

HOUSE No. 02693

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

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 passage of the accompanying bill:

An Act relative to licensing of chimney sweeps.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Anne M. Gobi

5th Worcester

Geraldo Alicea

6th Worcester

HOUSE No. 02693

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

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 examiners
4 of chimney sweeps to consist of the commissioner of public safety or his designee, the director
5 of professional licensure or his designee and 5 persons, residents of the commonwealth, to be
6 appointed by the governor for terms of 3 years, 2 of whom shall be journeyman 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 the term
11 of the office of a member expires, a successor shall be appointed in like manner for a term of 3
12 years. The governor may fill a vacancy in the board for the unexpired portion of the term.

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

19 Section 102. The board shall have the following powers and duties: (i) to administer and enforce
20 sections 263 to 278, inclusive, of chapter 112; (ii) to adopt rules and regulations governing the
21 licensure of master, journeyman and apprentice chimney sweepers, and business entities and
22 schools teaching chimney sweeping; (iii) to establish standards of professional and ethical
23 conduct; (iv) to establish standards for continuing education reflecting acceptable national
24 standards; and (v) in conjunction with the division of professional licensure, to investigate
25 complaints, conduct inspections, request and review business records of licensees, and set and
26 administer penalties as defined in sections 61 to 65E, inclusive, of said chapter 112 and sections
27 263 to 278, inclusive, of said chapter 112 for fraudulent, deceptive or professionally incompetent
28 and unsafe practices and for violations of rules and regulations promulgated by the board.

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

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

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

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

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

41 “Chimney sweep work”, the cleaning of a chimney, moderate repair of a chimney liners,
42 pointing of chimney brick and mortar; provided, however, that sheet metal work shall not include
43 the work conducted by a licensed pipe fitter, oil burning technician, refrigeration technician,
44 plumber or gasfitter as determined by the laws and regulations relating to those professions; and
45 provided further, that nothing in this section shall be construed to supercede chapters 142 and
46 146.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

222 SECTION 5. (a) Notwithstanding any general or special law to the contrary, the board may issue
223 a license to practice as a journeyman chimney sweep, without examination, to an applicant
224 who otherwise meets the requirements of sections 263 to 277 of chapter 112 of the General Laws
225 and the board’s regulations and provides, to the board’s satisfaction, proof that he has been in the
226 paid professional practice in the field of chimney sweep work, prior to the effective date of the
227 board’s regulations for such period of time as may be determined by the board.

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

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

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