

SUBJECT: Continuing TDLR and TCLR, modifying and eliminating certain licenses

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — S. Thompson, Darby, Ellzey, Fierro, Geren, Goldman, Guillen, Huberty

0 nays

3 absent — Kuempel, Hernandez, Pacheco

WITNESSES: For — (*Registered, but did not testify:* Will McAdams, Associated Builders and Contractors of Texas; CJ Tredway, IEC of Texas, Texas Automotive Recyclers Association, and Texas Towing and Storage Association; Rod Bordelon, Texas Public Policy Foundation; Joey Bennett, Texas Sign Association)

Against — Patricia Harris, A+ Academy Driving School, LLC.; Blake Garrett, Aceable Inc; Darla Bedenbaugh, Cosmetology Instructors In Public Schools; Joseph McCarthy, Fenian Polygraph Services; Samuel Shotts, Lone Star Driver Safety Foundation; Jackie Shillingburg, Texas Auctioneers Association; James Swigert, Texas Auctioneers Association and Swico Auctions; Stephen Howsley, Texas Home School Coalition; Debbie Callahan, Texas Professional Drivers Education Association; Greg Peters, Vista Ridge Driving School, Inc.; (*Registered, but did not testify:* Mary Gregory and Dorothy DeWalt, Texas Professional Drivers Education Association; Cecilia Jackson, Texas Professional Drivers Education Association and The Driving School Association of the Americas)

On — Brian Francis, Texas Department of Licensing and Regulation; (*Registered, but did not testify:* Emily Johnson, Texas Sunset Advisory Commission)

BACKGROUND: The Texas Department of Licensing and Regulation (TDLR) was created

by the Legislature in 1909 and originally known as the Texas Bureau of Labor Statistics. The department's mission was broadened over time to include labor-related regulatory functions, and in 1989 TDLR became an umbrella agency for occupational licensing and regulatory programs.

TDLR is undergoing a limited scope review in the 87th regular session of the Legislature. Under Occupations Code sec. 51.002(b), programs transferred to TDLR on or after September 1, 2016, are not included in this Sunset review.

Functions. TDLR performs the following activities:

- licenses, certifies, permits, and registers qualified applicants;
- oversees requirements for pre-licensure education, licensing examinations, and continuing education for regulated occupations;
- inspects facilities, equipment, and buildings for safety and accessibility;
- investigates complaints and enforces the agency's statutes and rules by taking disciplinary action against violators; and
- responds to customer service inquiries.

Governing structure. TDLR is governed by the Texas Commission of Licensing and Regulation (TCLR), which consists of seven members of the general public appointed by the governor who serve staggered six-year terms. TCLR receives advice and recommendations from 31 statutorily created advisory boards whose members mostly are industry participants and nominated by the commission chair to serve staggered six-year terms.

Funding. In fiscal 2019, TDLR took in \$53 million in revenue, \$39 million of which was from licensing and renewal fees. TDLR also collects revenues from a gross receipts tax on combative sports events regulated by the agency. The department spent about \$45 million and transferred about \$8 million to the general revenue fund in fiscal 2019.

Staffing. The department was allocated 460 full time staff in fiscal 2019, about 400 of whom are located at the agency's headquarters in Austin.

The remainder of staff report to field offices in Fort Worth and Houston.

TCLR and TDLR would be discontinued September 1, 2021, unless continued in statute.

DIGEST:

CSHB 1560 would continue the Texas Commission of Licensing and Regulation (TCLR) and the Texas Department of Licensing and Regulation (TDLR) in statute until September 1, 2033. The bill also would modify and eliminate certain licenses, consolidate the licensure of barbering and cosmetology, transfer certain licenses from the Texas Real Estate Commission to TDLR, and incorporate recommendations from the Sunset Advisory Commission, among other provisions.

Subjective license eligibility criteria. The bill would eliminate the authority of TCLR to determine a person's ineligibility for a license based on information indicating that the person lacked the honesty, trustworthiness, and integrity to hold a TDLR-issued license.

Risk-based inspections. The bill would require TDLR to conduct risk-based inspections that prioritized inspections based on key risk factors identified by the department, including whether a license holder previously violated certain TDLR or TCLR laws, rules, or orders and the number of violations committed by a license holder.

TDLR could use alternative inspection methods, including the use of videoconference technology or other methods instead of conducting an in-person inspection, in circumstances the department considered appropriate.

Complaints. CSHB 1560 would make several changes to the TDLR complaint process regarding investigations, a complaint response system, notification requirements, dismissal, and complaint analysis and reporting.

Risk-based investigations. TDLR would have to assign priorities and investigate complaints based on risk to the public of the conduct alleged in a complaint.

Complaint response system. TDLR would have to maintain a system to promptly and efficiently act on complaints filed with the department. TDLR would have to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. TDLR would have to make information available describing its procedures for complaint investigation and resolution.

Notification of complaint parties. The bill would specify that TDLR had to notify complaint parties of the status of the complaint until final disposition, with certain exceptions, periodically rather than at least quarterly.

Dismissal. TDLR would have to dismiss a complaint if the department determined at any time that an allegation made or formal complaint submitted by a person was inappropriate or without merit.

Complaint analysis and reporting. TDLR would have to make available on its website a statistical analysis of complaints received by the department, including aggregate information on the number, source, type, and disposition of complaints received during the preceding fiscal year.

The analysis would have to include, for each program regulated by TDLR, the number of license holders, number of complaints and the status of and other information regarding these complaints, the average time required to resolve a complaint, the average amount of administrative penalties assessed, and the number and amount of refunds ordered by TDLR or the executive director or obtained through an informal resolution.

Refunds. TDLR or the executive director could order a license holder to pay a refund to a customer as provided in an agreed settlement, default order, or commission order instead of or in addition to imposing an administrative penalty or sanction. The amount of a refund ordered could not exceed the amount the consumer paid to the license holder for a service regulated by TDLR. TDLR or the executive director could not

require payment of other damages or estimate harm in a refund order.

Continuing education. The bill would specify that TDLR, rather than TCLR, would have to recognize, prepare, or administer continuing education programs for license holders. TCLR by rule could establish a minimum number of hours of continuing education required for license renewal. In adopting rules for a program regulated by TDLR, TCLR would have to consult, if applicable, with the advisory board established for the program.

Barbering and cosmetology. CSHB 1560 would consolidate the definitions of, existing regulations on, and certain licenses for barbering and cosmetology in the Occupations Code and establish the Barbering and Cosmetology Advisory Board.

Class A barber licenses and cosmetology operator licenses would be retained, and certain unified specialty licenses would be established. The bill also would unify establishment and specialty establishment licenses.

Barbering and Cosmetology Advisory Board. The bill would create a single advisory board for barbering and cosmetology that would consist of nine members appointed by the presiding officer of TCLR, with the commission's approval, as follows:

- four members who each held an individual practitioner license, including at least one holder of a Class A barber license and at least one holder of a cosmetology operator license;
- two members who each held an establishment license;
- two members who each held a school license; and
- one member who represented the public.

The bill would transfer to the Barbering and Cosmetology Advisory Board the duties and vacancy requirements of the Advisory Board on Barbering and the Advisory Board on Cosmetology, respectively. The Advisory Board on Barbering and Advisory Board on Cosmetology would be abolished December 1, 2021, and the presiding officer of TCLR would

have to appoint members to the new consolidated board. The bill would provide for staggered terms for board members.

The presiding officer of TCLR would have to appoint one of the advisory board members to serve as the presiding officer of the advisory board for a term of two years.

TCLR by rule would have to establish requirements for the issuance of a barbering and cosmetology license for an individual practitioner, instructor, establishment, or school and a student permit.

Barbering and cosmetology schools. The holder of a public secondary school license, public postsecondary school license, or private postsecondary school license could provide instruction in the barbering and cosmetology services for which the license holder had been approved by the department.

A license holder could only employ to provide instruction a person who held an instructor license to teach the acts of barbering and cosmetology for which the person would provide instruction. TDLR could take any disciplinary or other enforcement action against a person who violated these requirements.

The bill would require a barbering and cosmetology school to instruct students in the theory and practice of subjects necessary and beneficial to the practice of barbering and cosmetology. TCLR by rule would have to establish the subjects in which students would receive instruction. A school could not increase, decrease, or withhold for any reason the number of hours earned by a student.

TCLR by rule could adjust any tuition reimbursement limit established by the bill relating to private postsecondary schools and adopt procedures regarding the collection of fees from these schools.

To ensure that licensed schools offering instruction in barbering and cosmetology maintained accreditation and that students of those schools

continued to qualify for federal aid, TCLR would have to adopt any rules necessary for the implementation of changes made by the bill as soon as practicable after the bill's effective date.

Exams. The bill would remove certain early examination requirements and permit TCLR by rule to allow for the early written examination of a student.

License renewal. TCLR by rule could establish requirements for the renewal of a barbering and cosmetology license, including continuing education requirements. Before establishing these requirements, the commission would have to consider the potential impact of continuing education with respect to identifying and assisting trafficked persons and providing license holders with opportunities to acquire new skills.

Implementation and applicability. By September 1, 2023, TCLR would have to adopt any rules necessary to implement the changes in law made by CSHB 1560 and TDLR would have to begin issuing and renewing licenses and permits as added by the bill.

Until September 1, 2023, TDLR still could issue a certificate, license, or permit under the barbering and cosmetology chapters of the Occupations Code. A certificate, license, or permit issued under the barbering and cosmetology statutes would continue to be valid until expiration.

A person who on the bill's effective date held such a certificate, license, or permit could perform certain services as specified in the bill. Such a person would be entitled on the expiration of a certificate, license, or permit to issuance of a comparable license or permit created by the bill, if the person otherwise met the requirements for the license or permit.

Until TCLR adopted rules regarding written and practical examination requirements for the issuance of barbering and cosmetology licenses, TDLR would have to continue operating under existing examination requirements.

As soon as practicable after the bill's effective date, the comptroller of public accounts would have to transfer to the unified barbering and cosmetology school tuition protection account the unexpended and unencumbered balances of the barber school tuition protection account and the cosmetology school tuition protection account.

The bill would not affect the validity of a disciplinary action or other proceeding initiated before the bill's effective date and pending on that date. Such an action would be governed under existing law. The repeal of a law by the bill would not entitle a person to a refund of a certificate, license, or permit fee paid before the bill's effective date.

Home warranties. The bill would transfer the licensing and regulation of entities selling residential service contracts, commonly known as home warranties, from the Texas Real Estate Commission (TREC) to TDLR. The bill also would create new requirements for certain employees to give notice of their compensation by employers on residential service contracts and new insurance requirements for providers.

On the bill's effective date, a license issued by TREC would be continued in effect as a license of TDLR. All rules, fees, policies, procedures, decisions, and forms of TREC related to a program or activity transferred to TDLR by the bill would be continued in effect until changed by the department or TCLR. A complaint, investigation, contested case, or other proceeding related to a program that was transferred under the bill and was pending on the bill's effective date would be transferred without change in status to TDLR or TCLR, as appropriate.

By June 1, 2022, TCLR would have to adopt rules necessary to implement these changes. A licensed residential service company that on May 1, 2021, maintained security in accordance with current law would have to continue maintaining security in at least that amount until September 1, 2026. A residential service company operating as a licensed residential service contract provider would not have to comply with the security requirements for providers until September 1, 2026.

On the bill's effective date, all money, contracts, leases, property, software source code and documentation, records, and obligations of TREC related to a program or activity transfer to TDLR by the bill would be transferred to the department, along with the unexpended and unobligated balance of any money appropriated by the Legislature relating to that program or activity.

As soon as practicable after the bill's effective date, TREC would have to transfer to TCLR or TDLR, as appropriate, any bond, reimbursement insurance policy, or other security held for a residential service company related to a program or activity transferred by the bill. TREC would have to provide TDLR with access to any systems, facilities, or information necessary to implement the bill's provisions.

Eliminated licenses and regulations. The bill would eliminate the barber instructor and cosmetology instructor licenses, wig license, barber pole regulation, and dual shop license.

The bill also would eliminate the polygraph examiner license and certain combative sports licenses, along with the Polygraph Advisory Committee. These licenses would expire on the bill's effective date. On this date, a pending regulatory action, including a complaint investigation, disciplinary action, or administrative penalty proceeding, of TDLR with respect to a polygraph examiner license or abolished combative sport license would be terminated.

The bill would repeal certain prescriptive advisory board meeting requirements, inspection schedules, continuing education requirements, and refund authority related to certain licenses. It also would repeal certain other statutes related to barbering and cosmetology.

Required studies of certain occupations. The bill would require TDLR by January 1, 2023, in consultation with the Auctioneer Advisory Board and the Driver Training and Traffic Safety Advisory Committee, to study the regulation of auctioneering and driver training. The department would have to prepare a report with any findings and recommendations to

improve public safety and the department's processes and to eliminate inefficiencies, including any necessary legislative changes.

In conducting the study, TDLR could consult with any interested organizations, associations, and stakeholders. The department would have to submit the report to the standing legislative committee with jurisdiction over TDLR.

Financial disclosure statement. TCLR by rule could require a person, other than an individual, applying for a TDLR-issued license to submit with the license application a financial disclosure statement. Commission rules could require the disclosure of certain information based on the type of license for which the application was submitted.

TDLR could deny an application for the issuance or renewal of a license or suspend or revoke a license on the grounds that an applicant or license holder failed to disclose a relationship required by TCLR rules or disclosed such a relationship with a person who failed to comply with an order of the commission or executive director.

Advisory board meetings. The bill would specify that an advisory board would meet at the call of the executive director or the presiding officer of TCLR. The board could meet by telephone conference, videoconference, or other similar method, provided that each meeting required to be open to the public be audible and, if applicable, visible to the public.

Interdisciplinary advisory boards. The executive director or the presiding officer of TCLR could appoint interdisciplinary advisory boards consisting of members from various businesses, industries, general trades, or occupations to provide expertise related to a program regulated by TDLR.

Training program. The bill would revise certain information required to be included in the training program for TCLR members. The executive director of TDLR would have to create a training manual including this required information and distribute a copy of the manual annually to each

commission member. Each commission member would have to sign and submit to the executive director a statement acknowledging that the member had received and reviewed the manual.

Changes made by the bill to the training program for TCLR members would apply to a member of TCLR appointed before, on, or after the bill's effective date. A member of the commission who, before the bill's effective date, completed the requiring training program would only have to complete additional training on subjects added to the program by the bill. Such a member could not vote, deliberate, or be counted as a member in attendance at a commission meeting held on or after December 1, 2021, until the member completed the additional training.

Other provisions. The bill would lower the required education for an audiology license from a doctoral degree to a master's degree in audiology or a related hearing science from an accredited program. This change would apply only to a license application submitted on or after the bill's effective date.

The bill would take effect September 1, 2021.

**SUPPORTERS
SAY:**

CSHB 1560 would improve the efficiency and operations of the Texas Department of Licensing and Regulation (TDLR) by consolidating the licensure of barbering and cosmetology, eliminating certain duplicative licenses and regulations, streamlining the administrative functions of the department, and continuing TDLR and the Texas Commission of Licensing and Regulation for 12 years, among other provisions.

As the umbrella agency for regulatory issues in Texas, TDLR is tasked with overseeing a multitude of occupational licenses. As the Legislature transfers more licenses under the department's purview each session, the need for efficiency in TDLR operations increases. CSHB 1560 would incorporate the recommendations of the Sunset Advisory Commission to ensure TDLR functions as efficiently as possible while serving license holders and upholding public health and safety.

Consolidation of barbering and cosmetology licensure. Barbers and cosmetologists, while often providing substantially similar services, are licensed separately by TDLR. Separately administering these two similar professions leads to a waste of state resources, disparate regulations on barbering and cosmetology license holders, and inconsistent public health and safety protections for the public. The bill remedies these problems by consolidating barbering and cosmetology licenses into one licensure scheme and eliminating some unnecessary and burdensome regulations.

Transfer, elimination, and modification of licenses. CSHB 1560 would eliminate subjective license eligibility requirements, which create unnecessary barriers for many license applicants. The bill also would eliminate certain licenses unnecessary for public health and safety, such as the polygraph examiner's license and combative sports event coordinator license, and appropriately transfers the licensure of home warranty providers from the Texas Real Estate Commission to TDLR. Implementing these best practices would allow the department to better serve license applicants and the public.

The bill appropriately would maintain regulation of used automotive parts recyclers (UAPRs) under TDLR, as the department has successfully regulated UAPRs in the past. Also, UAPRs form an industry separate from the salvage industry and thus should be regulated separately.

Inspections. The bill would enable TDLR to better protect public health and safety by requiring the department to create a risk-based approach to conducting inspections and investigating complaints. The department's current procedures for handling complaints are too rigid, resulting in inefficient and un-prioritized investigations. The bill solves this issue by requiring the prioritization of complaints based on risk to public health and safety and infraction history of the license holder in question, and by requiring TDLR to provide a statistical analysis of complaints received.

Administrative functions. Currently, TDLR is subject to statutory requirements governing its advisory board that hamper its ability to efficiently conduct board meetings. By standardizing TDLR's advisory

board meeting requirements, the bill would streamline the department's administrative functions. The bill also would give TDLR the flexibility to create interdisciplinary advisory boards composed of members from similar professions, which would increase the coordination of regulating these industries and improve TDLR's overall administrative efficiency.

Driver training programs. The bill would address concerns regarding certain regulations on driver training programs by requiring TDLR to create a study in consultation with the Driver Training and Traffic Safety Advisory Committee and to make recommendations to the Legislature for consideration in a future session.

CRITICS
SAY:

CSHB 1560 would fail to incorporate some important recommendations from the Sunset Advisory Commission to improve the efficiency of the Texas Department of Licensing and Regulation (TDLR), allowing several inefficient and unfair regulations to continue in statute. The bill also would inappropriately eliminate certain licenses that provide a benefit to the public and revenue to the state.

Transfer, elimination, and modification of licenses. The bill should retain the polygraph examiner license and transfer regulation of automotive parts recyclers from TDLR to the Texas Department of Motor Vehicles (TxDMV). Polygraph examiners provide important services that are used by law enforcement, and should not be deregulated by TDLR. These licenses generate revenue for the state that would be lost if the license was eliminated.

TDLR should not regulate used automotive parts recyclers (UAPRs), as it does not possess the relevant authority or expertise to enforce UAPR compliance with TxDMV. The bill should follow the Sunset Advisory Commission's recommendation to transfer UAPR oversight to TxDMV, which would remove an administrative burden on TDLR and allow the proper agency to regulate the salvage vehicle industry.

Inspections. Requiring TDLR to adopt a risk-based approach to inspections would be unnecessary, as existing scheduled inspections are

sufficient to ensure compliance.

Administrative functions. The bill should not remove prescriptive requirements for advisory board meetings, as having regular meetings helps the public and industry participants stay abreast of regulatory issues.

Driver training programs. The Sunset Advisory Commission recommended that certain excessive and burdensome requirements placed on driving training programs be removed in order to level the playing field with parent-taught driver education course providers. By keeping these regulations in place, the bill would not take full advantage of Sunset's recommendations and continue unfair regulations that put certain driver training programs at a disadvantage.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about \$18,000 to general revenue through fiscal 2023 and a positive impact of about \$53,000 to all funds through fiscal 2026.