

By: Williams

S.B. No. 957

A BILL TO BE ENTITLED

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AN ACT

relating to the powers and duties of the Texas Department of Licensing and Regulation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 51.202, Occupations Code, is amended to read as follows:

(a) The commission shall set fees, in amounts reasonable and necessary to cover the costs of administering the programs or activities, for:

- (1) licenses issued by the department;
- (2) license renewals and late renewals;
- (3) examinations; ~~and~~
- (4) continuing education; and
- (5) any other program or activity administered by the department for which a fee is authorized.

SECTION 2. Subchapter D, Chapter 51, Occupations Code, is amended by adding Section 51.209 to read as follows:

Sec. 51.209. SUBPOENA. (a) The commission or executive director may request and, if necessary, compel by subpoena:

- (1) 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 the department, or a rule adopted or order issued by the commission or executive

1 director; and

2 (2) the attendance of a witness for examination under
3 oath.

4 (b) A subpoena may be issued throughout the state and may be
5 served by any person designated by the commission or executive
6 director.

7 (c) The department, acting through the attorney general,
8 may bring an action to enforce a subpoena issued under this section
9 against a person who fails to comply with the subpoena.

10 (d) Venue for an action brought under this section is in a
11 district court in:

12 (1) Travis County; or

13 (2) any county in which the department may hold a
14 hearing.

15 (e) The court shall order compliance with the subpoena if
16 the court finds that good cause exists to issue the subpoena.

17 (f) The authority of the commission or executive director to
18 issue a subpoena under this section may not be delegated to another
19 person.

20 SECTION 3. Section 51.353, Occupations Code, is amended to
21 read as follows:

22 Sec. 51.353. LICENSE REFUSAL; ADMINISTRATIVE SANCTIONS.

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

1 (b) The commission may probate the suspension of a [~~place on~~
2 ~~probation a person whose~~] license [~~is suspended~~]. If a license
3 suspension is probated, the commission may require the person to:

4 (1) report regularly to the department on matters that
5 are the basis of the probation;

6 (2) limit practice to the areas prescribed by the
7 commission; or

8 (3) continue or renew professional education until the
9 person attains a degree of skill satisfactory to the commission in
10 those areas that are the basis for the probation.

11 SECTION 4. Subchapter G, Chapter 51, Occupations Code, is
12 amended by adding Sections 51.355 and 51.356 to read as follows:

13 Sec. 51.355. CEASE AND DESIST ORDERS. The executive
14 director may issue a cease and desist order if the executive
15 director determines that the action is necessary to prevent a
16 violation of:

17 (1) this chapter;

18 (2) a law establishing a regulatory program
19 administered by the department; or

20 (3) a rule adopted or order issued by the commission or
21 executive director.

22 Sec. 51.356. EMERGENCY ORDERS. (a) The executive director
23 may issue an emergency order, including an order to suspend or
24 revoke a license or to cease operation of unsafe equipment,
25 including an unsafe elevator or unsafe boiler, if the executive
26 director determines that an emergency exists requiring immediate
27 action to protect the public health and safety.

1 (b) The executive director may issue the emergency order
2 with or without notice and hearing as the executive director
3 considers practicable under the circumstances.

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

11 (d) The commission by rule may prescribe procedures for the
12 determination and appeal of an emergency order under this section,
13 including a rule allowing the commission to affirm, modify, or set
14 aside a decision made by the State Office of Administrative
15 Hearings under Subsection (c).

16 (e) A proceeding under this section is a contested case
17 under Chapter 2001, Government Code.

18 SECTION 5. Subchapter H, Chapter 51, Occupations Code, is
19 amended by adding Sections 51.407, 51.408, and 51.409 to read as
20 follows:

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

25 Sec. 51.408. TEMPORARY LICENSE. (a) The commission by
26 rule may provide for the issuance of a temporary license to an
27 applicant who:

1 (1) submits to the executive director an application
2 on a form prescribed by the executive director;

3 (2) meets preliminary qualifications established by
4 commission rule; and

5 (3) pays the required fees.

6 (b) A temporary license expires on the 21st day after the
7 date of issuance and may not be renewed.

8 (c) A temporary license holder is subject to:

9 (1) this chapter;

10 (2) any law applicable to the activity for which the
11 license is required; and

12 (3) any rule or order of the commission or the
13 executive director applicable to the license.

14 Sec. 51.409. EMERGENCY LICENSE. (a) The executive
15 director may issue an emergency license to a person who meets
16 eligibility requirements provided by:

17 (1) a law establishing a regulatory program
18 administered by the department; or

19 (2) a rule adopted to implement this section.

20 (b) The license expires on the date indicated by the
21 executive director, but may not exceed the 90th day after the date
22 of issuance.

23 (c) The emergency license holder may engage in the
24 activities indicated by the type of license only:

25 (1) during a time declared as a state of disaster and
26 the following recovery period; and

27 (2) in an area designated as a disaster area by:

1 (A) the governor; or

2 (B) the presiding officer of a governing body of

3 a political subdivision.

4 SECTION 6. This Act takes effect September 1, 2005.