

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 408
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Business & Commerce
2/27/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Public Information Act (Act) is found in Chapter 552 (Public Information) of the Government Code. The Act gives the public broad access to "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for a governmental body. To obtain information pursuant to the Act, a person must submit a written request for the records.

The Act is critical to maintaining government accountability and transparency; however, some aspects of the current law are frustrating the ability of the Texas Department of Licensing and Regulation (TDLR) to carry out fair and efficient investigations, which TDLR performs under the authority of Chapter 51 (Texas Department of Licensing and Regulation) of the Occupations Code.

Information made public relating to an open investigation has the potential to bias the proceedings and possibly damage the reputation of a person who is subject to the investigation even if the person is eventually cleared of wrongdoing. Cases resulting from TDLR investigations can be adjudicated by the State Office of Administrative Hearings (SOAH). Although certain information pertaining to the contested cases is not available through discovery in the SOAH proceedings, it is possible the information could be obtained through a request under the Act. Therefore, parties involved in a case or investigation with TDLR could use the Act to circumvent confidentiality protections. TDLR currently works with the Office of the Attorney General to determine whether requested records may be exempt from disclosure under the Act; however, this process delays investigations unnecessarily.

C.S.S.B. 408 adds a new section to Chapter 51, Occupations Code, to make TDLR records relating to a complaint or investigation confidential and not subject to disclosure under the Act or another means of legal compulsion. Under C.S.S.B. 408, complaints and investigative records will still be available under certain circumstances to a law enforcement agency; a member of the legislature; a legislative agency; TDLR employees or agents, parties involved in the applicable investigation; a licensing or disciplinary board in another jurisdiction; and a person engaged in research, as long as all identifying information has been deleted.

Additionally, on the conclusion of an investigation or case that results in formal proceedings, including warnings and reprimands, the records pertaining to these proceedings will again be subject to the Act under C.S.S.B. 408.

C.S.S.B. 408 amends current law relating to the confidentiality of certain complaints to and investigations by the Texas Department of Licensing and Regulation.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter E, Chapter 51, Occupations Code, by adding Section 51.2525, as follows:

Sec. 51.2525. CONFIDENTIALITY OF COMPLAINTS AND INVESTIGATIONS. (a) Provides that, notwithstanding any other law, except as provided by this section, a complaint against a person filed with the Texas Department of Licensing and Regulation (TDLR) or an investigation of a person conducted by TDLR and all information and material compiled by TDLR related to the complaint or investigation is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone.

(b) Requires that information regarding the complaint or the investigation described by Subsection (a) be disclosed on request to a law enforcement agency, a member of the legislature, or a legislative agency. Requires the member of the legislature or the legislative agency to maintain the confidentiality of any information identifying a specific person.

(c) Authorizes information regarding the complaint or the investigation described by Subsection (a) to be disclosed to TDLR or a TDLR employee or agent involved in a disciplinary or other administrative proceeding, a party to the disciplinary or other administrative proceeding or the party's designated agent, a licensing or disciplinary board in another jurisdiction, or a person engaged in bona fide research, if all information identifying a specific person has been deleted.

(d) Provides that the filing of formal proceedings against a person by TDLR, the nature of those proceedings, disciplinary proceedings of TDLR, and final disciplinary actions, including warnings and reprimands, by TDLR are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2013.