

1 AN ACT

2 relating to licensing and regulation by a state agency.

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

4 SECTION 1. The heading to Chapter 2005, Government Code, is
5 amended to read as follows:

6 CHAPTER 2005. MISCELLANEOUS PROVISIONS RELATING TO STATE LICENSES
7 AND PERMITS [~~PERMIT PROCESSING~~]

8 SECTION 2. Sections 2005.001 through 2005.007, Government
9 Code, are designated as Subchapter A, Chapter 2005, Government
10 Code, and a subchapter heading is added to read as follows:

11 SUBCHAPTER A. PERMIT PROCESSING

12 SECTION 3. Chapter 2005, Government Code, is amended by
13 adding Subchapter B to read as follows:

14 SUBCHAPTER B. DENIAL, SUSPENSION, OR REVOCATION FOR FALSE
15 STATEMENT, MISREPRESENTATION, OR REFUSAL TO PROVIDE INFORMATION

16 Sec. 2005.051. DEFINITIONS. In this subchapter:

17 (1) "License" means a license, certificate,
18 registration, permit, or other authorization:

19 (A) that is issued by a licensing authority;

20 (B) that is subject before expiration to
21 suspension, revocation, forfeiture, or termination by the issuing
22 licensing authority; and

23 (C) that a person must obtain to:

24 (i) practice or engage in a particular

1 business, occupation, or profession; or

2 (ii) engage in any other regulated
3 activity, including hunting, fishing, or other recreational
4 activity for which a license or permit is required.

5 (2) "Licensing authority" means an agency of the
6 executive, legislative, or judicial branch of state government that
7 issues a license.

8 Sec. 2005.052. DENIAL, SUSPENSION, OR REVOCATION FOR FALSE
9 STATEMENT, MISREPRESENTATION, OR REFUSAL TO PROVIDE INFORMATION.

10 (a) A licensing authority may deny a person's application for a
11 license or suspend or revoke a person's license if the licensing
12 authority determines, after notice and hearing, that the person
13 knowingly:

14 (1) made a false statement in connection with applying
15 for or renewing the license;

16 (2) made a material misrepresentation to the licensing
17 authority in connection with applying for or renewing the license;

18 (3) refused to provide information requested by the
19 licensing authority; or

20 (4) failed to provide all of the person's criminal
21 history information in response to the licensing authority's
22 request for the information.

23 (b) A denial, suspension, or revocation by a licensing
24 authority under this section is governed by the administrative
25 procedures that apply to other disciplinary actions taken by the
26 licensing authority.

27 Sec. 2005.053. CRIMINAL PROSECUTION. A person who

1 knowingly makes a false statement in connection with applying for
2 or renewing a license may be subject to criminal prosecution under
3 Section 37.10, Penal Code.

4 SECTION 4. Section 2005.001, Government Code, is amended to
5 read as follows:

6 Sec. 2005.001. DEFINITIONS. In this subchapter [~~chapter~~]:

7 (1) "Permit" means an authorization by a license,
8 certificate, registration, or other form that is required by law or
9 state agency rules to engage in a particular business.

10 (2) "State agency" means a department, board, bureau,
11 commission, division, office, council, or other agency of the
12 state.

13 SECTION 5. Section 2005.002, Government Code, is amended to
14 read as follows:

15 Sec. 2005.002. EXCEPTIONS. This subchapter [~~chapter~~] does
16 not apply to a permit:

17 (1) for which an agency's median time during the
18 preceding calendar year for processing a permit application from
19 receipt of the initial application to the final permit decision did
20 not exceed seven days;

21 (2) issued in connection with any form of gaming or
22 gambling; or

23 (3) issued under the Alcoholic Beverage Code.

24 SECTION 6. Section 2005.005, Government Code, is amended to
25 read as follows:

26 Sec. 2005.005. DUTY OF HEAD OF AGENCY. The head of each
27 state agency shall ensure that the agency complies with this

1 subchapter [~~chapter~~].

2 SECTION 7. Section 2005.006(a), Government Code, is amended
3 to read as follows:

4 (a) A state agency subject to this subchapter [~~chapter~~]
5 shall establish by rule a complaint procedure through which a
6 permit applicant can:

7 (1) complain directly to the chief administrator of
8 the agency if the agency exceeds the established period for
9 processing permits; and

10 (2) request a timely resolution of any dispute arising
11 from the delay.

12 SECTION 8. Section 2005.007(b), Government Code, is amended
13 to read as follows:

14 (b) The report must include:

15 (1) a statement of the periods the agency has adopted
16 under this subchapter [~~chapter~~] for processing each type of permit
17 it issues, specifying any changes the agency made since the last
18 report;

19 (2) a statement of the minimum, maximum, and median
20 times for processing each type of permit during the period since the
21 last report from the date the agency receives the initial permit
22 application to the final permit decision;

23 (3) a description of the complaint procedure required
24 by Section 2005.006;

25 (4) a summary of the number and disposition of
26 complaints received by the agency under Section 2005.006 since the
27 last report; and

1 (5) a description of specific actions taken by the
2 agency since the last report to simplify and improve its permit
3 application, processing, and paperwork requirements.

4 SECTION 9. Section 247.045, Health and Safety Code, is
5 amended by amending Subsections (d) and (e) and adding Subsections
6 (h) and (i) to read as follows:

7 (d) The attorney general may institute and conduct a suit to
8 collect a penalty and fees under this section at the request of the
9 department. If the attorney general fails to notify the department
10 ~~[take action]~~ within 30 days of referral from the department that
11 the attorney general will accept the case, the department shall
12 refer the case to the local district attorney, county attorney, or
13 city attorney. The district attorney, county attorney, or city
14 attorney shall file suit in a district court to collect and retain
15 the penalty.

16 (e) Investigation and attorney's fees may not be assessed or
17 collected by or on behalf of the department or other state agency
18 unless ~~[the department or other state agency assesses and collects]~~
19 a penalty described under this chapter is assessed.

20 (h) If a person who is liable under this section fails to pay
21 any amount the person is obligated to pay under this section, the
22 state may seek satisfaction from any owner, other controlling
23 person, or affiliate of the person found liable. The owner, other
24 controlling person, or affiliate may be found liable in the same
25 suit or in another suit on a showing by the state that the amount to
26 be paid has not been paid or otherwise legally discharged. The
27 department by rule may establish a method for satisfying an

1 obligation imposed under this section from an insurance policy,
2 letter of credit, or other contingency fund.

3 (i) In this section, "affiliate" means:

4 (1) with respect to a partnership other than a limited
5 partnership, each partner of the partnership;

6 (2) with respect to a corporation:

7 (A) an officer;

8 (B) a director;

9 (C) a stockholder who owns, holds, or has the
10 power to vote at least 10 percent of any class of securities issued
11 by the corporation, regardless of whether the power is of record or
12 beneficial; and

13 (D) a controlling individual;

14 (3) with respect to an individual:

15 (A) each partnership and each partner in the
16 partnership in which the individual or any other affiliate of the
17 individual is a partner; and

18 (B) each corporation or other business entity in
19 which the individual or another affiliate of the individual is:

20 (i) an officer;

21 (ii) a director;

22 (iii) a stockholder who owns, holds, or has
23 the power to vote at least 10 percent of any class of securities
24 issued by the corporation, regardless of whether the power is of
25 record or beneficial; and

26 (iv) a controlling individual;

27 (4) with respect to a limited partnership:

- 1 (A) a general partner; and
2 (B) a limited partner who is a controlling
3 individual;
4 (5) with respect to a limited liability company:
5 (A) an owner who is a manager as described by the
6 Texas Limited Liability Company Act (Article 1528n, Vernon's Texas
7 Civil Statutes); and
8 (B) each owner who is a controlling individual;
9 and
10 (6) with respect to any other business entity, a
11 controlling individual.

12 SECTION 10. (a) In this section:

13 (1) "Department" means the Department of Aging and
14 Disability Services.

15 (2) "Disabled person" has the meaning assigned by
16 Section 48.002, Human Resources Code.

17 (3) "Elderly person" has the meaning assigned by
18 Section 48.002, Human Resources Code.

19 (4) "Executive commissioner" means the executive
20 commissioner of the Health and Human Services Commission.

21 (5) "Boarding house" means an establishment that:

22 (A) provides services, including community
23 meals, light housework, meal preparation, transportation, grocery
24 shopping, money management, or laundry services to three or more
25 elderly persons or disabled persons residing in the boarding house
26 who are unrelated to the owner or proprietor of the establishment;

27 (B) is not:

1 (i) required to be licensed under Chapter
2 142, 242, 246, 247, or 252, Health and Safety Code; or

3 (ii) exempt from licensing under Section
4 142.003(a)(19) or 247.004(4), Health and Safety Code; and

5 (C) is not a:

6 (i) child-care facility as defined by
7 Section 42.002, Human Resources Code;

8 (ii) family violence center as defined by
9 Section 51.002, Human Resources Code;

10 (iii) hotel as defined by Section 156.001,
11 Tax Code;

12 (iv) retirement community;

13 (v) monastery or convent; or

14 (vi) sorority or fraternity house or other
15 dormitory affiliated with an institution of higher education.

16 (b) Subject to the appropriation of funds for the express
17 purpose of implementing the pilot program described by this
18 section, the executive commissioner by rule shall develop and
19 implement a pilot program in each county or municipality described
20 by Subsection (d) of this section. The pilot program must:

21 (1) require boarding houses to be licensed and
22 inspected; and

23 (2) enforce rules and regulations for licensed
24 boarding houses.

25 (c) In implementing the pilot program, the executive
26 commissioner shall adopt rules and regulations for boarding houses
27 that include:

1 (1) minimum standards to ensure the health and safety
2 of residents of boarding houses, including fire safety
3 requirements;

4 (2) a requirement that a boarding house may not allow
5 an individual required to register under Chapter 62, Code of
6 Criminal Procedure, to reside in the boarding house;

7 (3) required disclosures by boarding houses;

8 (4) reporting requirements regarding resident deaths,
9 injuries, or accidents; and

10 (5) administrative penalties for a boarding house of
11 not less than \$100 or more than \$1,000 for each violation by a
12 boarding house of a rule adopted or order issued under the pilot
13 program.

14 (d) Subject to the appropriation of funds for the express
15 purpose of implementing the pilot program described by this
16 section, not later than August 1, 2008, the executive commissioner
17 shall implement the pilot program in each county or municipality
18 that has adopted an order or ordinance regulating the operation of
19 boarding houses.

20 (e) Not later than January 1, 2009, the Health and Human
21 Services Commission shall submit a report to the governor, the
22 lieutenant governor, the speaker of the house of representatives,
23 and the presiding officer of each house and senate standing
24 committee having jurisdiction over adult protective services. The
25 report must include:

26 (1) if the pilot program has been developed and
27 implemented:

1 (A) the number of:

2 (i) boarding houses licensed through the
3 pilot program;

4 (ii) violations by boarding houses of rules
5 adopted under the pilot program; and

6 (iii) investigations of boarding houses
7 licensed under the pilot program related to alleged abuse, neglect,
8 or exploitation of a resident;

9 (B) a description of any penalties against a
10 boarding house licensed under the pilot program resulting from a
11 department investigation; and

12 (C) a recommendation regarding the advisability
13 of expanding the pilot program statewide; or

14 (2) if the pilot program has not been developed and
15 implemented, a study and recommendations regarding the most
16 effective method for regulating boarding houses, including
17 recommendations on whether clarifying the authority of and granting
18 additional authority to counties and municipalities to establish
19 health and safety standards for boarding houses is recommended.

20 (f) This section expires September 1, 2011.

21 SECTION 11. Subchapter B, Chapter 2005, Government Code, as
22 added by this Act, applies only to a statement, misrepresentation,
23 or refusal made, in connection with applying for or renewing a
24 license, on or after the effective date of this Act.

25 SECTION 12. The change in law made to Section 247.045,
26 Health and Safety Code, by this Act applies only to a violation that
27 occurs on or after the effective date of this Act. A violation

1 occurs before the effective date of this Act if any element of the
2 violation occurs before that date. A violation that occurs before
3 the effective date of this Act is covered by the law in effect when
4 the violation occurred, and the former law is continued in effect
5 for that purpose.

6 SECTION 13. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 1168 was passed by the House on May 11, 2007, by the following vote: Yeas 138, Nays 0, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1168 on May 25, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1168 on May 28, 2007, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Chief Clerk of the House

H.B. No. 1168

I certify that H.B. No. 1168 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 30, Nays 1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1168 on May 27, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor