

BILL ANALYSIS

Senate Research Center

S.B. 43
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State Affairs
3/28/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2013, the legislature consolidated the regulatory bodies for professional guardians, court reporters, process servers, and court interpreters into a new entity, the Judicial Branch Certification Commission (JBCC). JBCC's enabling statute imposes several inefficient administrative requirements, especially regarding disciplinary hearings and the renewal and reissuance of certifications and licenses. S.B. 43 would make numerous changes, including consolidating renewal provisions and graduated late fees, creating a procedure for reissuance of a certificate, registration, or license which has been revoked or refused renewal as a disciplinary sanction, providing new definitions for the terms "certified process server" and "process server," and applying Texas Rules of Civil Procedure to JBCC hearings. These changes would enhance the operational efficiency of JBCC and streamline regulations for those who work in these industries.

As proposed, S.B. 43 amends current law relating to the Judicial Branch Certification Commission; authorizes fees, and modifies existing penalties.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Supreme Court is modified in SECTION 28 (Section 152.102, Government Code) of this bill.

Rulemaking authority previously granted to the Texas Supreme Court is rescinded in SECTION 38 (Section 154.108, Government Code) of this bill.

Rulemaking authority is expressly granted to the Judicial Branch Certification Commission in SECTION 22 (Section 154.103, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 57.002 (b-1), Government Code, by changing a reference to Section 57.043(d) to Section 157.101(d).

SECTION 2. Amends Section 151.001(7), Government Code, by redefining "regulated persons."

SECTION 3. Amends Sections 152.053(b), (c), and (d), Government Code, as follows:

(b) Provides that a person is not eligible for appointment as a member of the Judicial Branch Certification Commission (commission) or as a member of an advisory board or committee that serves the commission, under certain circumstances, rather than provides that a person is not eligible for appointment as a member of the commission under certain circumstances.

(c)-(d) Makes conforming changes.

SECTION 4. Amends Section 152.056, Government Code, to authorize the presiding officer of the commission to designate a member of the commission to preside over a meeting of the commission in the presiding officer's absence.

SECTION 5. Amends the heading to Section 152.109, Government Code, to read as follows:

Sec. 152.109. NOTICE OF COMPLAINT PROCESS

SECTION 6. Amends Sections 152.111(a) and (c), Government Code, as follows:

(a) Authorizes the commission to adopt a policy allowing office employees to dismiss a complaint that, rather than complaints that, clearly does not allege misconduct; that is not within the commissioner's jurisdiction; that alleges misconduct taking place more than five years before the date the complaint was filed, or for which there is no evidence to establish the alleged misconduct. Makes nonsubstantive changes.

(c) Authorizes a person who files a complaint that is dismissed under this section, not later than the 30th day after the date of notice of the dismissal, to request in writing that the commission reconsider the complaint, rather than authorizes a person who files a complaint that is dismissed under this section may request that the commission reconsider the complaint.

SECTION 7. Amends Section 152.201, Government Code, by adding Subsection (c-1) and amending Subsection (d), as follows:

(c-1) Provides that a passing score on an applicable examination is valid for purposes of certification, licensing, or registration for a period of two years after the date of the examination. Requires a person who does not apply to become certified, licensed, or registered before the expiration of the two-year period to repeat and pass the examination.

(d) Prohibits a person from viewing a copy of the examination the person failed.

SECTION 8. Amends Subchapter E, Chapter 152, Government Code, by adding Section 152.2015, as follows:

Sec. 152.2015. CERTIFICATION, REGISTRATION, AND LICENSING FEE AND RENEWAL. (a) Requires a person, firm, or business entity to pay the commission an initial and any other required fee to receive a certification, registration, or license from the commission.

(b) Authorizes a regulated person who is otherwise eligible to renew a certification, registration, or license to renew an unexpired certification, registration, or license by paying the required renewal fee to the commission before the expiration date. Prohibits a regulated person whose certification, registration, or license has expired from engaging in any applicable regulated activity until the certification, registration, or license has been renewed.

(c) Authorizes a regulated person whose certification, registration, or license has expired for 90 days or fewer to renew the certification, registration, or license by paying the commission a renewal fee equal to 1-1/2 times the normally required renewal fee.

(d) Authorizes a regulated person whose certification, registration, or license has expired for more than 90 days but less than one year to renew the certification, registration, or license by paying the commission a renewal fee equal to twice the normally required renewal fee.

(e) Prohibits a person, firm, or business entity from renewing its expired certification, registration, or license one year or more after expiration, except as provided by Subsection (f). Authorizes a person, firm, or business entity to obtain a new certification, registration, or license by complying with the requirements for obtaining an original certification, registration, or license.

(f) Authorizes a person to renew, without examination, a certification, registration, or license that has expired for one year or longer under certain conditions.

(g) Requires that the commission send written notice, not later than the 30th day before the date a regulated person's certification, registration, or license is scheduled to expire, of the impending expiration to the regulated person's last known address according to the commission's records.

SECTION 9. Amends Section 152.205(c), Government Code, to require that the commission propose to the Texas Supreme Court (supreme court) a rule stating that a person who violates the code of ethics is subject to commission enforcement under Chapter 153 (Commission Enforcement), rather than subject to an administrative penalty assessed under Chapter 153.

SECTION 10. Amends Subchapter A, Chapter 153, Government Code, by adding Section 153.0001, as follows:

Sec. 153.0001. FILING COMPLAINT. (a) Requires that a person satisfy certain requirements in order to file a complaint with the commission against a regulated person or another person alleged to have unlawfully engaged in the regulated conduct.

(b) Requires the commission, on receipt of a properly executed complaint, to furnish a copy of the complaint and any attachments to the person who is the subject of the complaint.

(c) Provides that this section does not preclude the commission, an advisory board of the commission, or a court of this state from filing a complaint.

SECTION 11. Amends Section 153.003, Government Code, as follows:

Sec. 153.003. CEASE AND DESIST ORDER. (a) Creates this subsection from existing text. Authorizes the administrative director of the Office of Court Administration of the Texas Judicial System (director) to issue a temporary cease and desist order for the duration of the investigation and disciplinary action by the commission under certain circumstances.

(b) Authorizes a cease and desist order to require a person to cease and desist from committing a violation listed under Subsection (a) or from engaging in any practice regulated by the commission as necessary to prevent such a violation.

(c) Authorizes a person to whom a cease and desist order is issued to file a written request for a hearing before the commission. Sets forth time limits for the person to file the hearing request and for the commission to conduct the hearing.

SECTION 12. Amends Section 153.004, Government Code, by adding Subsection (c), to authorize the commission, on its own motion, or on the recommendation of its staff, to conduct a hearing to inquire into a suspension. Authorizes the commission to revoke or take other disciplinary action against a person's certification, registration, or license under certain circumstances.

SECTION 13. Amends Section 153.051, Government Code, as follows:

Sec. 153.051. IMPOSITION OF PENALTY. (a) Authorizes the commission to impose an administrative penalty on a person, rather than a person regulated under this subtitle, who violates this subtitle, a law establishing a regulatory program administered by the commission, a rule or standard adopted under this subtitle, or an order issued by the commission or director under this subtitle. Makes conforming changes.

(b) Deletes existing text applying the requirements of this subchapter to the imposition of administrative sanctions imposed in a proceeding under this subchapter.

SECTION 14. Amends Section 153.053, Government Code, as follows:

Sec. 153.053. REPORT AND NOTICE OF VIOLATION, PENALTY, AND SANCTION. (a) Requires the commission to appoint a committee of advisory board members (committee) to review a complaint, make the initial written determination on whether a violation occurred, and impose, rather than recommend the imposition of, certain measures. Requires the committee to state its written determination as separately stated proposed findings of fact and conclusions of law.

(b) Deletes existing Subdivision (2) and redesignates existing Subdivision (3) as Subsection (b). Requires the committee to give to the person who is the subject of the complaint under Subsection (a) written notice by certified mail of the committee's, rather than commission's, determination on whether a violation occurred and each penalty or sanction, if any, rather than each recommended penalty or sanction, if any.

(c) Redesignates existing Subsection (b) as Subsection (c). Makes conforming changes.

SECTION 15. Amends Section 153.054, Government Code, as follows:

Sec. 153.054. PENALTY PAID, SANCTION ACCEPTED, OR HEARING REQUESTED. (a) Authorizes a person to accept the determination of the committee and the imposition of the penalty or sanction as an agreed order to be presented to the commission, or request a hearing before the commission. Makes conforming changes.

(b) Requires the commission to review the proposed order and accept, revise, or reject it or remand the matter to the committee for further review, if the person accepts the determination and penalty or sanction as an agreed order. Authorizes the person to take certain steps if the commission revises or rejects the order. Deletes existing text or if the person fails to respond to the notice, by order. Makes conforming changes.

(c) Authorizes the commission, if the person fails to respond to the notice, to issue a default order to approve the determination of the committee and impose or revise the committee's proposed, penalty, sanction, or both. Deletes existing text regarding the commission approving the determination and imposing the recommended penalty or sanction.

SECTION 16. Amends Sections 153.055(c), (d), (e) and (g), Government Code, as follows:

(c) Requires the commission to adopt, revise, or reject the committee's findings, rather than make findings, of fact and conclusions of law.

(d) Provides that the Texas Rules of Civil Procedure, including discovery rules, apply to the commission's hearings to the extent not inconsistent with this subchapter or commission rules, and authorizes the commission to deviate from the rules as necessary for a full and fair adjudication and determination of fact or law.

(e) Authorizes the commission's presiding officer to issue orders, including scheduling orders, and designate the discovery control plan or otherwise limit or modify discovery before a hearing.

(g) Requires at least one member of the applicable advisory board to attend the hearing to consult with the commission on the reasons for the advisory board committee's determination and proposed penalty or sanction rather than recommendation.

SECTION 17. Amends Section 153.056, Government Code, to require a person to accept the obligation to pay the commission's penalty, and to make a conforming change.

SECTION 18. Amends Section 153.058(f), Government Code, by authorizing the special committee of the supreme court to uphold or reduce any other sanction.

SECTION 19. Amends Subchapter B, Chapter 153, Government Code, by adding Section 153.060, as follows:

Sec. 153.060. REISSUANCE OF CERTIFICATE, REGISTRATION, OR LICENSE. (a) Authorizes the commission to reissue a certificate, registration, or license that has been revoked or that the commission has refused to renew as a disciplinary sanction if the individual subject to the revocation or nonrenewal applies in writing to the commission and establishes good cause to justify reissuance of the certificate, registration, or license. Provides that the applicant has the burden of proving certain requirements.

(b) Authorizes the commission to impose certain conditions upon the revocation of or refusal to renew a certificate, registration, or license.

(c) Authorizes the commission to impose appropriate probationary conditions for a specified period on the practice of a person whose certificate, registration, or license is reissued.

SECTION 20. Amends Section 154.001(a)(2), Government Code, by redefining "certification."

SECTION 21. Amends Section 154.101(g), Government Code, by authorizing the commission to seek an injunction in the district court of the county in which a person not certified by the supreme court resides or in Travis County.

SECTION 22. Amends Section 154.103, Government Code, as follows:

Sec. 154.103. EXAMINATION. (a) Requires the commission to establish, by rule, the form and content of the examination for certification in light of the authorized methods of shorthand reporting. Authorizes the commission to contract with a testing service to develop, administer, and grade examinations. Deletes existing text setting forth the content of the examination.

(b) to (c) Deletes existing text of these subsections. Redesignates existing Subsection (d) as Subsection (b). Makes no further changes to this subsection.

SECTION 23. Amends Section 154.106(a), Government Code, to prohibit a shorthand reporting firm or an affiliate office from assuming or using certain titles or designations.

SECTION 24. Amends Sections 154.107(b) and (c), Government Code, as follows:

(b) Provides that, effective January 1, 2018, a certification or registration expires on the last day of the month in which the second anniversary of the date on which it was issued falls unless the certification or registration is renewed on or before that day. Requires the commission, if during a two-year period the certification or registration expiration date is changed, to prorate certification and registration fees on a monthly basis so that each certification or registration holder pays only the portion of the fee that is allocable to the number of months during which the certification or registration is valid. Deletes existing text relating to the expiration of the certification or registration. Makes a nonsubstantive change.

(c) Provides that a fee is charged upon each renewal of the certification or registration. Requires a firm or affiliate office of a firm that may not renew an expired registration to pay all unpaid renewal and late fees charged for the expired registration, in addition to complying with all registration requirements and procedures, in order to obtain a new

registration. Deletes existing text relating to a person's renewal of a certification or registration.

SECTION 25. Amends Section 154.110(a), Government Code, by requiring a shorthand reporter's certification to be impacted by a felony or misdemeanor conviction directly related to their duties and responsibilities as a certified shorthand reporter, rather than court reporter.

SECTION 26. Amends Section 154.111(c), Government Code, by authorizing the commission to suspend a shorthand reporting firm's or affiliate office's registration for a designated period of time in accordance with Section 154.110(b) (relating to the time period the commission may suspend a certification for).

SECTION 27. Amends Sections 155.001(2), (3), (5), and (7), Government Code, to redefine "corporate fiduciary," "guardian," "incapacitated person," and "ward."

SECTION 28. Amends Sections 155.102(c) and (d), Government Code, as follows:

(c) Requires any rules adopted by the supreme court to provide that a certificate expires on the last day of the month in which the second anniversary of the date the certificate was issued falls, unless renewed prior to expiration, rather than provides that a certificate expires on the second anniversary of the date the certificate is issued.

(d) Provides that if the requirements for issuing a certificate under this section or reissuing a certificate under Section 153.060 include passage of an examination requirements, then certain requirements must be met.

SECTION 29. Amends Section 155.104, Government Code, by replacing a reference to Section 697(e), Texas Probate Code, with Section 1104.306 (Use of Names and Business Addresses), Estates Code.

SECTION 30. Amends Section 155.105(c), Government Code, by replacing a reference to Section 697(a), Texas Probate Code, with Section 1104.303 (Requirements of Application), Estates Code.

SECTION 31. Amends Section 156.001, Government Code, as follows:

Sec. 156.001. New heading: DEFINITIONS. Defines "advisory board" and "certified process server." Makes nonsubstantive changes.

SECTION 32. Amends Section 156.052(a), Government Code, by deleting existing text requiring the supreme court to approve the fees recommended by the commission before the fees may be collected.

SECTION 33. Amends Subchapter B, Chapter 156, Government Code, by adding Section 156.053, as follows:

Sec. 156.053. PROCESS SERVER CERTIFICATION RENEWAL; FEES. Provides that each process server certification expires on the last day of the month in which the second anniversary of its issuance falls, unless it is renewed prior to that day. Requires each process server, upon renewal of certification, to pay an established fee to the commission in accordance with Section 152.2015.

SECTION 34. Amends Sections 157.101(a), (c), and (d), Government Code, as follows:

(a) Requires the director to issue a court interpreter license to an applicant who passes the appropriate examination prescribed by the commission within the period specified in Section 152.201(c-1). Deletes existing text requiring passage of the examination not earlier than two years before the date the applicant's application for license is received by the director.

(c) Provides that a license issued under this chapter expires on the last day of the month in which the second anniversary of its date of issuance falls, unless it is renewed on or before that day. Deletes language providing that the license is valid for one year from the date of issuance.

(d) Requires an applicable license under this chapter to include at least a basic designation that permits the interpreter to interpret court proceedings in certain courts, but prohibits the designation from permitting the interpreter to interpret a proceeding before the court in which the judge is acting as a magistrate, rather than other than a proceeding before the court in which the judge is acting as a magistrate.

SECTION 35. Amends the heading to Section 157.104, Government Code, to read as follows:

Sec. 157.104. COMMISSION DUTIES.

SECTION 36. Amends Section 157.105, Government Code, as follows:

Sec. 157.105. New heading: SUSPENSION, REFUSAL OF RENEWAL, AND REVOCATION OF LICENSES; REISSUANCE. (a) Requires the commission, after providing the opportunity for a hearing in accordance with Section 153.055, to suspend, revoke, or refuse to renew a court interpreter license on certain findings. Makes nonsubstantive changes.

(b) Authorizes the commission, in accordance with Section 153.060, to reissue a license to an individual whose license has been revoked or has been refused renewal if the individual applies in writing to the department and shows good cause to justify the issuance of the license. Makes a nonsubstantive change.

SECTION 37. Amends Section 157.107(b), Government Code, by providing that a violator is subject to an administrative penalty assessed by the commission as provided by Chapter 153 (Commission Enforcement), in addition to administrative sanctions that may be imposed under Section 157.105, rather than as provided by Chapter 153 only.

SECTION 38. Repealer: Section 154.104 (Certification to Supreme Court), Government Code.

Repealers: Section 154.107(d) (relating to renewing a certification or registration that is expired for 90 days or less by paying a fee equal to 1-1/2 times the normal fee), Section 154.107(e) (relating to renewing a certification or registration that is expired between 90 days and one year by paying a fee equal to 2 times the normal fee), Section 154.107(f) (relating to a person whose certification or registration has expired for one year or more), Section 154.107(g) (relating to a person who was certified, has moved to another state, and is currently certified), Section 154.107(h) (relating to the required written expiration notice the commission is required to send), Government Code.

Repealer: Section 154.108 (Staggered Renewal of Certification or Registration), Government Code.

Repealer: Section 154.109 (Complaint), Government Code.

Repealer: Section 154.110(d) (relating to the commission's hearing to inquire into a suspension), Government Code.

Repealer: Section 154.111(e) (relating to the commission's hearing to inquire into a suspension of a firm), Government Code.

Repealer: Section 156.052(b) (relating to the proration of a fee for a certification), Government Code.

SECTION 39. Effective date: September 1, 2017.