HOUSE DOCKET, NO. 3270 FILED ON: 1/21/2011

HOUSE . . . . . No. 2693

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:

An Act relative to licensing of chimney sweeps.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Anne M. Gobi	*5th Worcester*
Geraldo Alicea	*6th Worcester*

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HOUSE . . . . . No. 2693

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.

The Commonwealth of Massachusetts

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:

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

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

(b) No member shall serve for more than 2 consecutive and complete 3-year terms. As 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

24 ethical conduct; (iv) to establish standards for continuing education reflecting acceptable national
25 standards; and (v) in conjunction with the division of professional licensure, to investigate
26 complaints, conduct inspections, request and review business records of licensees, and set and
27 administer penalties as defined in sections 61 to 65E, inclusive, of said chapter 112 and sections
28 263 to 278, inclusive, of said chapter 112 for fraudulent, deceptive or professionally incompetent
29 and unsafe practices and for violations of rules and regulations promulgated by the board.

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

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

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

37 "Board", the board of examiners of chimney sweepers, established in section 109 of
38 chapter 13.

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

43 "Chimney sweep work", the cleaning of a chimney, moderate repair of a chimney liners,
44 pointing of chimney brick and morter; provided, however, that sheet metal work shall not include
45 the work conducted by a licensed pipe fitter, oil burning technician, refrigeration technician,
46 plumber or gasfitter as determined by the laws and regulations relating to those professions; and
47 provided further, that nothing in this section shall be construed to supercede chapters 142 and
48 146.

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

51 "Journeyperson" or "journeyperson chimney sweep", a person who performs chimney
52 sweep work or who, through an apprentice in the employ of a master, employs the journeyperson
53 and who has passed an examination and been issued a license as provided in this chapter.

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

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

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

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

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

69 Section 265. (a) A person licensed in the commonwealth as a master chimney sweep may
70 apply to the board for a certificate of a chimney sweep corporation, partnership, LLC, LLP or
71 other such entity upon payment of a fee or a biennial renewal fee, the amounts of which shall be
72 determined annually by the secretary of administration and finance pursuant to section 3B of
73 chapter 7. A certificate of a chimney sweep corporation shall authorize a master to conduct the
74 chimney sweep business as a corporation; provided, however, that in the corporation the master
75 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 journeyperson 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
97 crediting of relevant military experience and the waiver of other requirements for individuals
98 who demonstrate competence in the field of chimney sweep work.

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

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

114 Section 268. Upon payment of a fee and the submission of an application provided by the
115 board, the board may issue a license without examination to an applicant who is legally
116 registered as a journeyperson or master chimney sweep in any other state or country whose
117 requirements for obtaining and maintaining registration, in the opinion of the board, are at least
118 substantially equivalent to the requirements in the commonwealth, provided such other state or
119 country has a reciprocal privilege to licensees registered by the board. The board may require
120 additional education if it determines that the standards required for chimney sweep work in
121 another state or country are inconsistent with the standards in effect in the commonwealth.

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

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

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

132 (b) The board shall be under the supervision of the division of professional licensure and
133 shall have all the authority conferred under sections 61 to 65E, inclusive. For the purposes of this
134 section and said sections 61 to 65E, inclusive, conduct which places into question the holder's
135 competence to practice chimney sweep work shall include, but not be limited to: (1) committing
136 fraud or misrepresentation in obtaining a license; (2) criminal conduct which the board
137 determines to be of such a nature as to render the person unfit to practice chimney sweep work,
138 as evidenced by criminal proceedings which resulted in a conviction, guilty plea, plea of nolo
139 contendere or an admission of sufficient facts; (3) violating a rule or regulation of the board; (4)
140 failing to cooperate with the board or its agents in the conduct of an inspection or investigation;
141 (5) failing to fulfill any continuing education requirements required by the board; (6) aiding or
142 abetting an unlicensed person to practice chimney sweep work; or (7) negligence in the course of
143 professional practice.

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

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

151 Section 272. Whoever, not being licensed to practice chimney sweep work pursuant to
152 this chapter, practices or attempts to practice chimney sweep work or holds himself out as being
153 licensed to practice chimney sweep work or uses any of the licensed titles of that profession, or
154 whoever practices chimney sweep work under a false or assumed name or under a name other
155 than that by which he is licensed or whoever impersonates another practitioner of chimney sweep
156 work, or whoever buys, sells or fraudulently obtains a diploma, license, license renewal
157 certificate or record or registration to practice chimney sweep work or aids or abets in such
158 selling or fraudulent obtaining or whoever practices chimney sweep work under cover of any
159 diploma, license, license renewal certificate, record or registration to practice chimney sweep
160 work shall be punished by a fine of not less than $100 nor more than $1,000. A city or town that
161 fails to comply with any of its provisions shall forfeit $50 to the commonwealth for each month
162 during which such neglect continues. Nothing in this section shall affect, restrict, diminish or
163 limit any other penalty or remedy provided by law, including those penalties provided under
164 sections 61 to 65E of chapter 112.

165 Section 273. The board shall adopt reasonable and uniform rules and regulations for cities
166 and towns relative to the practice of chimney sweep work. The rules and regulations shall be
167 enforced by the local inspector of buildings or a like official. The board shall adopt a regulation
168 requiring all cities and towns to use a uniform application for a permit to perform chimney sweep
169 work or to make special reference to the work on permits issued by an inspector operating

170 pursuant to chapter 143 and any other applicable laws. Any fees for these permits shall be
171 established by the city or town. Notwithstanding any general or special law to the contrary, no
172 licensed journeyperson or master chimney sweep shall be issued a permit for the performance of
173 chimney sweep work pursuant to this chapter unless the licensee has a current liability insurance
174 policy, including completed operations coverage, which has been issued by an insurance
175 company licensed to do business within the commonwealth, or other type of indemnity against
176 liability providing substantially equivalent coverage, or a bond.

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

181 Section 274. If in the opinion of an inspector of buildings or other official, the holder of a
182 license or certificate violates any law or rule or regulation relative to chimney sweep work and
183 has not resolved the violation to the satisfaction of the inspector, the inspector or other official
184 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
208 the legislative, executive or judicial departments. Such instrumentalities shall include, but not be
209 limited to, the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation
210 Authority and the Massachusetts Water Resources Authority, and all plans for chimney sweep
211 work in such buildings shall be subject to the approval of the board.

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

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

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

225 SECTION 5. (a) Notwithstanding any general or special law to the contrary, the board
226 may issue a license to practice as a journeyperson chimney sweep, without examination, to an
227 applicant who otherwise meets the requirements of sections 263 to 277 of chapter 112 of the
228 General Laws and the board’s regulations and provides, to the board’s satisfaction, proof that he
229 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 journeyperson 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 journeyperson 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.