(B) notify the department within 180 days that a new qualifier has been hired and provide the qualifier's name.

(5) A qualifier can operate for more than one company.

(6) A qualifier must fulfill all ongoing certifications requirements of the certifying organization in order to maintain status as a qualifier.

(d) Contractors must provide proof of insurance and bond. The types and amounts to be determined by the commission, if appropriate.

(e) Exemptions

(1) Contractors are exempt from application requirements D. (b) (1) (B) and (C). if they, can demonstrate:

- (A) They have twenty years of uninterrupted pool maintenance and repair experience in Texas, and
- (B) They have never completed a bankruptcy, and
- (C) They have operated under the same business name, or have changed business name only once when changing status from sole proprietorship to a corporation or from a sole proprietorship to a partnership.

(2) The executive director, by rule, can exempt a contractor with twenty years experience from requirements D. (b), (1) (B) and (C). during 2009.

(3) Certifying organizations can offer proficiency exams to replace training course hour requirement under © (3) above.

Recommendations to Executive Director to be communicated by the Swimming Pool Contractors Advisory Board.

1. If a Performance Bond is considered by the commission, the requirement per job should not exceed the dollar amount set by the commission.
2. Information about customer complaints on standards violations should not be made public unless the contractor fails to rectify and not until the complaint and arbitration process is complete.
3. Customer complaints regarding standard violations on a service performed on a pool are not to be acted on unless the contractor has been paid in full.