

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1475  
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Government Organization  
4/14/2007  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.S.B. 1475 clarifies and enhances enforcement and licensing provisions of the Texas Department of Licensing and Regulation (TDLR) applying to all programs regulated by TDLR.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 6 (Section 51.356, Occupations Code) and SECTION 7 (Section 51.407, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 51.001, Occupations Code, as follows:

Sec. 51.001. DEFINITIONS. Defines "advisory board." Makes conforming changes.

SECTION 2. Amends Section 51.202(a), Occupations Code, to require the Texas Commission of Licensing and Regulation (commission) to set fees, in amounts that are reasonable and necessary to cover the costs of administering the programs or activities, for certain licenses, examinations, and programs, including continuing education.

SECTION 3. Amends Subchapter D, Chapter 51, Occupations Code, by adding Sections 51.209, 51.210, and 51.211 as follows:

Sec. 51.209. APPOINTMENT OF ADVISORY BOARD MEMBERS. (a) Requires the presiding officer of the commission, with the commission's approval, to appoint certain members to the advisory board, except as otherwise provided by the law.

(b) Requires an advisory board member to serve without compensation but provides that the member is entitled to reimbursement for actual and necessary expenses incurred in performing advisory board functions, subject to the General Appropriations Act.

Sec. 51.210. REMOVAL OF ADVISORY BOARD MEMBER. (a) Authorizes the removal of an advisory board member appointed by the presiding officer of the commission with the commission's approval on certain grounds.

(b) Provides that the validity of an action of an advisory board is not affected by the fact that it is taken when a ground for removal of a member exists.

Sec. 51.211. STATE AGENCY CRIMINAL HISTORY PROCEDURES. (a) Authorizes the Texas Department of Licensing and Regulation (TDLR) to assist other state agencies in developing consistent procedures to obtain and use criminal history record information for licensing, regulatory, and related purposes.

(b) Authorizes TDLR to provide funds to other state agencies to assist with developing and implementing the procedures described under Subsection (a).

SECTION 4. Amends Subchapter G, Chapter 51, Occupations Code, by adding Section 51.3511, as follows:

Sec. 51.3511. SUBPOENAS. (a) Authorizes TDLR to issue a subpoena as provided by this section.

(b) Authorizes TDLR to request and, if necessary, compel by subpoena the attendance of a witness for examination under oath and the production for inspection and copying of records, documents, and other evidence relevant to the investigation of certain violations, laws, or rules.

(c) Authorizes a subpoena under this section to be issued throughout the state and to be served by any person designated by the commission or the executive director of TDLR (executive director).

(d) Authorizes TDLR, acting through the attorney general, to bring an action to enforce a subpoena issued under this section against a person who fails to comply with the subpoena.

(e) Provides that the venue for an action brought under this section is in a district court in Travis County or any county in which TDLR is authorized to hold a hearing.

(f) Requires the court to order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

SECTION 5. Amends Section 51.353, Occupations Code, as follows:

Sec. 51.353. New heading: LICENSE DENIAL; ADMINISTRATIVE SANCTIONS.

(a) Requires the commission to revoke, suspend, deny an application for, or refuse to renew a license or reprimand a license holder for certain violations.

(b) Authorizes the commission to probate the suspension of a license, rather than place on probation a person whose license is suspended.

SECTION 6. Amends Subchapter G, Chapter 51, Occupations Code, by adding Sections 51.355, 51.356, and 51.357, as follows:

Sec. 51.355. CEASE AND DESIST ORDERS. Authorizes the executive director to issue a cease and desist order if the director determines that the action is necessary to prevent certain violations from occurring.

Sec. 51.356. EMERGENCY ORDERS. (a) Authorizes the executive director to issue an emergency order to suspend or revoke a license or to halt operation of an unsafe facility or unsafe equipment that is subject to regulation by TDLR, if the executive director determines that an emergency exists requiring immediate action to protect public health and safety.

(b) Authorizes the executive director to issue the emergency order with or without notice and hearing as the director considers practicable under the circumstances.

(c) Requires the executive director, if an emergency order is issued under this section without a hearing, to set the time and place for a hearing conducted by the State Office of Administrative Hearings (SOAH) to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued. Requires the order to be affirmed to the extent that reasonable cause existed to issue the order.

(d) Authorizes the commission by rule to prescribe procedures for the determination and appeal of an emergency order under this section, including a rule allowing the commission to affirm, modify, or set aside a decision made by SOAH under Subsection (c).

(e) Provides that a proceeding under this section is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

Sec. 51.357. DEFERRED ADJUDICATION; LICENSE SUSPENSION, REVOCATION, OR DENIAL OR REFUSAL TO RENEW LICENSE. (a) Authorizes the commission to suspend, revoke, deny an application for, or refuse to renew a license if the commission determines that a deferred adjudication makes the person holding or seeking the license unfit for the license.

(b) Requires the commission to consider the factors set forth in Sections 53.022 (Factors In Determining Whether Conviction Relates To Occupation) and 53.023 (Additional Factors For Licensing Authority To Consider) and the guidelines issued by TDLR under Section 53.025 (Guidelines).

SECTION 7. Amends Subchapter H, Chapter 51, Occupations Code, by adding Sections 51.407 and 51.408, as follows:

Sec. 51.407. TEMPORARY LICENSE. (a) Authorizes the commission by rule to provide for the issuance of a temporary license to an applicant who meets certain criteria.

(b) Provides that a temporary license expires on the 21st day after the date of issuance and is prohibited from being renewed.

(c) Provides that a temporary license holder is subject to this chapter (Texas Department of Licensing and Regulation) and certain laws and rules.

Sec. 51.408. EMERGENCY LICENSE. (a) Authorizes the executive director to issue an emergency license to a person who meets eligibility requirements provided by a law establishing a regulatory program administered by TDLR or a rule adopted to implement this section.

(b) Provides that the license expires on the date indicated by the executive director but is prohibited from exceeding 90 days after the date of issuance.

(c) Authorizes the emergency license holder to engage in the activities authorized by the type of license only during a time declared as a state of disaster and the following recovery period and in an area designated as a disaster area pursuant to Chapter 418 (Emergency Management), Government Code.

SECTION 8. Effective date: September 1, 2007.