

BILL ANALYSIS

Senate Research Center
77R15671 JMM-F

H.B. 1214
By: Pitts (Brown, J. E. "Buster")
Business & Commerce
5/10/2001
Committee Report (Amended)

DIGEST AND PURPOSE

Currently, the Texas Department of Licensing and Regulation (TDLR) ensures public safety and welfare by regulating many diverse occupations. H.B. 1214 creates uniformity in the licensing renewal process, increases the administrative penalty, and modifies administrative hearing requirements.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 19 (Section 51.201, Occupations Code), of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 14(a)-(c), Article 9034, Revised Statutes, as added by Chapter 1559, Acts of the 76th Legislature, Regular Session, 1999, as follows:

(a) Authorizes the Texas Commission of Licensing and Regulation (department), rather than the commissioner, on a finding that a ground for disciplinary action exists under one or more provisions of this article, to impose appropriate administrative sanctions, including an administrative penalty as provided by Chapter 51F, Occupations Code.

(b) Provides that a disciplinary action taken under this article is subject to Sections 51.305, 51.310, and 51.354, Occupations Code.

(c) Authorizes the department, rather than the commissioner, to bring an action for injunctive proceedings under Section 51.352, Occupations Code, for a threatened or existing violation of this article or orders or rules adopted under this article and to also bring an action for civil penalties as provided by that section.

SECTION 2. Amends Section 5(h), Article 9102, Revised Statutes, to make a conforming change.

SECTION 3. Amends Section 6, Article 9102, Revised Statutes, to require the commission to set and charge, in accordance with Section 51.202, Occupations Code, fees for performing its functions under this article. Deletes language regarding plans and specifications for a building.

SECTION 4. Amends Section 755.030(a), Health and Safety Code, to authorize, in addition to the fees described by Section 51.202, Occupations Code, the collection of fees for certain items.

SECTION 5. Amends Section 92.003, Labor Code, to make a conforming change.

SECTION 6. Amends Section 51.001, Occupations Code, to define "license," "license holder," "respondent," and "sanction." Deletes the definitions of "commissioner."

SECTION 7. Amends Section 51.051(b), Occupations Code, to make a nonsubstantive change.

SECTION 8. Amends Section 51.053, Occupations Code, by amending Subsection (b) and adding Subsection (c) as follows:

(b) Provides that a person is not eligible for appointment as a member of the commission if the person or the person's spouse meets certain requirements.

(c) Defines "trade association."

SECTION 9. Amends Section 51.056(b), Occupations Code, to authorize the presiding officer to vote on all matters before the commission as provided by Robert's Rules of Order.

SECTION 10. Amends Sections 51.057(a) and (c), Occupations Code, as follows:

(a) Provides that it is a ground for removal from the commission that a member violates a prohibition established by Section 51.053, rather than 51.054.

(c) Requires that, if a commission member or the executive director, rather than the commissioner, has knowledge that a potential ground for removal exists, the member or executive director notify the presiding officer of the commission of the ground.

SECTION 11. Amends Section 51.059(a), Occupations Code, to require the commission to meet at least once in each quarter of the fiscal, rather than the calendar, year.

SECTION 12. Amends the heading to Chapter 51C, Occupations Code, to read as follows:

SUBCHAPTER C. EXECUTIVE DIRECTOR
AND OTHER DEPARTMENT PERSONNEL

SECTION 13. Amends Section 51.101, Occupations Code, as follows:

Sec. 51.101. New heading: EXECUTIVE DIRECTOR. Provides that the executive director serves at the will of the commission.

SECTION 14. Amends Section 51.103, Occupations Code, as follows:

Sec. 51.103. New heading: EXECUTIVE DIRECTOR POWERS AND DUTIES. (a) Requires the executive director, rather than the commissioner, to perform any duties assigned by the commission and other duties specified by law; administer and enforce the department's programs and issue licenses authorized by the laws establishing programs regulated by the department.

(b) Authorizes the executive director to delegate any power or duty assigned to the executive director unless prohibited by statute or rule.

(c) Authorizes the executive director to impose sanctions and issue orders relating to a sanction as provided by Section 51.353 and assess an administrative penalty or issue an order relating to an administrative penalty as authorized by a law establishing a program regulated by the department or as provided by Sections 51.301 and 51.302.

SECTION 15. Amends Section 51.104, Occupations Code, to make a conforming change.

SECTION 16. Amends Section 51.105, Occupations Code, to make a conforming change.

SECTION 17. Amends Section 51.107, Occupations Code, to require the executive director, rather than the commissioner or the commissioner's designee, to develop a career ladder program. Deletes

language regarding penalties for moving from office to office.

- (b) Requires the executive director to develop a system of employee, rather than annual, performance evaluations. Requires the system to require that evaluations be conducted at least annually.

SECTION 18. Amends Section 51.108, Occupations Code, to make a conforming change. Deletes language regarding a biennial report.

SECTION 19. Amends Section 51.201, Occupations Code, to authorize the commission to adopt rules as necessary for its own procedures and to require the commission to adopt rules as necessary to implement this chapter.

SECTION 20. Amends Section 51.202, Occupations Code, to make conforming and nonsubstantive changes.

SECTION 21. Amends Section 51.203, Occupations Code, as follows:

- Sec. 51.203. New heading: RULES ADOPTED BY EXECUTIVE DIRECTOR. Requires the executive director to adopt rules as necessary to implement each law establishing a program regulated by the department.

SECTION 22. Amends Section 51.204, Occupations Code, as follows:

- (a) Prohibits the executive director from adopting rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.
- (b) Prohibits the executive director from including in rules to prohibit false, misleading, or deceptive practices by a license holder a rule that restricts the use of any advertising medium; restricts the license holder's personal appearance or the use of the license holder's voice in an advertisement; relates to the size or duration of an advertisement; or restricts the use of a trade name in advertising.

SECTION 23. Amends Section 51.205, Occupations Code, to authorize the executive director to adopt a system under which licenses expire annually and may provide for a renewal period that exceeds 12 months.

- (b) Makes a conforming change.

SECTION 24. Amends Section 51.251(a), Occupations Code, to make a conforming change.

SECTION 25. Amends Section 51.252, Occupations Code, to make a conforming change. Deletes language regarding providing notice.

- (b) Makes a conforming change.

- (c) Makes a conforming change.

SECTION 26. Amends Section 51.301, Occupations Code, to authorize the executive director or commission to impose an administrative penalty against a person who violates a law establishing a regulatory program administered by the department or a rule adopted or order issued by the executive director or commission.

SECTION 27. Amends Section 51.302, Occupations Code, to require that, if the relevant law establishing a program regulated by the department does not state the maximum amount of an

administrative penalty under that law, the amount of the penalty is to be assessed by the commission or executive director in an amount that may not exceed \$5,000 per day, rather than \$1,000, for each violation. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

- (b) Requires the amount of the penalty to be based on certain factors.

SECTION 28. Amends Chapter 51F, Occupations Code, by adding Section 51.3025 as follows:

Sec. 51.3025. IMPOSITION OF SANCTION. Authorizes a proceeding under this subchapter imposing an administrative penalty to be combined with a proceeding to impose an administrative sanction. Provides that if a sanction is imposed in a proceeding under this subchapter, the requirements of this subchapter apply to the imposition of the sanction.

SECTION 29. Amends Section 51.303, Occupations Code, as follows:

Sec. 51.303. New heading: NOTICE OF VIOLATION AND PENALTY. Requires the department, if, after investigation of a possible violation and the facts surrounding the possible violation, the department determines that a violation occurred, the department to issue to the respondent a notice of alleged violation stating a brief summary of the alleged violation; the amount of the recommended administrative penalty and that the respondent has the right to a hearing to contest the alleged violation, the amount of the penalty, or both.

SECTION 30. Amends Section 51.304, Occupations Code, to make conforming and nonsubstantive changes.

SECTION 31. Amends Sections 51.305(a) and (b), Occupations Code, as follows:

- (a) Makes a conforming change.
- (b) Authorizes the executive director to employ a hearings officer to conduct the hearing.

SECTION 32. Amends Section 51.306, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

- (b) Makes a conforming change.
- (c) Requires the order under this section to include separate statements of the findings of fact and conclusions of law; the amount of any penalty imposed; a statement of the right of the respondent to judicial review of the order; and any other information required by law.

SECTION 33. Amends Section 51.307, Occupations Code, to make conforming and nonsubstantive changes.

SECTION 34. Amends Section 51.309, Occupations Code, to make a conforming change.

SECTION 35. Amends Section 51.310(a), Occupations Code, to make a conforming change.

SECTION 36. Amends Section 51.351(b), Occupations Code, to make a conforming change.

SECTION 37. Amends Section 51.352, Occupations Code, to make a conforming change.

SECTION 38. Amends Section 51.353, Occupations Code, to make conforming and nonsubstantive changes.

SECTION 39. Amends Section 51.354, Occupations Code, as follows: (a) provides that a respondent is entitled to a hearing if the executive director proposes to deny, suspend, or revoke a license.

(b) Makes a conforming change.

(c) Makes a conforming change.

(d) Makes a conforming change.

SECTION 40. Repealer: Sections 51.054 (Membership and Employee Restrictions), 51.102 (Commissioner Term Vacancy), 51.106 (Qualifications and Standards of Conduct Information), and 51.206 (Annual Report), Occupations Code.

SECTION 41. (a) Makes application of this Act prospective.

(b) Provides that a reference in any other law to the commissioner of licensing and regulation means the executive director of the Texas Department of Licensing and Regulation.

SECTION 42. Effective date: upon passage or September 1, 2001.