

TEXAS DEPARTMENT OF LICENSING AND REGULATION



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October 15, 1997

The Honorable Dan Morales
Attorney General of Texas
Price Daniel Senior Building
Austin, Texas 78701

FILE # ML-39836-97

I.D. # 39836

RECEIVED

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Opinion Committee

Attn: OPINION COMMITTEE

Re: Request for Attorney General Opinion under TEX. REV. CIV. STAT. ANN. Article 8861 (Vernon 1993) (hereafter referred to as Article 8861) and HB2025

Dear General Morales:

The Texas Department of Licensing and Regulation requests your opinion concerning the effect of the amendments to Article 8861 by HB2025 as passed by the 75th Legislature.

Section 6 of Article 8861 exempts certain individuals from licensure requirements. Section 10(e), as added by HB2025, states,

"Except as provided by Subsection (g) of this section, a person may purchase refrigerants or equipment containing a refrigerant in this state only if that person:

- (1) is licensed under this Act or a municipal ordinance that complies with section 9 of this Act; or
- (2) holds a certificate of registration issued by the department under this section."

Section 10(d) requires individuals who qualify as maintenance employees under Section 6(a)(2) and engineers qualifying under Section 6(a)(4) to obtain a Certificate of Registration from the Department if they purchase refrigerant products. Homeowners that are exempted from licensing requirements are not required to provide sellers of refrigerants with evidence of exemption, as provided in Section 10(g). Other individuals (employed by an electric or gas utility, employed by an industrial operation, performs a/c work on portable or temporary units, performs a/c work on motor vehicles) exempted by Article 8861 from licensing requirements are not provided with a method to purchase refrigerants in Section 10. Sec. 10(f) authorizes the commissioner to establish by rule, the evidentiary requirements purchasers of refrigerant products must show sellers.

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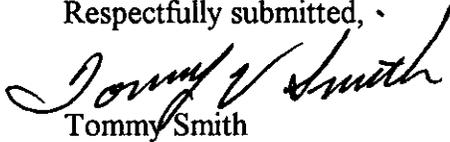
It appears that other individuals exempt from licensing requirements under sec. 6(a) may not purchase refrigerant products after January 1, 1998 unless they are licensed as air conditioning contractors under Article 8861. The Department would like to know the following:

May the Department promulgate a rule authorizing individuals who are exempted under Article 8861, and ineligible to register under HB 2025, to purchase refrigerant products?

If the Department can adopt such a rule, may the Department require of those persons claiming an exemption under sec. 6(a), to provide proof of their exemption to the seller of refrigerant products?

I appreciate your service in answering these questions.

Respectfully submitted, •

A handwritten signature in cursive script that reads "Tommy V. Smith".

Tommy Smith
Executive Director/Commissioner

TVS/TL/dm

cc: Theda Lambert, General Counsel

Attach: Article 8861
HB 2025

Air Conditioning and Refrigeration Contractor License Law

Texas Civil Statutes, Article 8861

Administered by the Texas Department of Licensing and Regulation

Section 1. SHORT TITLE.

This Act may be cited as the "Air Conditioning and Refrigeration Contractor License Law."

Section 2. DEFINITIONS.

In this Act:

- (1) "Environmental air conditioning" means the process of treating air to control temperature, humidity, cleanliness, ventilation, and circulation to meet human comfort requirements.
- (2) "Air conditioning and refrigeration contractor" means a person who performs air conditioning and refrigeration contracting.
- (3) "Commercial refrigeration" means the use of mechanical or absorption equipment to control temperature, humidity, or both in order to satisfy the intended use of a specific space.
- (4) "Process cooling or heating" includes the control of temperature, humidity, or cleanliness solely for proper operation of equipment or for production requirements.
- (5) "Commissioner" means the commissioner of Licensing and Regulation.
- (6) "Person" means an individual.
- (7) "Air conditioning and refrigeration maintenance work" means repair work and all other work required for the continued normal performance of an environmental air conditioning system, commercial refrigeration system or equipment, or process cooling or heating system. The term does not include the installation of a total replacement of the system or the installation of boilers or pressure vessels that must be installed by licensed persons pursuant to rules and regulations adopted by the commissioner under Chapter 755, Health and Safety Code. *Paragraph (7) amended effective September 1, 1993, by Acts of the 73rd Legislature*
- (8) "Advisory board" means the Air Conditioning and Refrigeration Contractors Advisory Board.
- (9) "Air conditioning and refrigeration contracting" means the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or of equipment in environmental air conditioning, commercial refrigeration, or process cooling or heating systems.

- (10) **"Mechanical integrity"** means physical installation of products, systems or equipment in accordance with their intended purpose and according to:
- (A) standards at least as strict as the standards set forth in the Uniform Mechanical Code published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, or their successor organizations, or the Standard Mechanical Code published by the Southern Building Code Congress International, Inc., or its successor organization;
 - (B) all other applicable codes; and
 - (C) the manufacturer's specifications.
- (11) **"Cooling capacity"** means the nominal tonnage of the compression equipment based on 40 degrees Fahrenheit suction temperature and 105 degrees Fahrenheit condensing temperature.
- (12) **"Department"** means the Texas Department of Licensing and Regulation.
- (13) **"Commission"** means the Texas Commission of Licensing and Regulation.

Section 3. POWERS AND DUTIES OF COMMISSIONER.

- (a) The commissioner shall adopt rules for the practice of air conditioning and refrigeration contracting consistent with this Act. The standards prescribed by rule must be at least as strict as the standards set forth in the Uniform Mechanical Code published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials or the Standard Mechanical Code published by the Southern Building Code Congress International, Inc., as those codes exist at the time the rules are adopted. 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 any notice and hearing that 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.
- (c) Deleted as mandated by HB 863.
- (d) The commissioner shall prescribe application forms for original and renewal licenses and the design of the licenses.

- (e) The commissioner shall prescribe the method and content of examinations administered under this Act and shall set compliance requirements for the examinations. The examinations shall be offered at locations within the state determined by the commissioner and shall be offered on a monthly basis or more frequently as determined by the commissioner. The examination may be offered by computer at locations within the state determined by the commissioner. *Paragraph (e) amended effective September 1, 1997 by Acts of the 75th Legislature*
- (f) The commissioner shall set insurance requirements for persons licensed under this Act. The commissioner may waive the insurance requirements for licensees who do not contract with the general public.
- (g) The department may employ the personnel necessary to implement this Act. The department shall employ at least two full-time air conditioning and refrigeration contractors to serve as examiners.
- (h) The commissioner may authorize necessary disbursements to implement this Act, including office expenses, costs of equipment, and other necessary facilities.
- (i) Deleted as mandated by HB 863.
- (j) The commissioner shall maintain a record of his proceedings under this Act.
- (k) The department shall publish annually a directory of the persons licensed under this Act. The department 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 department for use in the administration of this Act.
- (l) The department may contract with another state agency or a political subdivision of the state for the enforcement of this Act and the rules adopted by the commissioner under this Act. *Paragraph (l) effective September 1, 1993 by Acts of the 73rd Legislature*
- (m) A representative of the commission or a municipal air conditioning or refrigeration inspector within the jurisdiction of the municipality may issue a citation to a person who violates Section 10(e) or (f). *Subsection (m) effective September 1, 1997 by Acts of the 73rd Legislature*

Section 3A. ADVISORY BOARD.

- (a) The Air Conditioning and Refrigeration Contractors Advisory Board is created to advise the commissioner in adopting rules 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 governor with the advice and consent of the senate who are experienced in the design, installation, construction, maintenance, service, repair, alteration, or modification of equipment used for environmental air conditioning, commercial refrigeration, or process cooling or heating. A member of the advisory board serves a term of six years, with terms expiring on February 1 of odd-numbered years.

- (c) The governor shall appoint the advisory board members as follows:
- (1) one member must be an official of a municipality with a population of not more than 250,000;
 - (2) one member must be an official of a municipality with a population greater than 250,000;
 - (3) four members must be full-time licensed air conditioning and refrigeration contractors, as follows:
 - (A) one member must hold a Class A license and must practice in a municipality with a population greater than 250,000;
 - (B) one member must hold a Class B license and must practice in a municipality with a population greater than 250,000;
 - (C) one member must hold a Class A license and must practice in a municipality with a population greater than 25,000 but not more than 250,000; and
 - (D) one member must hold a Class B license and must practice in a municipality with a population of not more than 25,000;
- (d) For the purposes of Subsection (c) of this section, "population" means population according to the most recent federal decennial census.
- (e) The governor shall designate one member of the board to serve as chairman. The commissioner and the chief administrator of this Act serve as ex officio, nonvoting members of the advisory board. On the resignation, death, suspension, or incapacity of any member, the governor shall fill the vacancy for the remainder of the unexpired term with an individual who represents the same interests with which the predecessor was identified.
- (f) In appointing the air conditioning and refrigeration contractor members of the advisory board, at least one of those appointees should be an air conditioning and refrigeration contractor who employs organized labor, and at least two of those appointees should be registered professional engineers.
- (g) 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 four members.
- (h) The advisory board members serve without compensation. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the advisory board, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

Section 3B. LICENSE REQUIRED.

Unless the person is exempted under Section 6 of this Act, a person may not perform air conditioning and refrigeration contracting without a license under this Act. *Section 3B effective September 1, 1993 by Acts of the 73rd Legislature*

Section 4. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSE.

- (a) Air conditioning and refrigeration contractor licenses are of two classes:
 - (1) A Class A license entitles the licensee to perform air conditioning and refrigeration contracting, of each type for which the license is endorsed, on systems, products, or equipment of any size or capacity; and
 - (2) A Class B license entitles the licensee to perform air conditioning and refrigeration contracting, of each type for which the license is endorsed, on systems, products, or equipment of not more than 25 tons cooling capacity or of not more than 1.5 million British thermal units per hour output heating capacity.
- (b) Endorsements are of two types:
 - (1) an environmental air conditioning endorsement entitles the licensee to perform air conditioning and refrigeration contracting in relation to environmental air conditioning within the class of license held; and
 - (2) a commercial refrigeration and process cooling and heating endorsement entitles the licensee to perform air conditioning and refrigeration contracting in relation to commercial refrigeration and process cooling and heating within the class of license held.
- (c) Each license shall be endorsed for either environmental air conditioning or commercial refrigeration and process cooling and heating, or both. For each endorsement the licensee must perform satisfactorily on a separate examination related to the endorsement. A licensee may not perform under a state license air conditioning and refrigeration contracting of a type for which the person's license is not endorsed.
- (d) The commissioner shall prescribe separate examinations for each class of license and, within each class, separate examinations for environmental air conditioning and for commercial refrigeration and process cooling and heating.
- (e) An applicant for an air conditioning and refrigeration 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. For purposes of the experience requirement, a degree or diploma in air conditioning engineering, refrigeration engineering or mechanical engineering from an institution of higher education whose program is approved by the Texas State Board of Registration for

Professional Engineers for the purpose of licensing professional engineers is considered the equivalent of two years of practical experience.

- (f) The application must be made on a form prescribed by the commissioner and must specify the class of license and each endorsement the applicant seeks. The application must be 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.
- (g) The commissioner shall issue an air conditioning and refrigeration contractor license to an applicant 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.
- (h) A license issued under this Act expires at the end of the license period set by the commission.
- (i) 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 4A. NOTICE OF EXAMINATION RESULTS.

- (a) Not later than the 30th 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. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commissioner shall notify the examinee of the reason for the delay before the 90th day.
- (b) If requested in writing by a person who fails the examination, the commissioner shall furnish the person with an analysis of the person's performance on the examination.

Section 4B. CONTINUING EDUCATION PROGRAMS.

The commissioner may recognize, prepare, or administer continuing education programs for licensees. Participation in the programs is voluntary.

Section 4C. LICENSE BY RECIPROCIITY.

The commissioner may waive any license requirement for an applicant with a valid license from another state with which this state has a reciprocity agreement.

Section 4D. TEMPORARY LICENSE.

- (a) The commissioner, by rule, may provide for the issuance of a temporary license to perform air conditioning and refrigeration contracting.
- (b) The commissioner may issue a temporary license to an applicant who applies to the commissioner on a form prescribed by the commissioner and pays the required fees.

Section 5. 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. The failure to provide proper installation, 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, or a fraudulent promise made to influence, persuade, or induce an individual to contract for services 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 the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Section 5A. 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 5 of this Act.

Section 6. EXEMPTIONS.

- (a) This Act does not apply to a person who:

- (1) performs air conditioning and refrigeration contracting in a building owned solely by him as his home;
 - (2) performs air conditioning or refrigeration maintenance work if (i) the person is a maintenance man 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 maintenance 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 employer referred to in (i) above do not engage in the occupation of air conditioning and refrigeration contracting for the general public; *Paragraph (2) amended effective September 1, 1993 by Acts of the 73rd Legislature*
 - (3) performs air conditioning and refrigeration contracting and is regularly employed by a regulated electric or gas utility;
 - (4) is licensed as a professional engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), performs work in connection with the business in which the person is employed, and does not engage in the practice of air conditioning and refrigeration contracting for the general public;
 - (5) performs process cooling or heating work for an industrial operation such as a chemical plant, petrochemical plant, refinery, natural gas plant, or natural gas treating plant when employed by that operation;
 - (6) performs air conditioning and refrigeration contracting on:
 - (A) a portable or self-contained ductless air conditioning or refrigeration product that has a cooling capacity of three tons or less; *Amended effective September 1, 1993 by Acts of the 73rd Legislature*
 - (B) a portable or self-contained heating product that does not require the forced movement of air outside the heating unit; or
 - (C) environmental air conditioning equipment that is intended for temporary use and is not fixed in place; or
 - (7) performs air conditioning services only on a motor vehicle air conditioning unit or who employs a person who performs air conditioning services only on a motor vehicle air conditioning unit. *Paragraph (7) effective September 1, 1993 by Acts of the 73rd Legislature*
- (b) The work described by Subsection (a) of this section remains subject to any permit, inspection, or approval requirements prescribed by a municipal ordinance.
 - (c) A person licensed under this Act may not perform or offer or attempt to perform any act, service, or function that is defined as the practice of engineering by the Texas Engineering Practice, as amended (Article 3271a, Vernon's Texas Civil Statutes).

- (d) A person licensed under this Act may not perform or offer or attempt to perform any act, service, or function regulated under Chapter 113, Natural Resources Code, unless licensed or exempted by rule under that law. A person regulated under Chapter 113, Natural Resources Code, may not perform or offer or attempt to perform air conditioning or refrigeration contracting unless licensed under this Act.
- (e) A person licensed under this Act may not perform or offer or attempt to perform any act, service, or function that is defined as plumbing work under The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes) unless licensed under that law. A person who is licensed in this state as a plumber and is engaged in business as a plumber may not perform or offer or attempt to perform air conditioning and refrigeration contracting unless licensed under this Act.
- (f) This article does not apply to a person or firm that is licensed as a manufacturer, retailer, rebuilder, or installer and regulated pursuant to the Texas Manufactured Housing Standards Act, (Article 5221f, Vernon's Texas Civil Statutes) and that engages exclusively in air conditioning and refrigeration contracting for manufactured homes provided that the installation of air conditioning components at the site where the home will be occupied is performed by a person licensed under this Act. *Paragraph (f) amended effective September 1, 1993 by Acts of the 73rd Legislature; amended effective September 1, 1997 by Acts of the 75th Legislature*
- (g) A person who assists in the performance of air conditioning and refrigeration contracting work under the supervision of a licensee is not required to be licensed. *Paragraph (g) amended effective September 1, 1993 by Acts of the 73rd Legislature*

Section 7. REPORTING REQUIREMENT.

Each person licensed under this Act shall notify the municipal authority who has control of the enforcement of regulations relative to air conditioning and refrigeration contracting in the municipality in which the person is engaged in air conditioning and refrigeration contracting that the person has obtained a state license. The notification must be in the form required by the municipality.

Section 8. PENALTY.

Except as provided in Section 9, a person commits an offense if the person knowingly or intentionally engages in air conditioning and refrigeration contracting without a license issued under this Act. An offense under this section is a Class B misdemeanor.

Section 9. MUNICIPAL REGULATION.

- (a) A license issued by a municipality of this state is valid under the terms of the license within that municipality. However, a license issued under this Act is valid throughout the state, and the holder and people under supervision are not required to hold a municipal license to practice air conditioning and refrigeration contracting in any municipality within this state.

- (b) A municipality may by ordinance adopt and enforce standards for air conditioning and refrigeration contractors that are consistent with the standards established under this Act. The municipality shall report violations of the ordinance to the commissioner not later than the 10th day after the date on which the municipality takes action to enforce the ordinance. 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 10. SALE AND USE OF REFRIGERANTS.

Effective September 1, 1997 by Acts of the 75th Legislature

- (a) In this section, "refrigerant" means a class I or class II substance, as listed in Section 602, Clean Air Act Amendments of 1990 (42 U.S.C. Section 7671a), and federal administrative rules adopted under that section.
- (b) Each person who purchases, sells, or uses a refrigerant in this state shall comply with the requirements of the federal Clean Air Act and the federal administrative rules adopted under that Act. Consistent with that requirement, the department shall regulate the use and sale of refrigerants as provided by this section.
- (c) A person may not sell a flammable refrigerant or refrigerant substitute that contains a liquid petroleum-based product for use in an automotive, aviation, commercial, or residential air conditioning or refrigeration system. A flammable refrigerant or refrigerant substitute that contains a liquid petroleum-based product may not be used in the maintenance or installation of any system relating to an airplane or other aircraft.
- (d) To purchase a refrigerant, a person whose use is exempt under Section 6(a)(2) or 6(a)(4) of this Act must obtain a certificate of registration from the department and must present to the seller evidence of compliance with the registration requirement. The commissioner by rule shall adopt requirements governing the registration and the issuance of certificates of registration.
Paragraph (d) effective January 1, 1998 by Acts of the 75th Legislature
- (e) Except as provided by Subsection (g) of this section, a person may purchase refrigerants or equipment containing a refrigerant in this state only if that person:
- (1) is licensed under this Act or a municipal ordinance that complies with section 9 of this Act; or
 - (2) holds a certificate of registration issued by the department under this section. *Paragraph (e) effective January 1, 1998 by Acts of the 75th Legislature*
- (f) The purchaser must provide to the seller evidence of compliance by the purchaser with the license or registration requirements imposed under this Act that apply to the purchaser. The commissioner by rule shall establish requirements for the evidence. *Paragraph (f) effective January 1, 1998 by Acts of the 75th Legislature*

- (g) A purchaser may purchase refrigerants if that person's use is exempt under section 6(a)(1) of this Act if the person is authorized to do so under other state or federal law and is not required to provide to a seller evidence of the exemption.
- (h) A person commits an offense if the person purchases a refrigerant or equipment containing a refrigerant in this state in violation of Subsection (c), (e), or (f) of this section. An offense under this subsection is a Class B misdemeanor. *Paragraph (h) effective January 1, 1998 by Acts of the 75th Legislature*
- (i) This section does not apply to a "small appliance" as defined by 40 C.F.R. Part 82.152, as amended.

Section 11. Repealed by Acts 1987, 70th Leg. ch. 581, Sec. 12, eff. Sept. 1, 1987.