

# HOUSE . . . . . No. 2693

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*Anne M. Gobi*

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to licensing of chimney sweeps.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Anne M. Gobi</i>	<i>5th Worcester</i>	<i>1/21/2011</i>
<i>Geraldo Alicea</i>	<i>6th Worcester</i>	<i>2/4/2011</i>

# HOUSE . . . . . No. 2693

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By Ms. Gobi of Spencer, a petition (accompanied by bill, House, No. 2693) of Anne M. Gobi and Geraldo Alicea relative to licensing of chimney sweeps. Consumer Protection and Professional Licensure.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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An Act relative to licensing of chimney sweeps.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 13 of the General Laws is hereby amended by adding the following  
2   2 sections:-

3           Section 109. (a) There shall be within the division of professional licensure a board of  
4   examiners of chimney sweeps to consist of the commissioner of public safety or his designee, the  
5   director of professional licensure or his designee and 5 persons, residents of the commonwealth,  
6   to be appointed by the governor for terms of 3 years, 2 of whom shall be journeyperson chimney  
7   sweepers with at least 10 years of practical experience and who are wage earners, 2 of whom  
8   shall be master chimney sweepers with at least 10 years of practical experience in chimney  
9   sweeping and 1 of whom shall be a representative of the public and subject to section 9B.

10           (b) No member shall serve for more than 2 consecutive and complete 3-year terms. As  
11   the term of the office of a member expires, a successor shall be appointed in like manner for a

term of 3 years. The governor may fill a vacancy in the board for the unexpired portion of the term.

(c) The board shall annually elect from among its members a chairman and vice-chairman. The board shall meet at least 4 times annually and may hold additional meetings as necessary to discharge its duties. Members shall serve without compensation but shall be entitled to reasonable travel expenses. The members of the board shall be public employees for the purposes of chapter 258 for all acts or omissions within the scope of their duties as board members.

Section 102. The board shall have the following powers and duties: (i) to administer and enforce sections 263 to 278, inclusive, of chapter 112; (ii) to adopt rules and regulations governing the licensure of master, journeyperson and apprentice chimney sweepers, and business entities and schools teaching chimney sweeping; (iii) to establish standards of professional and ethical conduct; (iv) to establish standards for continuing education reflecting acceptable national standards; and (v) in conjunction with the division of professional licensure, to investigate complaints, conduct inspections, request and review business records of licensees, and set and administer penalties as defined in sections 61 to 65E, inclusive, of said chapter 112 and sections 263 to 278, inclusive, of said chapter 112 for fraudulent, deceptive or professionally incompetent and unsafe practices and for violations of rules and regulations promulgated by the board.

SECTION 2. Chapter 112 of the General Laws is hereby amended by adding the following 15 sections:-

Section 263. As used in this section and sections 263 to 278, inclusive, the following words shall have the following meanings unless the context requires otherwise:

“Apprentice” or “apprentice chimney sweep”, a person at least 16 years of age who is learning or working at the business of chimney sweeping under the direct supervision of a master chimney sweeper or a journeyman chimney sweeper in the employ of a master.

“Board”, the board of examiners of chimney sweepers, established in section 109 of chapter 13.

“Certificate of a chimney sweeping corporation, partnership, LLP, LLC or other entity”, a certificate of registration issued by the board to a master chimney sweep authorizing him to conduct a chimney sweep business as a corporation, partnership, LLP, LLC or other such entity, as the case may be.

“Chimney sweep work”, the cleaning of a chimney, moderate repair of a chimney liners, pointing of chimney brick and mortar; provided, however, that sheet metal work shall not include the work conducted by a licensed pipe fitter, oil burning technician, refrigeration technician, plumber or gasfitter as determined by the laws and regulations relating to those professions; and provided further, that nothing in this section shall be construed to supercede chapters 142 and 146.

“Inspector”, the inspector of buildings, building commissioner or other local inspector charged with enforcing the state building code under section 3 of chapter 143.

“Journeyman” or “journeyman chimney sweep”, a person who performs chimney sweep work or who, through an apprentice in the employ of a master, employs the journeyman and who has passed an examination and been issued a license as provided in this chapter.

“Master” or “master chimney sweep”, a person having a regular place of business and who, by himself or through journeypersons in his employ, performs chimney sweeping work, subject to inspection and in compliance with any law, rule or regulation pertaining to chimney sweep work. The master chimney sweeper may be in the employ of another master chimney sweeper, but shall not be in the employ of a journeyperson or apprentice.

“Veteran”, as that term is defined in clause Forty-third of section 7 of chapter 4.

Section 264. (a) No person shall engage in work as a master, journeyperson or apprentice nor shall any person advertise or represent that he is a master, journeyperson or apprentice unless that person holds a valid license issued by the board as provided in this chapter.

(b) The license or certificate of a master, journeyperson or apprentice shall be displayed when required by an inspector of buildings or an inspector acting on behalf of the board. The inspectors may enforce this section by entering into an establishment where the licensees are performing their work.

(c) A sign, listing or advertisement of a chimney sweep business, master or that of a journeyperson chimney sweep shall contain his designation and license number.

Section 265. (a) A person licensed in the commonwealth as a master chimney sweep may apply to the board for a certificate of a chimney sweep corporation, partnership, LLC, LLP or other such entity upon payment of a fee or a biennial renewal fee, the amounts of which shall be determined annually by the secretary of administration and finance pursuant to section 3B of chapter 7. A certificate of a chimney sweep corporation shall authorize a master to conduct the chimney sweep business as a corporation; provided, however, that in the corporation the master chimney sweep shall be designated as an officer of the corporation organized under the laws of

76 the commonwealth. A certificate of chimney sweep partnership or LLP shall authorize a master  
77 chimney sweep to conduct the chimney sweep business as a partnership or LLP; provided,  
78 however, that all partners in such a partnership or LLP shall be master chimney sweeper. A  
79 certificate of a chimney sweep LLC shall require, as a prerequisite, that a master chimney sweep  
80 be designated as a manager of that LLC. The board shall determine the appropriate requirements  
81 for any other business entities not so designated.

82 (b) No corporation, partnership, LLC, LLP or other entity shall engage in business,  
83 advertise the provision of chimney sweep work, make application for and take out permits for  
84 chimney sweep work, bid for chimney sweep work, permit its employees to perform chimney  
85 sweep work or represent that it holds a license or certificate issued by the board unless the entity  
86 and all employees who performing such work hold a license or certificate, issued by the board, as  
87 further described in chapter 13 and this chapter.

88 (c) The certificate of a chimney sweep corporation, partnership, LLP, LLC, or other  
89 entity shall only be issued to a master chimney sweep who shall be responsible for all chimney  
90 sweep work performed by that entity and its duly licensed employees.

91 Section 266. The board shall make such rules as they deem proper for the performance of  
92 their duties and governing the qualifications of applicants for examination. The board shall  
93 examine each person who applies for a license as a journeyman chimney sweep or a master  
94 chimney sweep, as to his practical knowledge of chimney sweep work. The board shall hold  
95 frequent examinations in the greater Boston area, and at such other convenient locations as it  
96 deems necessary. The board shall make every effort to accommodate veterans, including the

crediting of relevant military experience and the waiver of other requirements for individuals who demonstrate competence in the field of chimney sweep work.

Section 267. An apprentice, before starting an apprenticeship, shall file an application with the board, accompanied by the appropriate fee, requesting that an apprentice license be issued. The application shall be made on a form to be furnished by the board and shall require the applicant to state his age, the employer's name and address and such other information as the board may require. A master chimney sweep may employ more than 1 apprentices but not more than 1 apprentice may work under the direct supervision of a master or a journeyman in the employ of the master. The board may, by regulation, establish a maximum length of time for apprentice training.

Notwithstanding this section, students in a vocational school accredited by the department of education, under the direct personal supervision of a master or journeyman chimney sweep who is certified as an instructor by the division of occupational education, may engage in an on-the-job training program on installations approved by the examiners and conducted in cooperation with such a vocational school. The examiners shall adopt rules and regulations relative to the on-the-job training program and may accept such training as fulfillment, in whole or in part, of the necessary prerequisites for journeyman licensure.

Section 268. Upon payment of a fee and the submission of an application provided by the board, the board may issue a license without examination to an applicant who is legally registered as a journeyman or master chimney sweep in any other state or country whose requirements for obtaining and maintaining registration, in the opinion of the board, are at least substantially equivalent to the requirements in the commonwealth, provided such other state or

country has a reciprocal privilege to licensees registered by the board. The board may require additional education if it determines that the standards required for chimney sweep work in another state or country are inconsistent with the standards in effect in the commonwealth.

Section 269. The fees for a license as a journeyman, master and apprentice chimney sweep, or for any biennial renewal thereof, shall be determined annually by the secretary of administration pursuant to section 3B of chapter 7.

Section 270. The board may adopt rules and regulations for a system of continuing education, compliance with which shall be a condition precedent to the renewal of licenses issued by the board.

Section 271. (a) The board may investigate all complaints filed relating to the proper practice of chimney sweep work, any violation of this chapter pertaining to the practice of chimney sweep work or any rule or regulation of the board. Such complaints may be brought by any person or the board.

(b) The board shall be under the supervision of the division of professional licensure and shall have all the authority conferred under sections 61 to 65E, inclusive. For the purposes of this section and said sections 61 to 65E, inclusive, conduct which places into question the holder's competence to practice chimney sweep work shall include, but not be limited to: (1) committing fraud or misrepresentation in obtaining a license; (2) criminal conduct which the board determines to be of such a nature as to render the person unfit to practice chimney sweep work, as evidenced by criminal proceedings which resulted in a conviction, guilty plea, plea of nolo contendere or an admission of sufficient facts; (3) violating a rule or regulation of the board; (4) failing to cooperate with the board or its agents in the conduct of an inspection or investigation;



(5) failing to fulfill any continuing education requirements required by the board; (6) aiding or abetting an unlicensed person to practice chimney sweep work; or (7) negligence in the course of professional practice.

(c) The board may issue an order to a licensee directing him to cease and desist from unethical or unprofessional conduct if the board finds, after notice and the opportunity for a hearing, that the licensee has engaged in such conduct.

(d) Nothing in this section shall limit the board's authority to impose, by agreement, sanctions that are considered reasonable and appropriate by the board. Any person aggrieved by a disciplinary action taken by the board pursuant to this section or for violation of any other law, rule or regulations may, pursuant to section 64, file a petition for judicial review.

Section 272. Whoever, not being licensed to practice chimney sweep work pursuant to this chapter, practices or attempts to practice chimney sweep work or holds himself out as being licensed to practice chimney sweep work or uses any of the licensed titles of that profession, or whoever practices chimney sweep work under a false or assumed name or under a name other than that by which he is licensed or whoever impersonates another practitioner of chimney sweep work, or whoever buys, sells or fraudulently obtains a diploma, license, license renewal certificate or record or registration to practice chimney sweep work or aids or abets in such selling or fraudulent obtaining or whoever practices chimney sweep work under cover of any diploma, license, license renewal certificate, record or registration to practice chimney sweep work shall be punished by a fine of not less than \$100 nor more than \$1,000. A city or town that fails to comply with any of its provisions shall forfeit \$50 to the commonwealth for each month during which such neglect continues. Nothing in this section shall affect, restrict, diminish or

limit any other penalty or remedy provided by law, including those penalties provided under sections 61 to 65E of chapter 112.

Section 273. The board shall adopt reasonable and uniform rules and regulations for cities and towns relative to the practice of chimney sweep work. The rules and regulations shall be enforced by the local inspector of buildings or a like official. The board shall adopt a regulation requiring all cities and towns to use a uniform application for a permit to perform chimney sweep work or to make special reference to the work on permits issued by an inspector operating pursuant to chapter 143 and any other applicable laws. Any fees for these permits shall be established by the city or town. Notwithstanding any general or special law to the contrary, no licensed journeyman or master chimney sweep shall be issued a permit for the performance of chimney sweep work pursuant to this chapter unless the licensee has a current liability insurance policy, including completed operations coverage, which has been issued by an insurance company licensed to do business within the commonwealth, or other type of indemnity against liability providing substantially equivalent coverage, or a bond.

(b) A person aggrieved by a ruling interpreting the rules and regulations made under this section, may appeal to the board in writing within 10 days after such ruling and the board shall hear and decide such appeal, subject to chapter 30A relative to adjudicatory proceedings. Such decision shall be final and binding upon all parties in interest.

Section 274. If in the opinion of an inspector of buildings or other official, the holder of a license or certificate violates any law or rule or regulation relative to chimney sweep work and has not resolved the violation to the satisfaction of the inspector, the inspector or other official shall give notice thereof to the board.

185           Section 275. No person shall install chimney sweep work without first obtaining a permit  
186   from the local inspector of buildings or other official. The permit shall be obtained by mailing or  
187   delivering a permit application form approved by the board to the inspector or other official. A  
188   person failing to obtain the permit shall be punished by a fine to be determined by the board.  
189   This section shall be enforced by inspectors of buildings or other officials designated by the local  
190   building authority and the board. Nothing in this section shall affect, restrict, diminish or limit  
191   any other penalty or remedy provided by law, nor shall any enforcement action taken by a local  
192   inspector or other official limit the board from taking any action within the scope of its  
193   jurisdiction.

194           Section 276. The director of professional licensure shall determine the renewal cycle and  
195   renewal period for all licenses issued by the board. Persons licensed in accordance with these  
196   sections shall apply to the board for renewal of their licenses on or before the expiration date, as  
197   determined by the director, unless such license was earlier revoked, suspended or canceled as a  
198   result of a disciplinary proceeding instituted pursuant to this chapter. Applications for renewal  
199   shall be made on forms approved by the board and accompanied by payment of a renewal fee, as  
200   determined by the secretary of administration pursuant to section 3B of chapter 7. All licensing  
201   and application fees and civil administrative penalties collected pursuant to sections 237 to 250,  
202   inclusive, of chapter 112, shall be deposited into the trust fund established in section 35V of  
203   chapter 10.

204           Section 277. The board shall adopt rules relative to the construction, alteration, repair and  
205   inspection of all chimney sweep work on property and buildings owned, used or constructed by  
206   the commonwealth and in property and buildings owned, used or constructed by a public  
207   instrumentality of the commonwealth which is not subject to the supervision and control of either

the legislative, executive or judicial departments. Such instrumentalities shall include, but not be limited to, the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority and the Massachusetts Water Resources Authority, and all plans for chimney sweep work in such buildings shall be subject to the approval of the board.

SECTION 3. Section 96 of chapter 143 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

For the purposes of this section, “specialized codes” shall include, but not be limited to, the state plumbing code, electrical code, architectural barriers regulations, fire safety code, fire prevention regulations, sheet metal regulations, chimney sweep regulations and elevator regulations.

SECTION 4. Notwithstanding section 264 of chapter 112 of the General Laws, for a period of 1 year after the effective date of the initial regulations adopted by the board of examiners of chimney sweeps, an individual shall not be required to be licensed to practice chimney sweep work pursuant to sections 263 to 277, inclusive, of said chapter 112 if he is of good moral character and can document that he has been engaged in the practice of chimney sweep work for such period of time as may be determined by the board.

SECTION 5. (a) Notwithstanding any general or special law to the contrary, the board may issue a license to practice as a journeyman chimney sweep, without examination, to an applicant who otherwise meets the requirements of sections 263 to 277 of chapter 112 of the General Laws and the board’s regulations and provides, to the board’s satisfaction, proof that he has been in the paid professional practice in the field of chimney sweep work, prior to the

230 effective date of the board's regulations for such period of time as may be determined by the  
231 board.

232 (b) In addition, the board may issue a license to practice as a master chimney sweep,  
233 without examination, to an applicant who meets the requirements of subsection (a) for a  
234 journeyman chimney sweep license and has employed individuals engaged in chimney sweep  
235 work.

236 (c) For the purposes of this section the board, in its discretion, may waive any educational  
237 requirements for an applicant if it determines that the applicant's combined professional and  
238 educational credentials are adequate to protect public welfare and safety. An individual denied a  
239 license as a journeyman or master chimney sweep under this section shall be entitled to a  
240 hearing to dispute the factual grounds for which the denial was based. Unless the board has  
241 substantial evidence related to moral character, business acumen, or public safety, a license shall  
242 be granted.

243 (d) This section shall expire 1 year after the effective date of the board's initial  
244 regulations.