

BILL ANALYSIS

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C.S.H.B. 2310
By: Kuempel (Williams)
Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill clarifies and enhances licensing and enforcement provisions to provide consistency across the Texas Commission of Licensing and Regulation's (TCLR) programs. This consistency results in greater efficiency and lower costs to license holders. The bill includes provisions that enable the Texas Department of Licensing and Regulation (TDLR) to continue improving services to licensees, including allowing payments by credit card and offering inactive status to those licensees who may choose to leave and later reenter a regulated position.

The bill also allows TDLR to respond quickly during emergency situations, such as hurricanes and other natural disasters, helping to deploy qualified workers where needed while minimizing bureaucratic hurdles. The bill increases protection by providing standard enforcement tools similar to those used by other regulatory agencies in Texas.

C.S.H.B. 2310 amends current law relating to the powers and duties of the Texas Department of Licensing and Regulation, including the power to issue emergency orders and temporary and emergency licenses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation (TCLR) in SECTION 2 (Section 51.210, Occupations Code), SECTION 4 (Section 51.3511, Occupations Code), SECTION 10 (Section 51.4011, Occupations Code), and SECTION 12 (Sections 51.407 and 51.408, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the executive director of TDLR in SECTION 3 (Section 51.310, Occupations Code) and SECTION 8 (Section 51.354, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 51.001, Occupations Code, by amending Subdivision (1) and adding Subdivision (1-a), to define "advisory board" and "commission."

SECTION 2. Amends Subchapter D, Chapter 51, Occupations Code, by adding Sections 51.209 and 51.210, as follows:

Sec. 51.209. ADVISORY BOARDS; REMOVAL OF ADVISORY BOARD MEMBER.

(a) Provides that this section applies to any advisory board appointed to advise the Texas Commission of Licensing and Regulation (TCLR) or Texas Department of Licensing and Regulation (TDLR) regarding a program subject to regulation by TDLR.

(b) Authorizes an advisory board member who was appointed by the presiding officer of TCLR with TCLR's approval to be removed from the advisory board by the presiding officer with TCLR's approval on certain grounds.

(c) 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. 51.210. METHOD OF MAKING PAYMENTS. (a) Authorizes TCLR to authorize payment of regulatory fees, fines, penalties, and charges for goods and services through

an electronic payment method or a credit card issued by a financial institution chartered by a state or the United States or issued by a nationally recognized credit organization approved by TCLR.

(b) Authorizes a payment by a method under this section to be made in person, by telephone, or through the Internet.

(c) Authorizes TCLR to require a person who makes a payment to TDLR through an electronic payment method or credit card to pay a discount or service charge in an amount reasonable and necessary to reimburse TCLR for the costs involved in processing the payment.

(d) Authorizes TCLR to adopt rules as necessary to implement this section.

SECTION 3. Amends Section 51.310, Occupations Code, by adding Subsection (c), to require the executive director of TDLR (executive director) by rule to prescribe notice procedures for proceedings under this subchapter that provide for notice by certified mail with electronic return receipt.

SECTION 4. Amends Subchapter G, Chapter 51, Occupations Code, by adding Sections 51.3511, 51.3512, and 51.3513, as follows:

Sec. 51.3511. ISSUANCE OF EMERGENCY ORDERS. (a) Authorizes the executive director, if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety, to issue an emergency order to suspend or revoke a license or other authorization issued under a program regulated by TDLR or halt operation of an unsafe facility or unsafe equipment that is subject to regulation by TDLR.

(b) Authorizes the executive director to issue an emergency order with or without notice and hearing as the executive 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 that the order be affirmed to the extent that reasonable cause existed to issue the order.

(d) Authorizes TCLR by rule to prescribe procedures for the determination and appeal of an emergency order issued under this section, including a rule allowing TCLR 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. 51.3512. 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 production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter, a law establishing a regulatory program administered by TDLR, or a rule adopted or order issued by TCLR or executive director; and the attendance of a witness for examination under oath.

(c) Authorizes a subpoena under this section to be issued throughout this state and to be served by any person designated by TCLR or the 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 venue for an action brought under this section is in a district court in Travis County or any county in which TDLR may 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.

Sec. 51.3513. CEASE AND DESIST ORDER. Authorizes the executive director to issue a cease and desist order if the executive director determines that the action is necessary to prevent a violation of this chapter, a law establishing a regulatory program administered by TDLR, or a rule adopted or order issued by TCLR or the executive director.

SECTION 5. Amends Section 51.352(a), Occupations Code, to authorize the attorney general or the executive director to institute an action for injunctive relief to restrain a violation by and to collect a civil penalty from a person that appears to be in violation of or threatening to violate a law establishing a regulatory program administered by TDLR or a rule or order of TCLR or executive director related to the regulatory program. Prohibits a civil penalty assessed under this subsection from exceeding \$5,000 per day for each violation.

SECTION 6. Amends the heading to Section 51.353, Occupations Code, to read as follows:

Sec. 51.353. LICENSE DENIAL; ADMINISTRATIVE SANCTIONS.

SECTION 7. Amends Section 51.353(a), Occupations Code, to authorize TCLR to deny, revoke, suspend, or refuse to renew a license, rather than require TDLR to revoke, suspend, or renew a license, or authorize, rather than require, TDLR to reprimand a license holder for a violation of this chapter, a law establishing a regulatory program administered by TDLR, or a rule or order of TCLR or the executive director.

SECTION 8. Amends Section 51.354, Occupations Code, by redesignating Subsection (d) as Subsection (b), and adding Subsection (c), as follows:

(b) Redesignates Subsection (d) as Subsection (b). Provides that a proceeding under this chapter to deny, suspend, or revoke a license is considered to be a contested case under Chapter 2001, Government Code.

(c) Requires the executive director by rule to prescribe notice procedures for a contested case under this chapter that provide for notice by certified mail with electronic return receipt.

SECTION 9. Amends Subchapter G, Chapter 51, Occupations Code, by adding Sections 51.355 and 51.356, as follows:

Sec. 51.355. LICENSE ELIGIBILITY OF PERSON WHOSE LICENSE HAS BEEN REVOKED. Provides that a person whose license has been revoked by order of TCLR or the executive director is not eligible for a new license until the first anniversary of the date of the revocation.

Sec. 51.356. DEFERRED ADJUDICATION; LICENSE SUSPENSION, LICENSE REVOCATION, OR DENIAL OR REFUSAL TO RENEW LICENSE. (a) Authorizes TCLR to deny, suspend, revoke, or refuse to renew a license or other authorization issued by a program regulated by TDLR if TCLR determines that a deferred adjudication makes the person holding or seeking the license unfit for the license.

(b) Requires TCLR, in making a determination under Subsection (a), 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 10. Amends Subchapter H, Chapter 51, Occupations Code, by adding Sections 51.4011 and 51.4012, as follows:

Sec. 51.4011. INACTIVE STATUS. (a) Authorizes TCLR to adopt rules to allow a license holder to place a license issued by TDLR on inactive status by submitting, on a form prescribed by TDLR, an application for inactive status to TDLR not later than the expiration date of the license and paying the required fee.

(b) Provides that, except as provided by Subsection (f), a person whose license is on inactive status is not required to complete continuing education required under this chapter, a law establishing a program regulated by TDLR, or a rule adopted by TCLR.

(c) Authorizes a person whose license is on inactive status to reapply for inactive status before the expiration date of the license. Requires the person to pay the required fee.

(d) Prohibits a person whose license is on inactive status from engaging in any activity for which the license is required.

(e) Prohibits a license holder from employing a person for an activity for which a license is required if the person's license is on inactive status.

(f) Authorizes a person whose license is on inactive status to return the license to active status by applying to TDLR for active status on a form prescribed by TDLR, paying the required fee and providing evidence satisfactory to TDLR that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding license period.

(g) Authorizes TCLR to set fees and adopt rules as necessary to implement this section.

Sec. 51.4012. LICENSE ELIGIBILITY REQUIREMENTS REGARDING APPLICANT'S BACKGROUND; DETERMINATION LETTER. (a) Authorizes TCLR, notwithstanding any other law, to determine that a person is not eligible for a license based on the person's criminal history or other information that indicates that the person lacks the honesty, trustworthiness, and integrity to hold a license issued by TDLR.

(b) Authorizes a person, before applying for a license from TDLR, to request that TDLR issue a letter determining whether the person would be eligible for a license under Subsection (a) of this section, Section 51.356, or Chapter 53 (Consequences of Criminal Conviction). Requires a person, to obtain a determination letter, to file a request on a form prescribed by TDLR and pay the required fee.

(c) Requires TDLR, not later than the 30th day after the date TDLR makes its determination, to issue the determination letter to the person.

(d) Provides that TDLR has the same powers to investigate a request filed under this section as TDLR has to investigate a person applying for a license.

(e) Provides that a determination letter issued under this section that is adverse to a person does not prevent the person from subsequently applying for a license.

(f) Provides that TDLR is not bound by its determination that the person would be eligible if, after the issuance of the determination letter, TDLR determines there

has been a change in a person's circumstances or discovers a previously undiscovered fact.

(g) Provides that a determination under this section is not a contested case under Chapter 2001, Government Code.

SECTION 11. Amends Section 51.402(c), Occupations Code, to authorize TDLR to require a testing service to notify a person of the results of the person's examination or collect a fee for administering a license examination from a person taking the examination.

SECTION 12. Amends Subchapter H, Chapter 51, Occupations Code, by adding Sections 51.407 and 51.408, as follows:

Sec. 51.407. TEMPORARY LICENSE. (a) Authorizes TCLR by rule to provide for the issuance of a temporary license to an applicant who submits to the executive director an application on a form prescribed by the executive director, meets preliminary qualifications established by TCLR rule, and pays any required fees.

(b) Provides that a temporary license issued under this section expires on the 21st day after the date of issuance and may not be renewed.

(c) Provides that a temporary license holder is subject to this chapter, any law applicable to the activity for which the license is required, and any rule of TCLR or the executive director applicable to the license.

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 an emergency license issued under this section expires on the date indicated by the executive director, but not later than the 90th day after the date the license is issued. Authorizes the executive director, if the governor declares an extended state of disaster under Section 418.014 (Declaration of State of Disaster), Government Code, to extend the term of an emergency license to an expiration date after the 90th day after the date the license was issued.

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

SECTION 13. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Sections 51.4011 and 51.4012, Occupations Code, as added by this Act: May 1, 2010.