

BILL ANALYSIS

C.S.H.B. 2310
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Commission of Licensing and Regulation currently oversees 26 statutes with almost 130 different license types and more than 580,000 licensees.

C.S.H.B. 2310 clarifies and enhances licensing and enforcement provisions to provide consistency across the commission's programs. This consistency results in greater efficiency and lower costs to license holders. The bill includes provisions that enable the Texas Department of Licensing and Regulation (TDLR) to continue improving services to licensees, including allowing payments by credit card and offering inactive status to those licensees who may choose to leave and later reenter a regulated position. The bill allows TDLR to respond quickly during emergency situations, like hurricanes and other natural disasters, helping to deploy qualified workers where needed while minimizing bureaucratic hurdles. Finally, the bill increases protection by providing standard enforcement tools similar to those used by other regulatory agencies in Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 2, 4, 10, and 11 of this bill, and to the executive director of the Texas Department of Licensing and Regulation in SECTIONS 3, 8, and 11 of this bill.

ANALYSIS

C.S.H.B. 2310 amends the Occupations Code to define "advisory board" as a board, committee, council, or other entity with multiple members that has as its primary function advising the Texas Commission of Licensing and Regulation or the Texas Department of Licensing and Regulation (TDLR). The bill authorizes the presiding officer of the commission, with the commission's approval, to remove from any advisory board appointed to advise the commission or TDLR regarding a program subject to regulation by TDLR a member who was appointed by the presiding officer with the commission's approval. The bill sets forth the grounds on which a member may be removed. The bill clarifies that the validity of an action of an advisory board is not affected by the fact that it is taken when a ground for removal of a member exists.

C.S.H.B. 2310 authorizes the commission to authorize the payment of regulatory fees, fines, penalties, and charges for goods and services through an electronic payment method or a credit card issued by a financial institution chartered by a state or the United States or issued by a nationally recognized credit organization approved by the commission. The bill authorizes a payment made by such a method to be made in person, by telephone, or through the Internet. The bill authorizes the commission to require a person who makes a payment to TDLR through an electronic payment method or credit card to pay a discount or service charge in an amount reasonable and necessary to reimburse the commission for the costs involved in processing the payment. The bill authorizes the commission to adopt rules as necessary to implement these methods of making payment. The bill requires the executive commissioner of TDLR by rule to prescribe notice procedures for administrative penalty proceedings that provide for notice by

certified mail with electronic return receipt.

C.S.H.B. 2310 authorizes the executive director of TDLR, if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety, to issue an emergency order to suspend or revoke a license or other authorization issued under a program regulated by TDLR or halt operation of an unsafe facility or unsafe equipment that is subject to regulation by TDLR. The bill authorizes the executive director to issue an emergency order with or without notice and hearing as the executive director considers practicable under the circumstances. The bill requires the executive director, if an emergency order is issued without a hearing, to set a time and place for a hearing conducted by the State Office of Administrative Hearings (SOAH) to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued and requires the order to be affirmed to the extent that reasonable cause existed to issue the order. The bill authorizes the commission by rule to prescribe procedures for the determination and appeal of an emergency order issued by the executive director, including a rule allowing the commission to affirm, modify, or set aside a decision made by SOAH. The bill establishes a proceeding relating to the issuance of an emergency order as a contested case under the Administrative Procedure Act.

C.S.H.B. 2310 authorizes TDLR to request and, if necessary, compel by subpoena the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation relating to TDLR, a law establishing a regulatory program administered by TDLR, or a rule adopted or order issued by the commission or the executive director, and the attendance of a witness for examination under oath. The bill authorizes a subpoena to be issued throughout Texas and served by any person designated by the commission or the executive director. The bill authorizes TDLR, acting through the attorney general, to bring an action to enforce a subpoena against a person who fails to comply with the subpoena. The bill provides that proper venue for an action brought relating to TDLR is in a district court in Travis County or in any county in which TDLR may hold a hearing. The bill requires a court to order compliance with the subpoena if the court finds that good cause exists to issue the subpoena. The bill authorizes the executive director to issue a cease and desist order if the executive director determines that the action is necessary to prevent a violation of provisions relating to TDLR, a law establishing a regulatory program administered by TDLR, or a rule adopted or order issued by the commission or the executive director.

C.S.H.B. 2310 prohibits a civil penalty assessed to a person that appears to be in violation of or threatening to violate a law establishing a regulatory program administered by TDLR or a rule or order of the commission or executive director related to the regulatory program from exceeding \$5,000 per day for each violation. The bill requires the commission to deny, as well as to revoke, suspend, or refuse to renew, a license for such a violation. The bill requires the executive director by rule to prescribe notice procedures for a contested case relating to an administrative penalty that provide for notice by certified mail with an electronic return receipt.

C.S.H.B. 2310 provides that a person whose license has been revoked by order of the commission or executive director is not eligible for a new license until the first anniversary of the date of the revocation. The bill authorizes the commission to deny, suspend, revoke, or refuse to renew a license or other authorization issued by a program regulated by TDLR if the commission determines that a deferred adjudication makes the person holding or seeking the license unfit for the license. The bill requires the commission, in making a determination as to whether to deny, suspend, revoke, or refuse to renew a license to consider prescribed factors to determine whether the conviction relates to the person's occupation, and to consider guidelines issued by TDLR.

C.S.H.B. 2310 authorizes the commission to adopt rules to allow a license holder to place a license issued by TDLR on inactive status by submitting, on a form prescribed by the department, an application for inactive status to TDLR not later than the expiration date of the license and by paying the required fee. The bill exempts a person whose license is on inactive

status from the requirement to complete continuing education required by law or a rule adopted by the commission. The exemption does not apply to a person returning the license to active status. The bill authorizes a person whose license is on inactive status to reapply for inactive status before the expiration date of the license and requires the person to pay the required fee. The bill prohibits a person whose license is on inactive status from engaging in any activity for which the license is required and a license holder from employing a person whose license is on inactive status. The bill authorizes a person whose license is on inactive status to return the license to active status by applying to TDLR for active status on a form prescribed by TDLR, paying the required fee, and providing evidence satisfactory to TDLR that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding license period. The bill authorizes the commission to set fees and adopt rules as necessary regarding licenses on inactive status.

C.S.H.B. 2310 authorizes the commission to determine that a person is not eligible for a license based on the person's criminal history or other information that indicates that the person lacks the honesty, trustworthiness, and integrity to hold a license issued by TDLR. The bill authorizes a person, before applying for a license from TDLR, to request that TDLR issue a letter determining whether the person would be eligible for the license and requires a person to file such a request on a form prescribed by TDLR and pay the required fee in order to obtain a determination letter. The bill requires TDLR to issue the determination letter to the person not later than the 30th day after the date TDLR makes its determination. The bill provides TDLR the same powers to investigate a determination request as TDLR has to investigate a person applying for a license, and specifies a determination letter that is adverse to a person does not prevent the person from subsequently applying for a license. The bill specifies that TDLR is not bound by its determination that the person would be eligible if, after the issuance of the determination letter, TDLR determines there has been a change in a person's circumstances or discovers a previously undiscovered fact. The bill establishes that a determination of eligibility is not a contested case under the Administrative Procedure Act.

C.S.H.B. 2310 authorizes the commission by rule to provide for the issuance of a temporary license to an applicant who submits an application to the executive director on a form prescribed by the executive director, meets preliminary qualifications established by commission rule, and pays any required fees. The bill provides for the expiration of a temporary license on the 21st day after the date of the issuance and prohibits renewal. The bill establishes a temporary license holder as subject to laws relating to TDLR, any law applicable to the activity for which the license is required, and any rule of the commission or the executive director applicable to the license.

C.S.H.B. 2310 authorizes the executive director to issue an emergency license to a person who meets eligibility requirements provided by a law establishing a regulatory program administered by TDLR or a rule adopted to implement provisions of an emergency license. The bill provides for the expiration of an emergency license on the date indicated by the executive director, but not later than the 90th day after the date the license is issued. The bill authorizes the executive director to extend the term of an emergency license to an expiration date after the 90th day after the date the license was issued if the governor declares an extended state of disaster. The bill authorizes an emergency license holder to engage in the activities authorized by the type of license only during a period in which a state of disaster has been declared and the following recovery period and in an area designated as a disaster area under the Texas Disaster Act of 1975.

C.S.H.B. 2310 makes provisions regarding the inactive status of a license and background requirements and eligibility determination of an applicant take effect May 1, 2010.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2310 adds a provision not in the original that includes as a grounds for removing a member of an advisory board that the member is unfit to continue serving on the advisory board. The substitute adds provisions not in the original to require the executive director by rule to prescribe notice procedures for an administrative proceeding and for a contested case involving an administrative penalty that provide for notice by certified mail with an electronic return receipt. The substitute differs from the original by authorizing the commission to adopt rules allowing a license holder to place a license on inactive status not later than the expiration date of the license, whereas the original authorizes a license holder to place a license on inactive status not later than the 10th day before the license's expiration date. The substitute adds a provision not in the original to authorize the extension of a term of an emergency license if the governor declares an extended state of disaster.