

BILL ANALYSIS

Senate Research Center
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas Department of Licensing and Regulation (TDLR) serves as the state's umbrella licensing agency, with regulatory authority over 22 different programs. In the interest of efficient and effective regulation, the legislature has seen fit to expand TDLR's duties substantially over the last few sessions. This incremental expansion of the TDLR umbrella has resulted in a patchwork of different regulatory authorities across different programs. S.B. 957 provides consistency across all TDLR's regulatory programs to allow for greater efficiency and more successful enforcement.

As proposed, S.B. 957 gives TDLR consistent authority in regard to: (1) cease and desist orders; (2) emergency orders; (3) subpoena authority; (4) the issuance of emergency licenses; (5) certain fees; and (6) license denial under certain circumstances.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 4 (Section 51.356, Occupations Code) and SECTION 5 (Section 51.408, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 51.202(a), Occupations Code, to include continuing education amongst the programs and activities for which the Texas Commission of Licensing and Regulation (commission) is required to set fees necessary to cover the costs of administration. Makes a nonsubstantive change.

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

Sec. 51.209. SUBPOENA. (a) Authorizes the commission or the executive director of the Texas Department of Licensing and Regulation (executive director) to request and, if necessary, compel by subpoena, certain actions related to investigating a violation of this chapter.

(b) Authorizes a subpoena to be issued throughout the state and to be served by any person designated by the commission or executive director.

(c) Authorizes the Texas Department of Licensing and Regulation (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.

(d) Provides that 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.

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

(f) Prohibits the authority of the commission or executive director to issue a subpoena under this section from being delegated to another person.

SECTION 3. Amends Section 51.353, Occupations Code, as follows:

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

(a) Requires the commission to revoke, suspend, or refuse to issue or renew a license or to reprimand a license holder for a violation of this chapter, a law establishing a regulatory program administered by the department, or a rule or order of the commission or executive director.

(b) Authorizes the commission to probate the suspension of a license, rather than place on probation a person whose license is suspended. Authorizes the commission to require the person to meet certain requirements if a license suspension is probated.

SECTION 4. Amends Subchapter G, Chapter 51, Occupations Code, by adding Sections 51.355 and 51.356, as follows:

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

Sec. 51.356. EMERGENCY ORDERS. (a) Authorizes the executive director to issue an emergency order if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

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

(c) Requires the executive director to set the time and place for a hearing conducted by the State Office of Administrative Hearings to affirm, modify, or set aside an emergency order not later than the 10th day after the date the order was issued if the order is issued without a hearing. 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.

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

SECTION 5. Amends Subchapter H, Chapter 51, Occupations Code, by adding Sections 51.407, 51.408, and 51.409, as follows:

Sec. 51.407. DEFERRED ADJUDICATION; REFUSAL TO ISSUE OR RENEW LICENSE. Authorizes the commission to refuse to issue or renew a license if the commission determines that a deferred adjudication makes the person seeking the license unfit for a license.

Sec. 51.408. TEMPORARY LICENSE. (a) Authorizes the commission, by rule, to provide for the issuance of a temporary license to an applicant who meets certain requirements.

(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 certain rules and regulations.

Sec. 51.409. EMERGENCY LICENSE. (a) Authorizes the executive director to issue an emergency license to a person who meets certain eligibility requirements.

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

(c) Authorizes the emergency license holder to engage in activities indicated by the type of license, with certain limitations.

SECTION 6. Effective date: September 1, 2005.