

BILL ANALYSIS

C.S.H.B. 2847
By: Goldman
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised that outdated statutes relating to certain occupations regulated by the Texas Department of Licensing and Regulation are in need of common-sense updates and that certain occupations are no longer in need of state regulation. C.S.H.B. 2847 seeks to address these concerns by amending or repealing provisions relating to the licensing and regulation of certain occupations and activities.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 1.004, 1.007, and 2.001 of this bill.

ANALYSIS

General Provisions Relating to Licensing

C.S.H.B. 2847 amends the Occupations Code to make confidential and exempt from disclosure under state public information law, and from disclosure, discovery, subpoena, or other means of legal compulsion for release, a complaint and investigation, and certain related information and materials, concerning the following professionals: athletic trainers, behavior analysts, dietitians, dyslexia practitioners and dyslexia therapists, hearing instrument fitters and dispensers, massage therapists, midwives, orthotists and prosthetists, podiatrists, and speech-language pathologists and audiologists.

C.S.H.B. 2847 provides for the limited disclosure of such a complaint, investigation, information, and materials to certain persons and entities at any stage of a disciplinary action and sets out the circumstances under which the Texas Department of Licensing and Regulation (TDLR) may not be compelled to release or disclose complaint and investigation information or materials to such a person or entity and under which TDLR may temporarily withhold or otherwise refrain from releasing or disclosing to any person any information or materials otherwise required to be released or disclosed.

C.S.H.B. 2847 requires TDLR to protect the identity of any patient whose records are examined in connection with a disciplinary action against a license holder, other than a patient who initiates or is a witness in the disciplinary action or who has submitted a written consent to release the records. The bill establishes that the following are not confidential and are subject to disclosure under state public information law: notices of alleged violations issued by TDLR against respondents; disciplinary proceedings of TDLR, the Texas Commission of Licensing and

Regulation (TCLR), or the TDLR executive director; and final disciplinary actions, including warnings and reprimands, by TDLR, TCLR, or the executive director.

C.S.H.B. 2847 repeals provisions relating to the confidentiality and disclosure of certain information regarding podiatrists and provisions relating to the confidentiality of complaint and disciplinary information regarding speech-language pathologists and audiologists, hearing instrument fitters and dispensers, athletic trainers, and behavioral analysts, orthotists and prosthetists, and dietitians.

C.S.H.B. 2847 includes a license, certificate, registration, permit, or other form of authorization required by an ordinance, regulation, policy, or rule made regardless of agency in the definition of "license" for purposes of statutory provisions relating to requirements for licensing agencies.

C.S.H.B. 2847 prohibits a political subdivision from adopting or enforcing any ordinance, order, rule, regulation, law, or policy that requires an individual required to possess a license issued by a state agency to engage in an occupation to possess a license issued by the subdivision to engage in that occupation or meet any other requirement or precondition to engage in that occupation. The bill makes an ordinance, order, rule, regulation, law, or policy that violates this prohibition void and unenforceable.

Driver Education

C.S.H.B. 2847 amends the Education Code to require TCLR by rule to establish standards for a driver education instructor to be certified as a teaching assistant, driver education teacher, or supervising teacher. The bill repeals provisions requiring TDLR to establish standards for driver education instructor training and provisions creating the temporary driver education instructor license and the duplicate license for a driver education instructor or driving safety instructor.

C.S.H.B. 2847 requires an applicant for a driver education instructor license to do the following:

- apply to TDLR on a form prescribed by TDLR and under rules adopted by TCLR;
- submit with the application a nonrefundable application fee in an amount set by TCLR rule; and
- present satisfactory evidence to TDLR that the applicant is at least 21 years of age, holds a high school diploma or high school equivalency certificate, and meets any other requirement established by TCLR rule.

C.S.H.B. 2847 sets out provisions regarding the certification of, eligibility requirements for, and authorized scope of instruction for a driver education instructor acting as a teaching assistant, as a driver education teacher, or as a supervising teacher.

C.S.H.B. 2847, with respect to a driver education school:

- authorizes a school to teach a driver education course by any method approved by TDLR;
- removes from the definition of "driver education school" the specification that it is an enterprise that is operated by certain entities for educating and training persons at a primary or branch location; and
- requires that TDLR determine, for approval of an application for a license, that the school meets applicable inspection requirements and provide adequate testing and security measures for the school's method of instruction.

C.S.H.B. 2847 provides for the continuing validity of a driver education instructor license issued before the repeal of the applicable provisions until the license expires and provides for the entitlement of an otherwise qualified license holder, on the expiration, to the issuance of a driver education instructor license certified as a teaching assistant, as a driver education teacher, or as a

supervising teacher, as applicable. The bill establishes that the changes in law made by the bill's provisions related to driver education do not affect the validity of a disciplinary action or other proceeding that was initiated before the bill's effective date and that is pending before a court or other governmental entity on that date.

Laser Hair Removal

C.S.H.B. 2847 amends the Health and Safety Code to require TCLR by rule to establish continuing education requirements for the renewal of a certificate issued under statutory provisions relating to laser hair removal.

Boilers

C.S.H.B. 2847 amends the Health and Safety Code to remove the specification that a certificate of operation for a boiler must be posted under glass.

Podiatry

C.S.H.B. 2847 amends the Occupations Code to remove the deadline for the TDLR to notify a licensed podiatrist who is the subject of a complaint filed by an insurance agent, insurer, pharmaceutical company, or third-party administrator of the name and address of the applicable complainant. The bill authorizes TDLR to contract with an expert witness to assist in reviewing, investigating, or prosecuting a complaint filed relating to a podiatrist. The bill grants an expert witness immunity from liability and prohibits the witness from being subject to a suit for damages for any act arising from the performance of certain duties, except for an act by the witness involving fraud, conspiracy, or malice. The bill repeals provisions requiring the executive director of TDLR to develop, implement, and enforce a written policy for determining the complaints that will be given priority for investigation and resolution by TDLR.

C.S.H.B. 2847 replaces the requirement for TCLR to develop by rule a system to monitor a podiatrist's compliance with the provisions governing podiatry with a requirement for TDLR to develop a system to identify and monitor compliance and any applicable order issued by TCLR or the executive director. The bill repeals the requirement for TCLR to develop a standardized podiatrist penalty schedule.

C.S.H.B. 2847 removes the authorization for TDLR or TCLR to refuse to admit a person to an examination for a podiatrist license and to refuse to issue such license to a person for being convicted of a felony or a crime that involves moral turpitude. That provision applies only with regard to a conviction that occurs on or after the bill's effective date.

Audiologists

C.S.H.B. 2847 amends the Occupations Code to replace a requirement for a person who meets the applicable requirements for licensing as an audiologist or audiologist intern and who fits and dispenses hearing instruments to register with TDLR the person's intention to fit and dispense hearing instruments and to comply with the profession's code of ethics with a requirement for a person who holds a license as an audiologist or audiologist intern to comply with applicable rules concerning the fitting and dispensing of hearing instruments. The bill includes the TDLR website address among the information to be contained in a written contract a licensed audiologist or audiologist intern is required to use when providing services in Texas.

Orthotic and Prosthetic Technicians

C.S.H.B. 2847 amends the Occupations Code to eliminate the orthotic or prosthetic technician registration certificate, repeal the applicable provisions regarding the regulation of such technicians, require TCLR to repeal all its rules relating to such regulation, and establish that

such a certification expires on the bill's effective date. These provisions do not affect the validity of a proceeding pending before a court or other governmental entity on the bill's effective date.

Dietitians

C.S.H.B. 2847 repeals Occupations Code provisions relating to use of a seal by a dietitian and amends the Occupations Code to remove the requirement for TDLR to adopt an official seal for such use. The bill removes a duplicative sanction provision relating to dietitians and clarifies that certain duties relating to the regulation of dietitians may be performed by TCLR as an alternative to TDLR, as appropriate.

Cosmetologists

C.S.H.B. 2847 amends the Occupations Code to update the references to the definition of cosmetology with regard to performing or offering to perform for compensation certain services for purposes of:

- the requirement for TCLR to adopt rules for the licensing of instructors to teach specialty courses in the practice of cosmetology;
- the limitation on the practice of cosmetology that a person holding a manicurist/esthetician specialty license may perform; and
- the limitation on the practice of cosmetology for which a person holding a specialty shop license may maintain an establishment.

Used Automotive Parts Recyclers

C.S.H.B. 2847 amends the Occupations Code to eliminate the used automotive parts employee license, repeal the applicable provisions regarding the regulation of such license holders, require TCLR to repeal all its rules relating to such regulation, and establish that such a license expires on the bill's effective date. The bill repeals provisions relating to risk-based inspections of used automotive parts recycling facilities and a fee for each such inspection. These provisions do not affect the validity of a proceeding pending before a court or other governmental entity on the bill's effective date.

Repealed Provisions

C.S.H.B. 2847 repeals the following provisions:

- Sections 1001.253, 1001.254, and 1001.256, Education Code
- Section 1001.3541(b), Education Code
- Section 202.2025, Occupations Code
- Section 202.6011, Occupations Code
- Section 202.404(d), Occupations Code
- Sections 202.509(a), (b), (c), (d), and (h), Occupations Code
- Section 401.2535, Occupations Code
- Section 402.154, Occupations Code
- Section 451.110, Occupations Code
- Section 506.202, Occupations Code
- Sections 605.002(19), (20), and (21), Occupations Code
- Section 605.259, Occupations Code

- Subchapter E, Chapter 605, Occupations Code
- Subchapter E, Chapter 701, Occupations Code
- Sections 701.155 and 701.353, Occupations Code
- Sections 2309.106(c) and (d), Occupations Code
- Section 2309.154, Occupations Code

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2847 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes certain provisions relating to the following:

- laser hair removal;
- a prohibition on certain local licensing requirements;
- podiatry;
- cosmetology; and
- procedural provisions regarding the expiration of a used automotive parts employee license.

The substitute includes within the provisions governing TDLR public interest information and complaint procedures certain provisions regarding the confidentiality of complaint and disciplinary information with respect to certain specified professionals and repeals applicable provisions governing certain confidential information with respect to podiatrists, speech-language pathologists and audiologists, hearing instrument fitters and dispensers, athletic trainers, and behavioral analysts, orthotists and prosthetists, and dietitians.

The substitute repeals provisions relating to the following:

- the requirement for TCLR to develop a standardized podiatrist penalty schedule; and
- the requirement for the executive director of TDLR to develop, implement, and enforce a written policy for determining the complaints regarding podiatry that will be given priority for investigation and resolution by TDLR.

The substitute does not include provisions relating to mold damage and mold assessors and remediators and does not repeal related provisions.